

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO ASIS Y FONPERADA AND GILBERT FORMENTO Y SARICON, APPELLANT.

G.R. No. 142531. October 15, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Circumstantial evidence that merely arouses suspicions or gives room for conjecture is not sufficient to convict. It must do more than just raise the possibility, or even the probability, of guilt. It must engender moral certainty. Otherwise, the constitutional presumption of innocence prevails, and the accused deserves acquittal.

The Case

For automatic review before this Court is the March 8, 2000 Decision[1] of the Regional Trial Court (RTC) of Manila (Branch 54) in Criminal Case No. 98-163090, finding Danilo Asis y Fonperada and Gilbert[2] Formento y Saricon guilty beyond reasonable doubt of robbery with homicide aggravated by abuse of confidence, superior strength and treachery. The decretal portion of the Decision reads as follows:

“WHEREFORE, the two (2) accused are found guilty beyond reasonable doubt of the crime of Robbery with Homicide with the generic aggravating circumstances of abuse of confidence, superior strength and treachery; and each is sentenced to death under Article 294, par. 1 of the Revised Penal Code; they are also ordered to jointly and severally pay P100,000.00 as damages to the heirs of the victim.”[3]

Appellants were charged in an Information[4] dated February 18, 1998, worded as follows:[5]

“That on or about February 10, 1998, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force and violence upon person, to wit: by then and there stabbing one YU HING GUAN @ ROY CHING with a bladed instrument on the different parts of the body thereafter take, rob and carry away the following, to wit:

Cash money in the amount of P20,000.00
one (1) wristwatch
one (1) gold necklace
and undetermined items

or all in the total amount of P20,000.00 more or less, belonging to said YU HING GUAN @ ROY CHING against his will, to the damage and prejudice of the said owner in the aforesaid amount more or less of P20,000.00, Philippine Currency, and as a result thereof, he sustained mortal stab wounds which were the direct and immediate cause of his death.”[6]

When arraigned on July 9, 1998, both appellants pleaded not guilty.[7] Found to be deaf-mutes, they were assisted, not only by a counsel de oficio,[8] but also by an interpreter from the Calvary Baptist Church. After due trial, appellants were found guilty and sentenced to death.

The Facts

Version of the Prosecution

In its Brief,[9] the Office of the Solicitor General (OSG) detailed the facts in the following manner:

“The prosecution presented nine (9) witnesses. Although none of them had actually seen the crime committed, strong and substantial circumstantial evidence abound linking beyond reasonable doubt both appellants to the crime.

“As culled from the records, hereunder are the pertinent facts of the case:

“George Huang, the nephew of the victim Yu Hing Guan a.k.a. Roy Ching, always passes by the store of the victim at 1042 Benavidez Street, Binondo, Manila to bring food stuff, ice and other things to his uncle and mother, Diana Yu, who work[s] in the office of said store.

“On February 9, 1998, at around 6:30 o’clock in the morning, Huang arrived at the victim’s store and discovered that the steel door of the store was locked from the outside. When he opened the steel door, he found everything to be normal except for the inner door which had always been left open but which was closed at that time with only a chair blocking it.

“When he removed the blocking chair, he discovered the body of his uncle, Yu Hing Guan a.k.a. Roy Ching (victim), lying prostrate on the ground with a knife embedded on his nape. He closed the door and proceeded to Luneta, where [his] mother exercises, to inform her of what he saw. After informing [his] mother, Huang first went to the Chinatown Police Station and reported the incident; thereafter, he went to another station located in Soler corner Reina Regente to report the incident again.

“Diana Yu, the sister of the victim, testified that on February 9, 1998, before 8:30 o’clock in the evening, she was in the office of her brother where she was working at 1042 Benavidez St., Binondo, Manila. She saw the two appellants, namely: Danilo Asis and Gilbert Formento, and her brother (the victim), who are all deaf-mutes, talking in sign language. She testified that Danilo Asis frequented the office of the victim, while Gilbert Formento came only on the night of February 9, 1998. At around 8:30 o’clock in the evening, she left the office, leaving both appellants and the victim behind. The following morning, at around 7:30 o’clock in the morning, her son, George Huang, informed her of her brother’s (victim’s) death. Upon learning of said incident, she went to the office where she saw her brother’s body. She discovered that the sales proceeds of the preceding day were missing and the necklace of her brother (victim) which he always wore was also missing.

