

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LOLITO ESTOYA, APPELLANT.

G.R. No. 153538. May 19, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

To qualify a killing to murder, treachery must be proved as fully as the crime itself. Inferences and presumptions cannot substitute for proof beyond reasonable doubt. Since the prosecution failed to prove this qualifying circumstance, appellant may be held guilty only of homicide, not murder.

The Case

Lolito Estoya appeals the March 8, 2002 Decision[1] of the Regional Trial Court (RTC) of Dumaguete City (Branch 34) in Criminal Case No. 13734, finding him guilty of murder as follows:

“WHEREFORE, accused LOLITO ESTOYA is hereby found guilty beyond reasonable doubt of the crime of MURDER, and the Court hereby imposes upon him the penalty of RECLUSION PERPETUA.

“Accused Lolito Estoya is likewise adjudged to indemnify the heirs of deceased victim Bemboy Cerna the sum of Fifty Thousand Pesos (P50,000.00) due to his untimely death.

“In line with Section 5, Rule 114 of the 1985 Rules on Criminal Procedure, as amended, the Provincial Jail Warden of the Negros Oriental Detention and Rehabilitation Center, is hereby directed to immediately transmit the living body of accused Lolito Estoya to the New Bilibid Prison at Muntinlupa City, Metro Manila, where he may remain to be detained. Said accused shall be given full credit for the period of his preventive detention, provided he has filed a written undertaking that he would follow all the legitimate rules and regulations imposed by the detention center.”[2]

The Information[3] dated June 3, 1997, charged appellant in these words:

“That on 29 March 1997 at about 9:00 o'clock in the evening at Barangay Eli, La Libertad, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above- named accused with intent to kill, attended with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shot Bemboy Cerna with the use of a handgun with which the said accused was then armed and provided[,] thereby inflicting upon said Bemboy Cerna fatal injuries which caused his death soon thereafter.

“That the commission of the said offense was attended with the aggravating circumstance of nighttime.”[4]

Upon his arraignment on September 15, 1997,[5] appellant, assisted by his counsel de parte,[6] pleaded not guilty. After trial in due course, the court a quo rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts in the

following manner:

“On March 29, 1997 at 9:00 o’clock in the evening more or less in Barangay Eli, La Libertad, Negros Occidental, Brgy. Councilman Solano Pactor was eating in the kitchen of the house of his brother-in-law, Lolito Garsula, together with Lolito’s wife, Virgin, and their two (2) children. Also with them were Lando, Harry, Merly and Lucrit Garsula and Bemboy Cerna, also a Brgy. Councilman.

“While they were eating, two (2) shots rang out. All of them dropped to the floor, with the exception of Lolito Garsula who immediately opened the window. He saw appellant Lolito Estoya running and holding a long gun. After that, he saw appellant aiming his gun at him. Then, there was another shot. Appellant was still holding his gun when he exclaimed ‘[W]ithdraw Bay.’ Thereafter, Garsula dropped to the ground. He saw Bemboy Cerna was already lying in a pool of blood and was no longer breathing.

“Solano Pactor reported the incident to Brgy. Councilman Editho Faburada and Emeterio Benlot. The killing of Cerna reached his wife, Nonita. Nonita and Brgy. Captain Fidelo Faculanang reported the killing to the Taleon Police Department, Dumaguete City.

“Prosecution witness Dr. Maria Lilian Tagle Arenas, the Municipal Health Officer of La Libertad, Negros Occidental, autopsied the body of Bemboy Cerna and prepared and signed the Autopsy Report.

“The Autopsy Report revealed that the victim suffered a gunshot wound, about 1 cm. in size located at the right sub mandibular region about 8 cm. from the submental region (middle of the chin). There was a second wound, about 1 cm. long [at the] left anterior portion of the neck, which was also a gunshot wound. Both wounds were considered fatal, because they were at the spinal cord, where the cervical spine is located. Dr. Arenas issued the Death Certificate of Cerna.

