

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FLORENCIO CALICA, APPELLANT.

G.R. No. 139178. April 14, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Kidapawan City, Branch 23, in Criminal Case No. 2423 convicting appellant Florencio Calica of murder under Article 248 of the Revised Penal Code, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Igmedio Pispis in the amount of P50,000.

A criminal complaint for multiple murder against Florencio Calica, Ernesto Calica, John Doe, Peter Doe and Richard Doe was filed in the Municipal Circuit Trial Court of Makilala, Cotabato, docketed as Criminal Case No. 2070.[2] Appended to the complaint was the sworn statement executed by Dominga Pispis with the assistance of Atty. Solema Jubilan dated January 13, 1986 taken by T/Sgt. Ricarte Marquez.[3] Dominga testified during the preliminary investigation. Municipal Judge Elena B. De Leon thereafter issued an Order[4] dated March 13, 1987 dismissing the case as to Ernesto Calica on the ground of lack of prima facie evidence and issued a warrant of arrest[5] against the appellant on the same date. As the appellant and his co-accused remained at large, an alias warrant of arrest[6] was issued on April 7, 1988. The appellant was finally arrested sometime in 1991.[7] However, then Acting Judge Moises C. Carbonell issued a Resolution[8] dated July 4, 1991 dismissing the case for insufficiency of evidence as the court disbelieved the testimony of Dominga. The provincial fiscal, on review, reversed the resolution.

An Information was thereafter filed on November 19, 1991 before the Regional Trial Court of Kidapawan, Cotabato, docketed as Criminal Case No. 2423, charging the appellant with multiple murder, thus:

That at around 2:00 o'clock in the morning of December 23, 1986, at Barangay Malabuan, Municipality of Makilala, Province of Cotabato, Philippines, the aforementioned accused, in company with several masked and unidentified persons, conspiring, confederating together, and mutually helping one another, did then and there, willfully, unlawfully feloniously and treacherously attack, assault and fired upon JOSEPH MONTILLA, LUIS VALDEZ, JR., IGMIDIO (sic) PISPIS, ROLANDO GONZALES and CARLITO ROLLUDA (sic), thereby hitting and inflicting upon the said individuals, multiple gunshot wounds in the different parts of their bodies, which caused their death.

With further aggravating circumstances of:

Committed at nighttime, in an uninhabited place and by a band, to facilitate the commission of the crime;

- Evident premeditation; and
- Taking advantage of superior strength.

CONTRARY TO LAW.[9]

A warrant for the arrest of the appellant was issued on November 20, 1991.[10] An alias warrant of arrest[11] was issued on June 11, 1993 as the appellant remained at large. The appellant was again arrested and later ordered committed to the Provincial Warden of the Cotabato Provincial Jail on September 2, 1993.[12]

The appellant moved for a reinvestigation[13] of the case in view of the emergence of two new witnesses, Elias Palog and Agustin Alonzo. The court granted the same.[14] The provincial prosecutor, however, recommended that trial of the case continue, as the allegation of the two witnesses, that the appellant was not present at the scene of the crime was not enough to overturn the original resolution which recommended the filing of the information.[15]

The appellant, assisted by counsel, pleaded not guilty to the charge during his arraignment on December 13, 1993.[16] Trial forthwith ensued.

The Case for the Prosecution[17]

Spouses Igmedio and Dominga Pispis resided at Barangay Malabuan, Makilala, Cotabato. They had two daughters, one of whom was Dolores. The Pispis family lived in a hut that stood on a farm on which rubber trees grew.[18]

At around 1:00 a.m. of December 23, 1986, while the Pispis family slept, Rolando “Boy” Gonzales, a neighbor, and fellow Ilocanos called out and asked about “Nong Tony.” Dominga woke up and peeped through the unfinished portion of the wall of their house. She saw Gonzales, his hands tied at the back, and an armed man positioned in front of their door. Two more men, similarly armed, stood beside the house, firearms pointed towards it, while still two others were sitting on a carabao sled (kangga) nearby. The armed men wore bonnets over their heads.

Dominga went down to answer the door. Igmedio followed suit, but had to go back to get his pants on account of the cold. One of the armed men shouted and ordered that the light be put off. The men then shouted to Igmedio, “Dalian mo!,” upon which Dominga went back upstairs. She noticed that her husband was sobbing.[19] Outside, they were suddenly surrounded by five men who were wearing bonnets[20] and armed with long firearms.[21] One of the men put an arm on Igmedio’s shoulder and forced the latter to go with them. Dominga tried to follow them and placed her arm on her husband, but the armed man parried her gesture.[22] The armed men, with her husband in tow, proceeded to walk away. One of the men asked Igmedio why his shirt was torn, to which the latter replied, “It’s alright, sir.” Dominga, for her part, climbed up on the roof of their house and saw the group head towards the direction of the house of Regino Taruma, which also led to the rubber plantation owned by a certain Irma Martinez, her husband’s employer.[23]

Dominga recognized one of the men as the appellant, Florencio Calica, who also happened to be her husband’s second cousin and a member of the Civilian Home Defense Force (CHDF) of Bato.[24] The appellant, who was wearing black pants and a long-sleeved uniform, positioned himself in front of the door of the hut, his firearm pointed towards Igmedio. He, like the other armed men, had a bonnet over his head; only the eyes, nose and mouth were visible. The appellant’s bonnet, however, was loose. Dominga was almost face to face with the appellant, about merely half an arm’s length away,[25] and saw his face in the moonlight.[26]

Then eleven-year-old Dolores, who was awakened by the commotion, also recognized the appellant, her uncle. His bonnet was loosened.[27] She watched from inside the house, and peeped through the unfinished portion of the wall.[28] Dolores saw Rolando Gonzales, Joseph Montilla, Luis Valdez, Jr. and her father being taken away by the armed men.