“On re-direct examination, Diana testified that she suspected both appellants, especially Gilbert Formento, to have perpetrated the crime because of the fact that she saw the pair of shorts of the victim in the bag of appellant Gilbert Formento.

“Jimmy Pagaduan testified that he was a helper in the Yu Hing Guan Auto Supply for five years already. He saw the two appellants everyday in the store of the victim. Furthermore, he testified that as far as he knows, Danilo Asis owed the victim PhP 3,000.00 and that he saw a list thereof which the victim showed him. On February 9, 1998, he left the store at around 6:00 o’clock in the evening and he saw both appellants conversing with the victim.

“SPO2 Pablo Ileteo of WPD Homicide Section testified that on February 11, 1998, he was at Barangay Sto. Ni[n]o, Hagunoy, Bulacan together with Sgt. Napoleon Timbol, PO3 Luis Chico, and witness, Diana Yu. The three (3) of them were trying to locate the whereabouts of appellant Gilbert Formento in connection with the death of Yu Hing Guan a.k.a. Roy Ching. They coordinated with the Hagunoy Bulacan police and searched the area. Diana Yu saw Gilbert Formento in a delivery truck and she pointed him to them. Thereafter, they invited Gilbert Formento to their office at the WPD Homicide Section. But before going to the WPD station, they first brought Gilbert Formento to his house. Upon reaching the house, Diana Yu asked from the wife of the suspect

for the stolen money. However, they could not understand each other, so the wife gave Diana Yu the bag of Gilbert Formento where Diana Yu noticed the pair of shorts which belonged to the victim. PO2 Iletto noticed what appears to be blood stains on the pair of shorts.

“SPO1 Benito Cabatbat testified that he, together with SPO1 Alfredo Opriasa, SPO1 Raul Olavario, the photographer SPO2 Tabio, and fingerprint technician Domingo Daclan of the District Crime Laboratory Division went to the crime scene to conduct the investigation on February 10, 1998. Upon arriving at the scene, they saw the victim lying prostrate on the ground, barefooted, and clad only in brief.

“After photographing the victim, the team went upstairs where traces of blood were seen on the second and third floors.

“During the course of investigation, SPO1 Cabatbat received a phone call from a relative informing him that one of the suspects, appellant Danilo Asis, went back to the scene of the crime. Afterwards, they brought Danilo Asis to the police station for investigation, who expectedly denied having anything to do with the killing of the victim.

“During investigation (February 10, 1998), SPO1 Cabatbat noticed that there was a bloodstain in Asis’ T-shirt.

“During the presentation of prosecution witness Dr. Olga Bausa, they stipulated that the bloodstains found in the white t-shirt with a lettering of ‘Collorific’ and in the short pants were human blood.”[10] (Citations omitted)

Version of the Defense

On the other hand, appellants’ version of the facts is as follows:[11]

“GILBERT FORMENTO is a deaf-mute who is one of the accused in this case. He testified through sign interpreter, Mrs. Nelda Bahena. On February 9, 1998 at about 11 am., he was in the house of Roy Ching[.] They talked about things and events. When he left the house of Ching he proceeded to Bulacan while Asis went to Luneta. He denied having in possession of the clothes of Ching found with him in Bulacan. A policeman met him in his house in Sto. Nino, Hagunoy, Bulacan. They handcuffed him immediately. He was whipped for the first time in his life. He was brought to Manila at Funeraria Paz. The relatives of Roy Ching were pointing to him while he was being whipped by the two policemen.