Not long thereafter, while Dominga and her children were praying for her husband’s safety, they heard several

bursts of gunfire. Igmedio never returned. His body was found at about 6:00 a.m. near a quarry in Malabuan, about one kilometer away from Barangay Villaflores.[29] The lifeless bodies of four others were found: Carlito Rulloda, Luis Valdez, Jr., Rolando Gonzales, and Joseph Montilla.[30] They were hogtied.[31]

In the meantime, Lorena Valdez was with her family at their house in Barangay Villaflores, Makilala, Cotabato – her husband Luis Valdez, Jr., her brother Joseph Montilla, and her young children. Suddenly, armed men wearing masks came and took her husband and her brother away. The next time Lorena saw them was in the quarry, their lifeless bodies lying on the ground.[32]

Meanwhile, Barangay Captain Andrino Garcia was informed that people were killed in the rubber plantation.[33] He went there and saw the dead bodies of five men, including that of his godson, Igmedio Pispis, and his nephew, Rulloda. He then proceeded to the Makilala municipal hall and reported the matter to the authorities.[34] The police went to the scene of the crime and loaded the lifeless bodies onto a vehicle to be brought to the funeral parlor.[35] Garcia then instructed the relatives of the victim to go to the municipal hall to report everything they saw.[36]

The respective certificates of death issued by Dr. Gervacio L. Albano indicate that the victims died of multiple gunshot wounds, and that the approximate time of death was at 2:00 a.m. of December 23, 1986.[37]

The Case for the Defense

Agustin Alonzo testified that he was a native of Barangay Bato, Makilala, Cotabato, and a CHDF volunteer. At about 2:00 a.m. of December 23, 1986, he saw CHDF Commander Pedro Lopez who asked to be accompanied to Malabuan. Commander Lopez was with six people whose faces were covered. When they reached Malabuan, the men “picked up” people, including Igmedio, who were suspected members of the New People’s Army (NPA).[38] When he saw that the men who were taken were killed, he ran away. Alonzo also testified that he had known the appellant since the latter was a boy. He was not among the armed men involved in the abduction and killing.

Elias Palog, also a resident of Barangay Bato, Makilala, Cotabato, testified that he was a CAFGU member and a CHDF volunteer. He claimed that at around 8:00 a.m. of December 22, 1986, he was in the house of Commander Lopez at Barangay Bato. They talked about “getting some people” (kuhaanon) at Malabuan who were members of the NPA, particularly the victim Igmedio Pispis who was a member of the HUKBALAHAP. He stated that the appellant was not among the group who was with Pedro Lopez.[39]

Elpidio Asidre testified that he was a farmer and a resident of Barangay Bato, Makilala, Cotabato, since 1959. He and the appellant were neighbors,[40] as their houses were about a hundred meters away from each other.[41] On December 22, 1986, Asidre was at his house preparing for the death anniversary of his mother. The appellant had arrived at 8:00 a.m. that morning to help him butcher a pig and a goat for the occasion.[42] The appellant, along with Rudy Llanado, helped in preparing 80 kilos of the meat. The appellant stayed in the house until 3:00 p.m. the following day, December 23, 1986.[43] Asidre testified that the appellant never left the house the entire time.[44]

Asidre also testified that the house of the victim Igmedio Pispis in Barangay Malabuan was about ten kilometers away, or a three-to-four hour hike from his place. There were no other means of transportation at the time due to the difficult road conditions.[45] The witness added that it was impossible for the appellant to have committed the crime charged because the latter was in their house helping with the preparations.[46]

Rudy Llanado testified that he was married and had been a resident of Barangay Bato, Makilala, for twenty years. The appellant, as well as Asidre, were his neighbors. The appellant’s wife, Estrella Llanado Calica, was his

sister.[47] He corroborated Asidre's testimony that there was a special occasion in the latter's house on December 22, 1986. He stated that he arrived in Asidre's house to help with the preparations at 3:00 p.m. that day. There were about thirty persons in the house, including the appellant. Llanado left the place at about 3:00 p.m. the next day.[48]

According to Llanado, he and the appellant sliced the meat of the butchered pig and served food and drinks to the visitors. The appellant never left Asidre's house. He was, thus, surprised when the appellant was implicated in the killing.[49]

Alfredo Aca testified that he was a rubber tapper by profession and that he resided at Malabuan, Makilala, Cotabato. His house was about 200 meters away from that of Igmedio Pispis.[50] He knew the appellant even as a little boy.[51] In the evening of December 22, 1986, he was awakened by calls from six persons. They were armed, and asked for coffee. Before they left, the men asked him for directions to Igmedio Pispis' residence. Aca merely pointed to the house, reasoning that he could not accompany them as his wife had just recently delivered a baby. The witness testified that the appellant was not among the armed men.

The appellant denied the charge lodged against him. He testified that he was a farmer and a long-time resident of Barangay Bato, Makilala, Cotabato. He confirmed his earlier testimony to the effect that it would take one three hours to get to Barangay Malabuan from Barangay Bato on foot, as the road was very difficult and one has to pass two mountains to get there.[52] Another option was to travel by horseback.

At 8:00 a.m. of December 22, 1986, he went to the house of Elpidio Asidre to help in the food preparations for the death anniversary of the latter's mother. There present were Rudy Llanado, Asidre, the latter's daughter, and some visitors. He stayed there until about 3:00 p.m. of the next day because aside from serving food to the visitors, he joined the merrymaking and the drinking spree that followed. He was unable to sleep on the evening of December 22, 1986, as they were in the process of butchering the pigs and goats. He never left the house.

The trial court thereafter rendered a decision convicting the appellant of murder, the dispositive portion of which reads:

In view of all the foregoing, this Court finds and so holds that for the killing of Igmedio Pispis, accused Florencio Calica is found guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code. Appreciating the aggravating circumstances of committing the crime in the nighttime and by a band and without any mitigating circumstances attending to its commission, accused Florencio Calica shall serve the penalty of Reclusion Perpetua. His detention from April 25, 1991 to July 4, 1991 and

subsequent detention from August 24, 1993 to July 13, 1994 is credited in full in his favor. He is directed to pay costs.

Accused Florencio Calica is directed to indemnify the heirs of deceased I[g]midio (sic) Pispis the sum of Fifty Thousand (P50,000.00) Pesos.

The property bond posted for his provisional liberty is cancelled and released. The Register of Deeds of Cotabato is directed to cancel the annotation in Transfer Certificate of Title No. T-51977. The Warden of the Provincial Rehabilitation Center of Cotabato is directed to take him into custody.

SO ORDERED.[53]

On appeal before this Court, the appellant ascribes the following errors to the court a quo:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.[54]

The appellant insists that the prosecution utterly failed to prove his guilt beyond reasonable doubt of the crime charged. Not one of the witnesses presented by the prosecution personally witnessed the abduction and killing of the victim Igmedio Pispis. The appellant asserts that there was no evidence that he was present during the meeting called by CHDF Commander Pedro Lopez. Defense witnesses Elias Palog and Agustin Alonzo did not testify that the appellant was among those who attended the meeting of December 22, 1986 and abducted and killed Igmedio. Considering that the trial court based its findings on their testimony which were exculpatory of the appellant, it clearly erred when it convicted him.