“NESTOR PAGLINAWAN is a friend of Danilo Asis. He is a vendor who vends at the PICC area. He testified that accused-appellant Danilo Asis occasionally help[s] him in vending by guarding his selling items and preparing coffee. He communicated with accused-appellant Asis through sign language. He had known Asis for five years. On February 9, 1998, at about 10:00 p.m., Danilo Asis was with him at the PICC. Accused-appellant Asis stayed with him until 7:00 am of the following day.

“DANILO ASIS is a deaf-mute and one of the accused in this case. He testified through sign interpreters, Ms. Theta Figuerres and Mrs. Nelda Bahena. Roy Ching was his friend since 1995. On February 9, 1998, he went to the store of Roy Ching because he was called by Ching to help him in his store. When he arrived at Ching’s store, Gilbert Formento was there already. The three of them drank beer. He left the store at 9:00 p.m., ahead of Gilbert Formento. He proceeded to PICC to help his friend Nestor, a cigarette vendor.

“He denied killing Ching. When he went back to Roy Ching’s store at 10 a.m. the following day, he felt depressed upon knowing that Roy Ching was dead. He was arrested and incarcerated on that same day.”[12] (Citations omitted)

Ruling of the Trial Court

The RTC held that the “crime charged and proved is robbery with homicide under Article 294, No. 1 of the Revised Penal Code.”[13] It ruled that “although no witnesses to the actual killing and robbery were presented,

the circumstantial evidence including the recovery of bloodstained clothing from both accused definitely proved that the two (2) x x x committed the crime.”[14] Finally, the RTC also appreciated the aggravating circumstances of abuse of confidence, superior strength and treachery and thus sentenced both appellants to the supreme penalty of death.

Hence, this automatic review before us.[15]

Issues

In their Brief, appellants fault the trial court with the following assignment of errors:

“I

The trial court gravely erred in finding the accused-appellants guilty beyond reasonable doubt of the crime of robbery with homicide notwithstanding the insufficiency of the circumstantial evidence presented by the prosecution.

“II

The trial court gravely erred in concluding that evident premeditation, treachery and conspiracy attended the killing of Roy Ching.

“III

The trial court gravely erred in not considering the physical infirmities of the two accused-appellants who are deaf-mutes.”[16]

The Court’s Ruling

The appeal is meritorious. The prosecution’s evidence does not prove the guilt of appellants beyond reasonable doubt; hence, their constitutional right to be presumed innocent remains and must be upheld.

Main Issue:

Sufficiency of Prosecution Evidence

In the present appeal, two things stand out: first, there were no eyewitnesses to the robbery or to the homicide; and second, none of the items allegedly stolen were recovered or presented in evidence.

Appellants argue that the pieces of circumstantial evidence submitted by the prosecution are insufficient to prove their guilt beyond reasonable doubt. The prosecution counters that these pieces of evidence, taken together, necessarily lead to their conviction.

Certainly, it is not only by direct evidence that the accused may be convicted of the crime charged.[17] Circumstantial evidence is resorted to when direct testimony would result in setting felons free and deny proper protection to the community.[18] The former is not a “weaker form of evidence vis-à-vis the latter.”[19] The accused may be convicted on the basis of circumstantial evidence, provided the proven circumstances constitute an unbroken chain leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[20] “Circumstantial evidence is akin to a tapestry; it should be made up of strands which create a pattern when interwoven.”[21] This pattern should be reasonably consistent with the hypothesis that the accused is guilty and at the same time totally inconsistent with the proposition that he or she is innocent.[22]

The Rules on Evidence[23] allow conviction by means of circumstantial evidence as follows:

“SEC. 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:

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

Bloodstained Trousers

The prosecution argues that the strongest piece of evidence damning appellants is the victim’s bloodstained pair of short pants recovered from the bag of Gilbert Formento. It argues that since the trousers were recovered from one of the appellants, then Rule 131 (j) of the Revised Rules of Court should apply. The said provision is worded, thus:

“Sec. 3. Disputable presumptions.

The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him;”[24]

We disagree. It escapes this Court how the recovery of a bloodstained pair of shorts allegedly owned by the victim should give rise to the presumption that one of the appellants was the “taker and doer of the whole act”[25] of robbery with homicide. By itself, the retrieval of the pair of shorts does not prove that appellants, or even just one of them, robbed the trouser owner of cash and jewelry and also killed him, as charged in the Information. Neither does it show that appellants, or one of them, perpetrated the aggression leading to the victim’s death.

Furthermore, the ownership of the pair of shorts was not definitively determined. And even granting for the sake of argument that it indeed belonged to the victim, still, there is no evidence to prove that it was taken from him on the night of the homicide. Neither can it be ruled out that he might have lent it or gave it to either one of the two. It was neither extraordinary nor impossible for him to have allowed Appellant Formento to use it, considering that they were friends, and that they shared a commonality as deaf-mutes.

The OSG harps on the bloodstains found on the shorts. But as testified to by the pathologist[26] who examined them, although the origin was human blood, the blood grouping could not be determined.[27] Thus, its mere presence on the pair of shorts did not in any way support the prosecution’s theory linking appellants to the crime.

Evidence Is Inadmissible

In any event, appellants’ argument of illegal search and seizure cannot simply be brushed aside, considering the guarantee so sacredly enshrined in our Constitution.

There is no question that appellants were collared without any arrest warrant. Neither was there any valid search warrant obtained against them. However, they never questioned the legality of their arrest through a motion to quash the Information. Instead, they entered a plea of not guilty and participated in the trial. Settled is the rule that any objection involving the arrest or the trial court’s procedure of acquiring jurisdiction over the person of the accused must be made before the arraignment; otherwise, the objection is deemed waived.[28]

Indeed, appellants do not now question the legality of their arrest. What they object to is the introduction of the bloodstained pair of shorts allegedly recovered from the bag of Appellant Formento. They argue that the search

was illegally done, making the obtainment of the pair of shorts illegal and taints them as inadmissible. The prosecution, on the other hand, contends that it was the wife of appellant who voluntarily surrendered the bag that contained the bloodstained trousers of the victim.[29] Her act, it claims, constituted a valid consent to the search without a warrant.[30]

We clarify. Primarily, the constitutional right against unreasonable searches and seizures, being a personal one, cannot be waived by anyone except the person whose rights are invaded or who is expressly authorized to do so on his or her behalf.[31] In the present case, the testimonies of the prosecution witnesses show that at the time the bloodstained pair of shorts was recovered, Appellant Formento, together with his wife and mother, was present. Being the very subject of the search, necessarily, he himself should have given consent. Since he was physically present, the waiver could not have come from any other person.

The OSG cites *Lopez v. Commissioner of Customs*,[32] which validated a waiver of a warrantless search, when a woman thought to be the wife of the accused -- but who later turned out to be a manicurist -- surrendered to the police the papers belonging to the appellant. The instant appeal, however, presents a different situation, because here the accused himself was present when the search was made. Hence, consent should have been obtained from or given by him. In *Lopez*, the accused was not present when the search was made; hence, the consent given by the occupant of the hotel room was deemed the consent of the accused who was then renting the space.

The OSG's argument loses even more cogency when evaluated against the well-settled principles on searches and seizures without warrants.

To constitute a valid waiver, it must be shown that first, the right exists; second, the person involved had knowledge, actual or constructive, of the existence of such a right; and third, the person had an actual intention to relinquish the right.[33] How could Appellant Formento have consented to a warrantless search when, in the first place, he did not understand what was happening at that moment? The prosecution witnesses themselves testified that there was no interpreter to assist him -- a deaf-mute -- during the arrest, search and seizure. Naturally, it would seem that he indeed consented to the warrantless search, as the prosecution would want this Court to believe.

As early as 1938, Justice Jose P. Laurel pointed out in *Pasion vda. de Garcia v. Locsin*:

“As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law.”[34]

This point becomes even more pronounced in the present case, in which appellant is a deaf-mute, and there was no interpreter to explain to him what was happening. His seeming acquiescence to the search without a warrant may be attributed to plain and simple confusion and ignorance.