The appellant, likewise, asserts that there is doubt as to the veracity of the identification made by Dominga Pispis and Dolores Gonzales; one claimed that she was able to identify the appellant because his blindfold was lost, while the other claimed that he had a loosened bonnet. The appellant points out that a bonnet and a blindfold are two different things. It would have been reckless of him to have worn a loose bonnet, thus exposing his face, since he was known to Dominga, Igmedio and their daughter. Furthermore, the prosecution failed to prove any motive on his part to kill the victim, especially considering that the victim was his own cousin. As a consequence, the appellant asserts that he was convicted on the basis of mere circumstantial evidence, which has not been adequately established much less corroborated. Hence, it cannot by itself be the basis of conviction. Finally, according to the appellant, he did not even have to establish the defense of alibi since the prosecution was unable to overcome the constitutional presumption of innocence in his favor.

For his part, the Solicitor General asserts that the trial court correctly found that the evidence adduced in the instant case established the culpability of the appellant for the crime of murder beyond reasonable doubt. The inconsistencies pointed out by the appellant are minor matters which do not impair the integrity of the prosecution's evidence, or the credibility of the witnesses who positively identified the appellant as the perpetrator of the crime.

The Ruling of the Court

The threshold issue in this appeal is whether or not the prosecution was able to prove, through the collective testimonies of Dominga Pispis and her daughter, that the appellant was one of those who abducted Igmedio from his house at 1:00 a.m. on December 23, 1986, and killed him shortly thereafter.

In criminal prosecution, accusation is not synonymous with guilt. It is incumbent on the prosecution to prove the guilt of the accused beyond reasonable doubt. By reasonable doubt is meant that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. There is a need, therefore, for the most careful scrutiny of the evidence of the prosecution, both oral and documentary, independently of whatever defense the accused may offer.[55] The prosecution must rely on the strength of its own evidence and not on the evidence of the accused. The weakness of the defense of the accused does not relieve the prosecution of its responsibility of proving the guilt of the accused beyond reasonable doubt.[56] In every case, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains reasonable doubt as to his guilt. Where the pieces of evidence against the accused are insufficient or doubtful to determine the guilt of the accused with moral certainty, he should be

acquitted.[57] Speculations, surmises and probabilities cannot take the place of proof beyond reasonable doubt.[58]

The prosecution is burdened to prove beyond reasonable doubt that (a) the crime charged was committed, and (b) the identity of the perpetrators of the said crime.[59] In *People v. Esmale*,[60] we held that the first duty of the prosecution is not to present the crime but to prove the identity of the criminal. To warrant the conviction of the accused, the identification of the accused as one of the assailants must be positive, categorical and consistent, made by a credible witness or witnesses.[61] The identification of the accused as the perpetrator or one of the perpetrators of the crime charged is concededly not an easy task.[62] It has been observed that:

“[T]here are few more difficult subjects with which the administration of justice has to deal. The carelessness or superficiality of observers, the rarity of powers of graphic description, and the different force with which peculiarities of form or color or expression strike different persons, make recognition or identification one of the least reliable of facts testified to even by actual witnesses who have seen the parties in question....”[63]

The probative weight of an in-court identification is largely dependent upon an out-of-court identification. To resolve the admissibility and probative weight of an out-of-court identification of suspects, the totality of the following factors must be considered, viz.:

... (1) the witness’ opportunity to view the criminal at the time of the crime; (2) the witness’ degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.[64]

The totality of circumstances test has been designed precisely to assure fairness as well as compliance with the constitutional requirement of due process in regard to out-of-court identification and to prevent the contamination of the integrity of an in-court identification.[65]

A suspect may be positively identified by his face, physical attributes, voice, mannerisms and body movements.[66] In several cases, the Court has ruled that the suspect may be identified by the illumination by starlight and by the light of the moon.[67]

Proof of the crime charged and the identity of the suspect/suspects may consist of direct evidence and/or circumstantial evidence. It is settled that in the absence of direct proof of the commission of the crime, circumstantial evidence could be the basis of conviction as long as the following requisites concur:

- (1) There is more than one circumstance;
- (2) The facts from which the inferences are derived are proven; and,
- (3) The combination of the circumstances is such as to produce a conviction beyond reasonable doubt.

However, to merit approbation, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of others, as the perpetrator of the crime.[68] A judgment of conviction based on circumstantial evidence may be upheld only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[69] As a corollary to the constitutional precept that the accused is presumed innocent until the contrary is proved, a conviction based on circumstantial evidence must exclude each and every hypothesis consistent with his innocence.[70]

In the case at bar, the prosecution proved that Igmedio was abducted by five armed men wearing bonnets over their heads at about 1:00 a.m. in front of his house on December 23, 1986. Even the appellant presented evidence that the perpetrators were Pedro Lopez, the Commander of the CHDF, and his men who suspected that Igmedio was a member of the NPA. The core issue then is whether or not the appellant was among those men who abducted and killed the victim.

The trial court anchored the appellant's conviction on (a) the testimony of Dominga who claimed to have witnessed the abduction of her husband and recognized the appellant when the bonnet made of knitted cloth covering his head was loosened, thus, exposing the latter's face; (b) the testimony of her young daughter Dolores who corroborated, in part, her mother's testimony; and, (c) the testimony of Elias Palog and Agustin Alonzo, former volunteer members of the CHDF, that the members of the CHDF led by Commander Pedro Lopez abducted and killed the victim because he was suspected of being a member of the NPA. The trial court declared, viz.:

A day before the victim was killed there was a meeting called by CHDF Commander Pedro Lopez at his house in Bato because they will take NPAs at Malabuan specially the victim who was a hukbala-ab. Accused Calica who is a resident of Bato was seen by Dominga and Dolores at about 1:00 o'clock in the morning of December 23, 1986 seated on the carabao sled in their yard armed with a long firearm. He even held his long firearm in an aiming position. His bonnet was loosely worn leaving his face to the clear view of the two. They are familiar with his face because he is a second cousin of the deceased. About one (1) hour after accused Calica's group took the victim, they heard gunbursts. At daylight, the body of the victim was found in a quarry in Malabuan riddled with bullets. Accused Calica and his group were the last persons to be with the victim before he was shot to death.[71]

We find the identification of the appellant as one of the abductors and killers of the victim dubious and unconvincing. Consequently, we acquit the appellant of the crime charged.