Verily, “courts indulge every reasonable presumption against waiver of fundamental constitutional rights and x x x we do not presume acquiescence [to] the loss of fundamental rights.”[35]

Neither can the OSG claim that appellant's wife voluntarily surrendered the bag that contained the bloodstained trousers of the victim.[36] As admitted by Prosecution Witness PO2 Pablo Iletto, the victim's sister and appellant's wife “cannot understand each other.”[37] Eventually, appellant's wife gave the belongings of Gilbert Formento where the bloodstained shorts of the victim were recovered.[38] How can the surrender of appellant's belongings in this case be voluntary, when the person surrendering them did not even understand the person she was communicating with?

To be sure, the OSG cannot even use the argument that the search was made by a private individual, the victim's sister, and thereby skirt the issue of constitutional protection against unlawful searches by the State.

The victim's sister herself testified against this argument as follows:

“ATTY. FONTANILLA

Q So Gilbert Formento was not wearing the alleged trouser[s]?

A The bag was given by his mother or his wife, sir.

Q To whom?

A To the policemen, sir.

Q And they searched this, is that right?

A Yes sir.”[39]

This testimony clearly forecloses the assertion that it was not the police authorities who conducted the search. This testimony in fact belies that of PO2 Pablo Iletto[40] that it was the prosecution witness who was talking to appellant's wife, and who conducted the search that yielded the bloodstained shortpants.

All told, the bloodstained pair of shorts was a piece of evidence seized on the occasion of an unlawful search and seizure. Thus, it is tainted and should thus be excluded for being the proverbial fruit of the poisonous tree.[41] In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.[42]

Bloodstained Shirt

The prosecution then contends that when the other appellant, Danilo Asis, was brought to the police station for investigation the following day, the police found bloodstain on his shirt.

Again, this fact cannot be taken as an indication of guilt on the part of Appellant Asis. It does not point to the conclusion that he was involved in the crime charged against him. We cannot agree that since there was bloodstain on his clothing, ergo, he committed the robbery and the attendant killing. At most, this piece of circumstantial evidence, taken with the other one, may lead to suspicion. But courts do not rely on circumstantial evidence that merely arouses suspicion or conjecture.[43] For circumstantial evidence to lead to conviction, it must do more than just raise the mere possibility or even probability of guilt.[44] It must engender moral certainty.

Motive for the Crime

The prosecution then attempts to ascribe motive to appellants by arguing that one of them, Appellant Asis, allegedly owed the victim P6,070.[45]

Indeed, motive becomes material when the evidence is circumstantial or inconclusive, and there is some doubt on whether a crime has been committed or whether the accused has committed it.[46] But the prosecution's contention again fails, as the fact of indebtedness was never conclusively established. According to the sister of the victim, Asis still owed her brother the amount of P6,070. Yet, during the testimony of the said appellant, it

was shown that it was actually the victim who had been indebted to the former. The prosecution, in fact, uses this testimony of Asis to bolster its claim that he became “madder and madder” at the victim. Coming from the prosecution itself, this argument casts doubts on whether it was appellant who owed the victim or the other way around.

The Public Attorney’s Office, the defense counsel, correctly points out that the victim himself had made the entries in his logbook which served as bases for the prosecution’s averment that appellant owed him some amount. The sister, who was explaining the entries, admitted that she had no personal knowledge thereof. More important, their veracity was never established. Neither were the erasures or scratches thereon sufficiently explained.

To show that there was sufficient motive to commit the crime charged, the prosecution uses the testimony of Asis that he got “madder and madder” at the victim. This statement is too speculative to deserve serious consideration.

The Last Persons Seen

Talking with the Victim

It is also argued that appellants were the last persons seen with the victim; ergo, the suspicion that they were the authors of the crime. Admittedly, this circumstance may raise a speculation, but it is insufficient to establish their guilt. As this Court has consistently stressed, mere suspicions and speculations can never be the bases of conviction in a criminal case.[47]

Neither is the mere presence of appellants at the locus criminis sufficient to implicate them. Their being at the store of the victim was not unusual, as testified to by the witnesses. In fact, it was established that he and appellants had known one another well, and that they had regularly met at his store. Moreover, there was paucity of evidence indicating that, other than appellants, no other person had or could have had access to the store where he was robbed and killed.

As they themselves correctly observe, their complicity in the crime becomes even more doubtful because, as testified to by his sister, the neighbors heard shouts; these could not have come from deaf-mutes. Furthermore, appellants question the non-presentation of the results of the tests conducted on the fingerprints lifted from the crime scene.

Appellants Pointed

to Each Other?

Finally, we do not find any evidence that appellants indeed pointed to one another as the author of the crime charged. In fact, even during their cross-examination, neither of them specifically shifted the blame to the other. When questioned by the public prosecutor, they even denied having done so.

All told, to sustain a conviction for the complex crime of robbery with homicide, which is primarily an offense against property, it is essential that the robbery be proved beyond reasonable doubt.[48] Proof of the homicide alone is not sufficient to support a conviction for the aforesaid complex crime.[49]

Essential to robbery is the taking, with intent to gain, of personal property belonging to another by means of violence or intimidation against another person by the use of force upon things. There is robbery with homicide when, by reason or on the occasion of a robbery with the use of violence against or intimidation of persons, homicide is also committed.[50]

Accordingly, in robbery with homicide cases, the prosecution needs to prove these elements: (a) the taking of personal property is perpetrated by means of violence or intimidation against a person; (b) the property taken

belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide -- here used in its generic sense -- is committed.[51]

Robbery Completely Unsubstantiated

The prosecution tried its best to prove the crime of homicide, even if unsuccessfully, but in the process, it left the crime of robbery totally unsubstantiated.

More glaring is the fact that the Information charged appellants “as conspiring and confederating together and mutually helping each other.”[52] Yet, the RTC Decision found them both guilty of the crime charged without any pronouncement as to the presence of conspiracy. To serve effectively as a basis for conviction, conspiracy must be proved as convincingly as the criminal act itself.[53]

Had the alleged conspiracy to commit the crime been established, then the precise modality of each individual conspirator becomes secondary. The applicable rule in conspiracy is that the act of one shall be deemed to be the act of all.[54] The degree of actual participation in the commission of the crime is immaterial.[55] However, since there was neither proof nor finding of conspiracy, then the extent of the individual participation of each appellant should have been clearly delineated.

In criminal cases, the prosecution has the *onus probandi* of establishing the guilt of the accused.[56] *Ei incumbit probatio non qui negat*. He who asserts -- not he who denies -- must prove.[57] The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense.[58] Hence, circumstantial evidence that has not been adequately established, much less corroborated, cannot be the basis of conviction.[59] Suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt.[60] Indeed, “the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass.”[61]

It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt.[62] Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.[63]

In the final analysis, the circumstances narrated by the prosecution engender doubt rather than moral certainty on the guilt of appellants.

In view of the above findings, we deem it unnecessary to deal with the other issues raised by appellants.

WHEREFORE, the automatically appealed Decision of the Regional Trial Court of Manila (Branch 54) in Criminal Case No. 98-163090 is SET ASIDE. Danilo Asis and Gilbert Formento are ACQUITTED on reasonable doubt, and ordered immediately RELEASED from custody, unless they are being held for some other lawful cause.

The director of the Bureau of Corrections is ORDERED to implement this Decision forthwith and to INFORM this Court, within five (5) days from receipt hereof, of the date appellants were actually released from confinement. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Sandoval-Gutierrez, Corona, Carpio-Morales, and Callejo Sr., JJ., concur.
Bellosillo, Mendoza, Quisumbing, Ynares-Santiago, Carpio, and Austria-Martinez, JJ., on official leave.