Dominga testified that all the armed men who arrived in their house and abducted her husband wore bonnets made of knitted cloth over their

heads. Each of the bonnets had holes through which the wearer could see, and over the mouth and nose.[72] However, in her sworn statement to T/Sgt. Ricarte Marquez of the Criminal Investigation Unit, Dominga, with the assistance of her counsel on January 13, 1986, declared that the appellant wore a black-colored bonnet where only his face was visible:

15. Q-

Aside from a black-colored uniform wore (sic) by Florencio Calica, what other could you observed (sic) that he wears on the occasion they took your husband?

A-

Also this Florencio Calica wears black-colored bonnet and only his face was appearing.[73]

Elaborating on the sworn statement to T/Sgt. Ricarte Marquez, Dominga declared, during the preliminary investigation of the charge against the appellant before the municipal trial court, that she saw the appellant's face because his bonnet was loose, adding that his mouth was "also appearing or somewhat appearing" so that she was able to identify the appellant:

Q-

Now you said in your affidavit before investigator T/Sgt. Ricarte Marquez that this Florencio Calica was wearing a bonnet, is that right?

A-

Yes, sir.

Q-

How did you know him?

A-

Because the bonnet was loose.

Q-

What do you mean by loose?

A-

Since the bonnet worn by Florencio Calica is (sic) loose instead his face was only appearing, his mouth was also appearing or somewhat appearing, so I was able to identify him.[74]

Dominga reiterated her testimony during the preliminary investigation when she testified during the trial:

A

The bonnet I am referring to, sir, is like this, it covers the entire head with knitted cloth that will cover the entire head and there is a hole in the [e]ye portion which is a wide hole and loose.

Q

In other words, only the [e]yes, the nose and the mouth are appearing, Mrs. Pispis?

A

It is the face that is seen.

Q

Are you sure of that Mrs. Pispis?

A

Yes, I am very sure.

Q

And at that time it was 2:00 o'clock in the morning?

A

When they took my husband, it was 1:00 o'clock.

Q

It was very dark?

A

It was moonlight, full moon.

Q

Do you have electricity in your barangay?

A

Our house is in the farm and it was moonlight, and there was no abstraction (sic).

Q

Is it not that your house is situated under the rubber trees?

A

We live in the hut and it has no shades.

Q

Now, you said, that one of the persons you saw that took your husband was Florencio Calica, is that right?

A

Yes, sir.

Q

And Florencio Calica is a second cousin of your husband?

A

Yes, sir.

Q

And you know Florencio Calica?

A

Yes, sir.

Q

You do not have misunderstanding with Florencio Calica?

A

None.

Q

You did not ask Florencio Calica at that time why your husband was being taken away?

A

No, I did not, sir.[75]

But it is inconceivable how Dominga could have seen the appellant's face when only his eyes and mouth were visible through the bonnet he wore over his head. Even if the bonnet of the appellant was "loose," his face could not have been exposed, unless he was not wearing it, or it was rolled up and merely covered his head. It bears stressing that Dominga's testimony showed that from the time the armed men arrived and until they left the victim's house, the appellant merely stood by with his knees bended a little, and his firearm pointed to the victim and Dominga.[76] There is no evidence that the appellant changed his position up to the time that the armed men left with the victim. Neither Dominga nor Dolores explained how the bonnet of the appellant became loose while he was immobile, thus, revealing his face to them.

Dominga testified that she was able to identify the appellant because at one point during the abduction, the latter was only half an arm's length from her and there was a full moon. During the trial, however, Dominga was shown pictures of her husband for identification, and the latter admitted that although it was during daytime, she was not sure if the pictures were those of her husband because her eyes were defective:

Q.

WHEN YOU WERE ASKED BY THE PROSECUTOR FOR YOU TO IDENTIFY YOUR HUSBAND IN THE PICTURES SHOWN TO YOU, YOU SAID THAT WOULD NOT BE SURE OF YOUR HUSBAND BECAUSE YOUR SIGHT IS BLURRED, CAN YOU REMEMBER HAVING ANSWERED THAT?

A.

YES, I STATED THAT.

Q.

IN OTHER WORDS, YOUR SIGHT OR YOUR EYES HAS SOME DEFECTS?

A.

YES.[77]

IF DOMINGA COULD NOT IDENTIFY HER HUSBAND IN BROAD DAYLIGHT FROM THE PICTURES SHOWN TO HER BECAUSE OF HER BLURRED VISION, WE FIND IT HARD TO BELIEVE THAT SHE WAS ABLE TO RECOGNIZE THE APPELLANT AT NIGHT WITH HIS BONNET ON, EVEN IF THERE

WAS MOONLIGHT. EQUALLY UNRELIABLE IS THE TESTIMONY OF DOLORES THAT SHE SAW THE FACE OF THE APPELLANT BECAUSE HIS BONNET WAS LOOSENEED AS SHE WATCHED FROM INSIDE THEIR HUT, LOOKING OUT FROM THE UNFINISHED PORTION OF THE WALL, VIZ.:

PROSECUTOR DE GUZMAN:

Q

WHAT HAPPENED AFTER THAT?

A

THEY BROUGHT MY FATHER OUT.

Q

WHAT ABOUT YOU, WHAT WERE YOU DOING THAT TIME?

A

I REMAINED INSIDE.

Q

WHEN YOUR NEIGHBOR WAKE (SIC) YOU UP, WERE YOU AWAKEN[ED]?

A

YES, SIR.

Q

YOU SAID YOUR FATHER WAS BROUGHT AWAY, WERE YOU ABLE TO IDENTIFY WHO BROUGHT YOUR FATHER AWAY?

A

ONLY ONE I RECOGNIZED.

Q

HOW MANY OF THEM?

A

FIVE OF THEM.

Q

YOU WERE ABLE TO IDENTIFY ONE, HOW COME THAT YOU WERE ABLE TO IDENTIFY ONE?

A

THREE OF US WERE INSIDE AND I SAW THAT PERSON, MY UNCLE, WHO HAS A LOOSEN VONNET (SIC).

Q

WHO IS THIS YOUR UNCLE YOU ARE REFERRING TO THAT YOU WERE ABLE TO IDENTIFY?