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- [1] Penned by Judge Manuel T. Muro; rollo, pp. 22-30; records, pp. 155-163.
- [2] When pointed to by Prosecution Witness PO2 Pablo Ilete in court on August 27, 1998, appellant identified himself as “Gilberto,” not “Gilbert.”
- [3] RTC Decision, p. 9; rollo, p. 30; records, p. 163.
- [4] Rollo, pp. 8-9; records, pp. 1-2.
- [5] Signed by Assistant City Prosecutor Francisco G. Supnet and “approved for the city prosecutor” by Chief of the Inquest Division Nelson A. Salva.
- [6] Rollo, p. 8; records, p. 1.
- [7] Order dated July 9, 1998; records, p. 66.
- [8] Atty. Romel Fontanilla.
- [9] Appellee’s Brief was signed by Solicitor General Simeon V. Marcelo, Assistant Solicitor General Ma. Aurora P. Cortes and Solicitor Arturo C. Medina.
- [10] Appellee’s Brief, pp. 4-11; rollo, pp. 86-93.
- [11] Appellant’s Brief was signed by Attys. Amelia C. Garchitorena and Isabelito E. Sicat of the Public Attorney’s Office.
- [12] Appellants’ Brief, pp. 7-8; rollo, pp. 51-52.
- [13] RTC Decision, p. 8; rollo, p. 29; records, p. 162.
- [14] Ibid.
- [15] This case was deemed submitted for resolution on February 22, 2002, upon receipt by this Court of appellants’ Reply Brief filed by the Public Attorney’s Office. Earlier, appellants’ Brief was received by the Court on June 28, 2001, while appellee’s Brief was submitted on November 5, 2001.
- [16] Appellants’ Brief, p. 1; rollo, p. 45. Original in upper case.
- [17] *People v. Ayola*, GR No. 138923, September 4, 2001; *People v. Icalla*, 353 SCRA 805, March 7, 2001; *People v. Oliva*, 349 SCRA 435, January 18, 2001.
- [18] *People v. Felixminia*, GR No.125333, March 30, 2002; *People v. Gallo*, GR No. 133002, October 19, 2001.
- [19] *People v. Prado*, 254 SCRA 531, 539, March 8, 1996, per Kapunan, J., citing *People v. Ramos*, 240 SCRA 191, January 18, 1995.
- [20] *People v. Labuguen*, 337 SCRA 488, August 9, 2000.
- [21] *People v. Cabrera*, 241 SCRA 28, 32, February 1, 1995, per Bellosillo, J.
- [22] *People v. Obosa*, GR No. 129688, April 2, 2002; *People v. Abriol*, GR No. 123137, October 17, 2001;

People v. Teves, 356 SCRA 14, April 2, 2001; People v. Caliwán, 343 SCRA 693, October 19, 2000; People v. Operaña Jr., 343 SCRA 43, October 13, 2000.

[23] §4, Rule 133 of the Rules of Court.

[24] §3(j), Rule 131 of the Rules of Court.

[25] Appellee's Brief, p. 20; rollo, p. 102.

[26] Dra. Olga M. Bausa.

[27] TSN, January 28, 1999, p. 10.

[28] People v. Bongalon, GR No. 125025, January 23, 2002; People v. Whisenhunt, GR No. 123819, November 14, 2001; People v. Castillon III, GR No. 132718, October 5, 2001; People v. Del Mundo, GR No. 138929, October 2, 2001.

[29] Appellee's Brief, p. 22; rollo, p. 104.

[30] Ibid., pp. 24 & 106.

[31] People v. Damaso, 212 SCRA 547, August 12, 1992.

[32] 68 SCRA 320, December 3, 1975.

[33] People v. Compacion, GR No. 124442, July 20, 2001; People v. Burgos, 144 SCRA 1, September 4, 1986; Pasion vda. de Garcia v. Locsin, 65 Phil. 689, June 20, 1938.

[34] Supra at 34, p. 695, per Laurel, J.

[35] People v. Burgos, 144 SCRA 1, 16, September 4, 1986, per Gutierrez Jr., J.

[36] Appellee's Brief, p. 22; rollo, p. 104.

[37] TSN, August 27, 1998, p. 11.

[38] Ibid.

[39] TSN, August 20, 1998, pp. 36-37.

[40] TSN, August 27, 1998, pp. 33-36.

[41] Del Rosario v. People, GR No. 142295, May 31, 2001; People v. Valdez, 341 SCRA 25, September 25, 2000.

[42] 1987 Constitution, Art. III, Sec. 3(2).

[43] People v. Williams, GR No. 125985, April 20, 2001.

[44] Ibid.

[45] Appellee's Brief, p. 25; rollo, p. 107.

[46] People v. Garcia, GR No. 135666, July 20, 2001; People v. Astorga, 283 SCRA 420, December 22, 1997.

[47] People v. Lugod, 352 SCRA 498, February 21, 2001; People v. Albao, 287 SCRA 129, March 6, 1998.

[48] People v. Geron, 281 SCRA 36, October 17, 1997; People v. Parel, 261 SCRA 720, September 16, 1996.

- [49] *People v. Geron*, supra; *People v. Parel*, supra; *People v. Pagal*, 79 SCRA 570, October 25, 1977.
- [50] *People v. Geron*, supra; *People v. Parel*, supra; *People v. Barlis*, 231 SCRA 426, March 24, 1994.
- [51] *People v. Robles*, 333 SCRA 107, June 8, 2000; *People v. Sumallo*, 307 SCRA 521, May 24, 1999.
- [52] Information dated February 18, 1998; rollo, p. 8; records, p. 1.
- [53] *People v. Leaño*, GR No. 138886, October 9, 2001; *People v. Miana Sr.*, GR No. 134565, August 9, 2001; *People v. Gonzales*, GR No. 128282, April 30, 2001.
- [54] *People v. Liad*, 355 SCRA 11, March 22, 2001; *People v. Catuiran Jr.*, 343 SCRA 293, October 17, 2000; *People v. Bariquit*, 341 SCRA 600, October 2, 2000.
- [55] *People v. Lising*, 285 SCRA 595, January 30, 1998; *People v. De Roxas*, 241 SCRA 369, February 15, 1995.
- [56] *People v. Quarre*, GR Nos. 140729-30, February 15, 2002; *People v. Villanueva*, GR No. 131773, February 13, 2002; *People v. Ombreso*, GR No. 142861, December 19, 2001; *People v. Mariano*, GR Nos. 135511-13, November 14, 2001; *People v. Arondain*, GR Nos. 131864-65, September 27, 2001; *People v. Francisco*, 354 SCRA 475, March 15, 2001.
- [57] *People v. Masalihit*, 300 SCRA 147, December 14, 1998.
- [58] *People v. Hernani*, 346 SCRA 73, November 27, 2000; *People v. Guillermo*, 336 SCRA 247, July 20, 2000; *People v. Bantilan*, 314 SCRA 380, September 14, 1999; *People v. Gomez*, 270 SCRA 432, March 26, 1997.
- [59] *People v. Olivarez Jr.*, 299 SCRA 635, December 4, 1998; *People v. Maluenda*, 288 SCRA 225, March 27, 1998; *People v. Ilaoa*, 233 SCRA 231, June 16, 1994.
- [60] §2, Rule 133 of the Rules of Court.
- [61] *People v. Marquita*, 327 SCRA 41, March 1, 2000, per Quisumbing, J.; *People v. Aquino*, 310 SCRA 437, July 19, 1999; *People v. Geron*, supra.
- [62] *People v. Aspiras*, GR No. 138382-84, February 12, 2002; *People v. Villarin*, GR No. 136847, July 31, 2001; *People v. Williams*, GR No. 125985, April 20, 2001; *People v. Pagaura*, 267 SCRA 17, January 28, 1997.
- [63] *People v. Baulite*, GR No. 137599, October 8, 2001.

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