A

FLORENCIO CALICA.

Q

IF THIS FLORENCIO CALICA IS AROUND, CAN YOU PINPOINT HIM?

A

YES, SIR. (WITNESS POINTS TO A PERSON INSIDE THE COURTROOM WHO, AND WHEN ASKED, HE ANSWERED THAT HE IS FLORENCIO CALICA, ACCUSED HEREIN).

Q

YOU SAID THAT THE INCIDENT HAPPENED EARLY DAWN, HOW WERE YOU ABLE TO IDENTIFY FLORENCIO CALICA?

A

THE MOON WAS BRIGHT THAT TIME.

Q

BY THE WAY, YOU SAID THIS FLORENCIO CALICA WAS YOUR UNCLE, HOW COME THAT HE IS YOUR UNCLE?

A

HE IS THE SECOND COUSIN OF MY FATHER.

Q

YOU ALSO SAID A WHILE AGO THAT HE WAS WEARING VONNET (SIC), HOW WERE YOU ABLE TO IDENTIFY HIM?

A

THE VONNET (SIC) COVERING HIS FACE WAS LOOSE AND I KNOW HIM BECAUSE HE IS MY UNCLE.

...

Q

NOW YOUR NEIGHBORS WOKE YOU UP, IS THAT RIGHT?

A

YES, SIR.

Q

NOW, WHEN THESE NEIGHBORS WOKE YOU UP, IT WAS ONLY YOUR MOTHER AND FATHER WHO WENT OUT, IS THAT RIGHT?

A

YES.

...

Q

NOW, YOU STATED A WHILE AGO THAT THE PERSONS OR THE NEIGHBORS WHO GOT YOUR FATHER AND MOTHER WORE SOME VONNETS (SIC)?

A

ONLY MY FATHER WAS TAKEN. YES, THERE WERE VONNETS (SIC).

Q

SO YOU DID NOT ACTUALLY SEE WHO WERE THESE NEIGHBORS WHO BROUGHT YOUR FATHER?

A

I RECOGNIZED MY UNCLE.

Q

BUT THAT PERSON WHOM YOU ASSUMED TO BE YOUR UNCLE WAS WEARING VONNET (SIC)?

A

THERE WAS, BUT IT WAS LOOSE.

Q

AND THE ONLY THING THAT YOU KNEW WAS YOUR FATHER WAS BROUGHT OUT FROM YOUR HOUSE?

A

YES, SIR.[78]

NO LESS THAN THE TRIAL COURT FOUND THE TESTIMONY OF DOLORES INCREDIBLE. THIS IS SO BECAUSE DOMINGA TESTIFIED THAT WHEN IGMEDIO WAS ABDUCTED, ALL HER CHILDREN WERE ASLEEP:

ON CLARIFICATORY QUESTION BY THE COURT, WHEN WITNESS WAS ASKED WHAT THEIR CHILDREN DID AS A REACTION ON THE TAKING OF THE ARMED MEN OF THEIR FATHER, SHE ANSWERED, "THEY WERE ASLEEP;" THAT THEY WERE NOT AWAKENED BY THE COMMOTION.[79]

THE APPELLANT IS THE SECOND-DEGREE COUSIN OF IGMEDIO, AND THE TWO OF THEM KNEW EACH OTHER VERY WELL. DOMINGA HERSELF KNEW THE APPELLANT AND HAD MET HIM. IF, INDEED, AS CLAIMED BY DOMINGA AND DOLORES, THE APPELLANT WAS ONE OF IGMEDIO'S ABDUCTORS, IT IS HARD TO BELIEVE THAT THE APPELLANT WOULD USE A "LOOSE BONNET" WITH HIS FACE VISIBLE TO THE VICTIM AND HIS FAMILY, AS HE COULD BE EASILY IDENTIFIED LATER. THUS, THE TRIAL COURT'S RELIANCE ON THE TESTIMONIES OF AGUSTIN ALONZO, ELIAS PALOG OR EVEN ALFREDO ACA WHO TESTIFIED FOR THE APPELLANT IN CONVICTING THE APPELLANT IS MISPLACED. ALONZO TESTIFIED THAT HE WAS A RECRUIT OF PEDRO LOPEZ, THE COMMANDER OF THE CHDF, AND THAT AT 2:00 A.M. ON DECEMBER 23, 1986, HE, JUN LOPEZ AND OTHER MEMBERS OF THE CHDF PICKED UP IGMEDIO AND OTHERS WHO WERE SUSPECTED NPA MEMBERS. THE VICTIMS WERE MAULED AND KILLED. ALONZO RECOUNTED THAT THE FACES OF THE COMPANIONS OF THE LOPEZES WERE COVERED:

Q

COULD YOU RECALL WHERE YOU WERE ON DECEMBER 23, 1986 AT AROUND 2:00 O'CLOCK IN THE MORNING?

A

YES, I CAN RECALL.

Q

WHERE WERE YOU?

A

I WAS AT BATO.

Q

COULD YOU RECALL ON THAT DATE AND TIME WHETHER THERE WAS A PERSON WHOM YOU MET?

A

THERE WAS.

Q

WILL YOU PLEASE TELL US WHO WAS THAT PERSON?

A

I DO NOT KNOW HIM.

Q

I WOULD REFRESH YOUR MEMORY, MR. AGUSTIN ALONZO, ASIDE FROM BEING A FARMER, DO YOU HOLD A POSITION IN YOUR BARANGAY?

A

YES, SIR.

Q

WHAT IS YOUR POSITION?

A

VOLUNTEER OF CHDF.

Q

YOU ARE A CHDF VOLUNTEER IN BRGY. BATO?

A

YES, SIR.

Q

WHAT YEAR WAS THAT WHEN YOU BECAME A VOLUNTEER OF BRGY. BATO?

A

1960, SIR.

Q

BUT IN THE YEAR 1986, ARE YOU ALREADY A CHDF VOLUNTEER?

A

YES, SIR.

Q

WILL YOU PLEASE TELL US IF (SIC) WHO RECRUITED YOU AS A CHDF VOLUNTEER?

A

PEDRO LOPEZ, SIR.

Q

IS THIS PEDRO LOPEZ YOUR CHDF COMMANDER?

A

YES, SIR.

Q

NOW, I WILL ASK YOU WHETHER YOU COULD STILL RECALL WHETHER YOU MET CHDF PEDRO LOPEZ ON DECEMBER 23, 1986?

A

YES, WE SAW EACH OTHER.

Q

WILL YOU PLEASE TELL US WHAT TIME DID YOU MEET CHDF CMDR. LOPEZ?

A

2:00 O'CLOCK DAWN.

Q

YOU ARE SAYING THAT YOU MET CHDF CMDR. PEDRO LOPEZ AT 2:00 O'CLOCK IN THE MORNING OF DECEMBER 23, 1986?

A

YES, SIR.

Q

WHAT DID HE TELL YOU, IF THERE WAS ANY, WHEN YOU MET?

A

COME WITH ME.

Q

DID YOU ASK CMDR. PEDRO LOPEZ WHERE YOU WILL GO?

A

I ASKED.

Q

AND WHAT WAS THE ANSWER OF CHDF CMDR. PEDRO LOPEZ?

A

WE WILL GO TO MALABUAN.

Q

AND DID YOU ASK WHAT WILL YOU DO AT BRGY. MALABUAN?

A

NO, I DID NOT ASK.

Q

DID YOU GO WITH CMDR. LOPEZ?

A

YES, I WENT WITH HIM.

Q

WAS [THE] CHDF CMDR. WITH COMPANIONS AT THAT TIME?

A

YES, SIR.

Q

WILL YOU PLEASE TELL US WHO WERE HIS COMPANIONS, IF YOU COULD STILL RECALL?

A

THE ONES WHOM I IDENTIFIED WERE THE TWO LOPEZES.

Q

WILL YOU PLEASE TELL THE NAME.

A

PEDRO LOPEZ, JUN LOPEZ, I DO NOT KNOW THE OTHERS.

Q

BUT ASIDE FROM PEDRO LOPEZ AND JUN LOPEZ, THERE WERE OTHER COMPANIONS?

A

YES, SIR.

Q

AROUND HOW MANY OF THEM?

A

AROUND SIX PERSONS.

Q

DO YOU KNOW THOSE SIX PERSONS?

A

I DO NOT KNOW.

Q

BUT YOU SAW THEIR FACES?

A

THEY WERE COVERED.

Q

NOW, YOU SAID THAT YOU WERE INSTRUCTED BY CHDF CMDR. PEDRO LOPEZ TO PROCEED TO MALABUAN, WERE YOU ABLE TO REACH BRGY. MALABUAN?

A

YES, SIR.

Q

AND WHAT HAPPENED THERE AT BRGY. MALABUAN?

A

THEY PICKED UP PEOPLE AND (SIC) SUSPECTED TO BE NPAS.

Q

DO YOU KNOW THOSE PERSONS WHO WERE PICKED UP?

A

I ONLY KNEW ONE.

Q

AND WHO WAS THAT PERSON?

A

A CERTAIN PISPIS.

Q

AND AFTER THESE PERSONS WERE PICKED UP, WHAT HAPPENED NEXT, IF YOU KNOW?

A

YES, I KNOW.

Q

WHAT HAPPENED?

A

THEY WERE MAULED AND WERE TAKEN.

Q

AFTER THEY WERE MAULED AND WERE TAKEN, WHAT HAPPENED?

A

THEY WERE KILLED BY PERSONS I CANNOT IDENTIFIED (SIC).

Q

AFTER THEY WERE TAKEN AWAY OR PICKED UP ACCORDING TO YOU, AROUND HOW MANY MINUTES THAT LAPSED BEFORE THEY WERE KILLED?

A

AROUND ONE HOUR THEN I SAW THAT THEY KILLED THOSE PERSONS. THOSE WERE THE ONLY I SAW (SIC), THEN I RAN AWAY.

Q

AND TELL US, IF YOU KNOW, WHO KILLED THOSE PERSONS BEING PICKED UP?

A

JUN LOPEZ AND THE OTHER ARMED MEN WHOM I COULD NOT IDENTIFY.[80]

However, Alonzo, likewise, testified that he could not categorically state whether the appellant was among those who were with him, Lopez and the other members of the CHDF because their faces were covered:

PROSECUTOR DE GUZMAN:

Q

AGUSTIN ALONZO, YOU SAID YOU WERE ALSO A MEMBER OF THE CHDF?

A

YES, SIR.

Q

SO, YOU PARTICIPATED IN KNOCKING AT THE DOOR OF THESE PEOPLE AND THEN GOT THEM FROM THEIR RESPECTIVE HOUSE[S] AND BROUGHT AT A CERTAIN HOUSE IN MALABUAN WHERE THEY WERE EXECUTED?

A

NO, I WAS AT A DISTANCE LOOKING AT WHAT THEY WERE DOING WHICH TO ME WAS VERY UNBECOMING.

Q

BUT YOU WERE A CHDF THAT TIME?

A

VOLUNTEER.

Q

SO, YOU ALSO HAVE (SIC) A GUN THAT EVENING?

A

NONE, SIR.

Q

WHEN (SIC) PEDRO LOPEZ TOLD YOU HE WAS WITH FIVE OR SIX COMPANIONS?

A

YES, SIR.

Q

AND YOU CANNOT IDENTIFY ANYONE OF THEM BECAUSE ALL THEIR FACES WERE COVERED?

A

I COULD NOT RECOGNIZE.

Q

SINCE YOU CANNOT RECOGNIZE THEM, IT IS (SIC) POSSIBLE THAT ONE OF THEM IS FLORENCIO CALICA?

A

NO, BECAUSE WHAT I CLEARLY IDENTIFIED WERE THESE TWO LOPEZES.

Q

BECAUSE THESE TWO LOPEZES [HAVE] NOT COVERED THEIR FACES AND IS IT ONLY THE SIX COMPANIONS [WHO] WERE COVERED?

A

YES, I WAS NOT ABLE TO RECOGNIZE THE FACES WHICH WERE COVERED.

Q

THE INCIDENT HAPPENED IN 1986?

A

YES, SIR.

Q

AND AFTER A PERIOD OF SIX YEARS, YOU EXECUTED AN AFFIDAVIT?

A

YES, SIR.

Q

AND THEN YOUR PURPOSE IN EXECUTING AN AFFIDAVIT IS TO EXCLUDE THE ACCUSED NOW IN THIS CASE?

A

I HAVE NOT SEEN FLORENCIO CALICA.

Q

YOU HAVE NOT SEEN FLORENCIO CALICA THAT TIME BECAUSE ALL THE COMPANIONS OF PEDRO LOPEZ WERE ALL MASKED?

ATTY. PALMONES:

WE OBJECT TO THE QUESTIONING, YOUR HONOR, THE WITNESS ALREADY ANSWERED THAT THE ACCUSED FLORENCIO CALICA WAS NOT AMONG THOSE COMPANIONS.

COURT:

MAY ANSWER.

A

THE TRUTH OF THE MATTER, I HAVE NOT SEEN FLORENCIO CALICA IN THAT GROUP AND I JUST WANT THAT JUSTICE AND TRUTH WILL COME OUT THAT FLORENCIO CALICA WAS NOT AMONG THE GROUP.

Q

AND YOU SAID A WHILE AGO THAT YOU DID NOT GO NEAR THE GROUP BECAUSE YOU WERE AFRAID.

COURT:

THE WITNESS ANSWERED THAT HE WAS JUST AFAR WATCHING WHAT THEY WERE DOING.

PROSECUTOR DE GUZMAN:

Q

BUT DURING ALL THIS INCIDENT, YOU WERE AFAR WATCHING BECAUSE YOU SAID YOU DID NOT PARTICIPATED (SIC)?

A

YES, SIR, THAT IS TRUE.

Q

IN FACT, YOU RAN AWAY WHEN THE SHOOTING WAS ALREADY HAPPENING?

A

YES, SIR.

Q

AND THAT IS THE REASON WHY THERE ARE ONLY TWO PEOPLE WHOM YOU CAN IDENTIFY?

ATTY. PALMONES:

MISLEADING, YOUR HONOR.

PROSECUTOR DE GUZMAN:

THE WITNESS ALREADY ANSWERED THAT NOT AMONG THOSE COMPANIONS OF CHDF PEDRO LOPEZ WAS THE ACCUSED FLORENCIO CALICA.

COURT:

MAY ANSWER.

A

YES, SIR.[81]

Aca testified that on December 22, 1986, at around past midnight, he was awakened by six armed men asking for coffee. But before they left, the armed men asked him where the house of Igmedio was. The armed men did not wear bonnets and he could identify their faces if he saw them afar:

Q

CAN YOU RECALL WHERE YOU WERE ON THE EVE OF DECEMBER 22, 1986 AT MORE OR LESS 12:00 O'CLOCK MIDNIGHT?

A

YES, SIR.

Q

TELL THE COURT PLEASE?

A

I WAS IN MY HOUSE.

Q

WHILE YOU WERE IN YOUR HOUSE IN THE MIDNIGHT OF DECEMBER 22, 1986, CAN YOU RECALL OF ANYTHING THAT HAPPENED?

A

YES, SIR.

Q

WHAT WAS THAT INCIDENT, IF YOU CAN STILL RECALL?

A

THERE WERE 6 PERSONS WHO AWAKENED ME.

Q

WHEN YOU WERE AWAKENED BY 6 PERSONS, WHAT DID YOU DO?

A

I ROSE UP.

Q

AND WHEN YOU RISE (SIC) UP, WHAT ELSE DID YOU DO?

A

I ONLY LISTENED TO THEM BECAUSE THEY WERE ASKING COFFEE.

Q

DID YOU SERVE THEM COFFEE BECAUSE YOU SAID THEY WERE ASKING COFFEE?

A

YES, SIR.

Q

IN WHAT PARTICULAR PORTION OF YOUR HOUSE DID YOU SERVE COFFEE?

A

IN MY KITCHEN.

Q

WERE THESE PERSONS ARMED?

A

YES, SIR.

Q

WHAT KIND OF ARMS WERE THEY BRINGING WITH THEM?

A

I DO NOT KNOW, SIR, BUT IT WAS (SIC) LONG ARMS.

Q

AND BY THE WAY, IF THESE PERSONS CAN BE SEEN AGAIN BY YOU, WILL YOU BE ABLE TO IDENTIFY THEIR FACES?

A

IF I CAN SEE THEM, I CAN IDENTIFY THEIR FACES.

Q

AND DO YOU KNOW THE NAMES OF THESE PERSONS?

A

NO, SIR.

Q

YOU CAN ONLY KNOW THEM BY THEIR FACES?

A

YES, SIR.

Q

AND AFTER DRINKING COFFEE IN YOUR HOUSE THAT EVENING, WHAT ELSE DID THE 6 PERSONS DO, IF ANY?

A

THEY WENT AWAY.

Q

AND BEFORE LEAVING YOUR HOUSE, DID THEY TELL YOU ANYTHING?

A

YES, SIR.

Q

WHAT DID THEY TELL YOU OR ASK YOU?

A

THEY TOLD ME TO TELL THEM WHERE THE HOUSE OF PISPIS [IS].

Q

YOU ARE REFERRING TO IGMEDIO PISPIS, THE DECEASED?

A

YES, SIR.

Q

DID YOU ACCOMPANY THEM TO THE HOUSE OF IGMEDIO PISPIS?

A

NO, SIR.

Q

WHY DID YOU NOT ACCOMPANY THEM TO THE HOUSE OF IGMEDIO PISPIS?

A

I COMPLAINED BECAUSE MY WIFE HAD JUST DELIVERED A BABY ON DECEMBER 21.

Q

SO INSTEAD OF GOING WITH THEM TO THE HOUSE OF IGMEDIO PISPIS, WHAT DID YOU DO?

A

I SLEPT.

Q

DID YOU TELL THEM WHERE THE LOCATION OF THE HOUSE OF IGMEDIO PISPIS [IS]?

A

I JUST TOLD THEM BECAUSE THE HOUSE IS NEAR AND COULD BE SEEN.[82]

But Aca testified that the appellant was not with the six armed men:

Q

NOW, YOU SAID YOU KNOW VERY WELL FLORENCIO CALICA?

A

YES, SIR.

Q

WAS FLORENCIO CALICA AMONG THE 6 PERSONS THAT WENT TO YOUR HOUSE LOOKING FOR THE HOUSE OF IGMEDIO PISPIS?

A

NO, SIR.

Q

NOW, DO YOU KNOW WHAT HAPPENED TO IGMEDIO PISPIS THE FOLLOWING DAY DECEMBER 23, 1986?

A

YES, SIR.

Q

WHAT HAPPENED TO IGMEDIO PISPIS?

A

HE DIED, SIR.

Q

DO YOU HAVE ANY KNOWLEDGE WHO KILLED IGMEDIO PISPIS?

A

I HAVE NO KNOWLEDGE.

Q

NOW, IT SEEMS YOU KNOW VERY WELL FLORENCIO CALICA AND IGMEDIO PISPIS. DO YOU KNOW IF FLORENCIO CALICA KNOWS IGMEDIO PISPIS?

A

YES, SIR, THEY KNEW EACH OTHER.

Q

DOES THIS FLORENCIO CALICA KNOW THE LOCATION OF IGMEDIO PISPIS?

A

YES, SIR, HE KNOWS.

THAT IS ALL FOR THE WITNESS.[83]

Elias Palog, likewise, testified that the appellant was not one of those who abducted and killed Igmedio.[84]

The People may argue that, based on the evidence of the prosecution, a strong probability of the appellant's guilt was established, a strong suspicion that the appellant was one of those who abducted and killed the victim, or, at the very least that there is a strong doubt as to the appellant's innocence. But such quantum of evidence is not sufficient on which to anchor a judgment of conviction. Before the appellant can be convicted, the hypothesis of his guilt must flow materially from the facts posed and must be consistent with all of them.[85]

As we acquit the appellant because of the prosecution's failure to prove his criminal culpability for the crime charged, we quote our ruling in *People v. Eslaban*: [86]

Admittedly, if a life is taken, justice demands that the wrong be redressed, but this same justice that calls for retribution cannot be the same, one that would convict the accused-appellant at bar whose guilt has not been proven beyond reasonable doubt. The burden of proof rests upon the prosecution and unless the State succeeds in proving his guilt, the presumption of innocence in favor of the accused-appellant applies. The conscience must be satisfied that on the accused-appellant could be laid the responsibility of the offense charged.[87]

IN LIGHT OF ALL THE FOREGOING, the appeal of the appellant is GRANTED. The decision of the trial court is SET ASIDE AND REVERSED. The appellant is ACQUITTED of the crime charged. The Director of the Bureau of Corrections is ORDERED to immediately release the appellant from detention unless detained for another cause or charge, and to submit his compliance with this decision of the Court within five (5) days from notice hereof.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Rogelio R. Narisma.

[2] Records, p. 12.

[3] Exhibits “A” to “A-3,” Id. at 13-16.

[4] Records, pp. 35-38.

[5] Id. at 34.

[6] Id. at 44.

[7] Id. at 45.

[8] Id. at 52-57.

[9] Id. at 2.

[10] Id. at 59.

[11] Id. at 60.

[12] Id. at 67.

[13] Id. at 69.

[14] Id. at 72.

[15] Id. at 76.

[16] Id. at 84.

[17] The prosecution presented Dominga Pispis, Dolores Gonzales, and Lorena Valdez as witnesses.

[18] TSN, 13 December 1993, p. 14.

[19] Exhibit “A-1,” Records, p. 14.

[20] TSN, 13 December 1993, p. 18.

[21] Id. at 8.

[22] Exhibit “A-1,” Records, p. 14.

[23] Exhibits “A-2,” Id. at 15.

[24] Exhibit “A-3,” Records, p. 16.

[25] TSN, 13 December 1993, pp. 20-21.

[26] Id. at 18.

[27] TSN, 3 May 1995, p. 7.

[28] Id. at 8.

- [29] Id. at 5.
- [30] Exhibit “B,” Records, p. 17.
- [31] TSN, 13 December 1993, p. 28.
- [32] TSN, 3 February 1998, pp. 4-6.
- [33] TSN, 1 June 1994, p. 4.
- [34] Id. at 7.
- [35] Id. at 8.
- [36] TSN, 4 August 1994, p. 4.
- [37] Exhibits “D” to “H,” Records, Vol. II, pp. 413-417.
- [38] TSN, 15 December 1993, pp. 6-9.
- [39] Id. at 16-18.
- [40] TSN, 28 August 1998, p. 5.
- [41] Id. at 10-11.
- [42] Id. at 7-8.
- [43] Id. at 9.
- [44] Id. at 10.
- [45] Id. at 11-12.
- [46] Id. at 13.
- [47] TSN, 7 September 1998, p. 9.
- [48] Id. at 5-6.
- [49] Id. at 7-8.
- [50] TSN, 29 October 1998, p. 9.
- [51] Id. at 5.
- [52] TSN, 3 December 1998, p. 5.
- [53] Rollo, pp. 28-29.
- [54] Id. at 49.
- [55] *People v. Dramayo*, 42 SCRA 59 (1971).
- [56] *People v. Crispin*, 327 SCRA 167 (2000).
- [57] *People v. Gamer*, 326 SCRA 660 (2000).
- [58] *People v. Contega*, 332 SCRA 730 (2000).
- [59] Id. at 741-742.

[60] 243 SCRA 578 (1995).

[61] Supra at note 57.

[62] People v. Niño, 290 SCRA 155 (1998).

[63] People v. Beltran, 61 SCRA 246 (1974), citing Estate of Bryant, 176 Pa. 309, 318, 35 Alt. 571, 577.

[64] People v. Verzosa, 294 SCRA 466 (1998).

[65] People v. Gamer, supra.

[66] People v. Aquino, 329 SCRA 247 (2000).

[67] People v. Alipayo, 324 SCRA 447 (2000); People v. Gamboa, Jr., 145 SCRA 289 (1986); People v. Pueblos, 127 SCRA 746 (1984); People v. Vacal, 27 SCRA 24 (1969).

[68] People v. Alma Bisda y Gaupo, et al., G.R. No. 140895, July 17, 2003.

[69] People v. Qutorio, 285 SCRA 196 (1998).

[70] People v. Xip Wai Ming, 264 SCRA 224 (1996).

[71] Rollo, p. 28.

[72] TSN, 13 December 1993, p. 18.

[73] Records, p. 14.

[74] Id. at 8-9.

[75] TSN, 13 December 1993, pp. 18-19.

[76] Id. at 21.

[77] TSN, 13 December 1993, p. 14.

[78] TSN, 3 May 1995, pp. 4-8.

[79] Records, p. 212.

[80] TSN, 15 December 1993, pp. 6-10.

[81] Id. at 13-15.

[82] TSN, 29 October 1998, pp. 5-8.

[83] Id. at 8-9.

[84] Rollo, p. 21.

[85] 23 Corpus Juris Secundum 850.

[86] 218 SCRA 534 (1993).

[87] Id. at 544.

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