“Prosecution witness Police Sr. Inspector Alet I. Virtucio, Chief of the PNP Crime Laboratory in Dumaguete City, prepared Ballistic Report No. FIB-131-2000 dated February 26, 2000.

“The caliber of the firearm used in the killing is 5.56 mm. Both slugs recovered from the body of the victim came from a high-powered firearm such as M-16 Rifle ER-15, ER-16, a Ghalil or a Bolt Action Rifle.”[7] (Citations omitted)

Version of the Defense

In his defense, appellant interposes denial and alibi as follows:

“The un rebutted evidence of the appellant indicates that at the time of the incident, the appellant was at Emporium, Brgy. Owakan, Jimalalud, Negros Oriental, about 20 kms. from Brgy. Eli, La Libertad, Negros Oriental. This is testified to by Lolito Estoya, Expedito Estoconing and Restituto de la Zerna, Brgy. Captain of Ampanangon, Jimalalud, Negros Oriental and CAFGU member, respectively.

“The whole night of March 29, 1997 up to the early morning, he was in Emporium, Owakan, Jimalalud, Negros Oriental doing some small selling business. Restituto de la Zerna, a CAFGU member, and Brgy. Captain Expedito Estoconing positively testified that Lolito Estoya throughout the night was with them in Emporium, Owakan, Jimalalud, Negros Oriental and never left said place. Besides, the distance between Emporium, Brgy. Owakan, Jimalalud and Brgy. Eli, La Libertad, Negros Oriental is about two hours walk on rugged and mountainous terrain.”[8] (Citations omitted)

Ruling of the Trial Court

The trial court ruled that the evidence on record led to the conclusion that appellant had killed Cerna. It found that the testimony of Solano Pactor was straightforward, positive and consistent as to the following facts: 1) he saw Estoya pointing a gun at the victim just after the burst of gunfire; 2) Estoya was the only person with a gun at the time; and 3) appellant uttered “Withdraw Bay” after the shooting. The court a quo further held that Estoya -- who

eluded arrest -- had previously told Pactor that Cerna's days were numbered and, thus, had a motive to kill the victim.

As regards the alibi of appellant, the court noted material discrepancies in the testimonies he and his witnesses had given. It brushed aside suggestions that Pactor had falsely testified against him, noting that the two had no previous misunderstanding.

Moreover, the lower court ruled that the killing was attended by treachery, because Cerna had been eating at the time and was therefore totally unaware that he would be shot from behind by Estoya. Appellant was thus convicted of murder and sentenced to reclusion perpetua. He was also directed to indemnify the heirs of the victim in the sum of P50,000. In the absence of proof, no actual damages were awarded.

Hence, this appeal.[9]

Issues

In his Brief, appellant raises the following issues for our consideration:

"I

[The lower court erred] in not declaring that the evidence adduced by the prosecution does not show a positive identification of the assailant.

"II

[The lower court erred] in giving credence to the testimony of Solano Pactor despite his absurd and doubtful behavior before, during and after the death of Bemboy Cerna and the fact that it is not impossible that Solano Pactor was the killer of Bemboy Cerna.

"III

[The lower court erred] in declaring that there was flight on the part of appellant and that he eluded arrest." [10]

The matters of treachery and damages will also be addressed.

The Court's Ruling

The appeal is partly meritorious.

First Issue:

Identification of Appellant as the Assailant

Appellant argues that the prosecution could not have established the identity of Cerna's assailant with moral certainty, because 1) there was no evidence of sufficient illumination in the crime scene that could have enabled Pactor to see the assailant; and 2) it was highly unbelievable that after hearing the gunshots, the witness looked out of the window instead of taking cover. In addition, appellant points out that the identity of the assailant was reported to the police as "unknown" by Barangay Captain Paculanang as well as by Pactor and appellant's wife, Nonita.

Estoya also contends that he could not have been at the crime scene on the night of March 29, 1997, because he was in Owakan, which was at least a two-hour walk or an hour-and-a-half ride by horseback from the mountain barangay of Eli. He presented two witnesses to corroborate this claim.

Appellant's assertions pertain to factual matters that have already been passed upon by the trial court. As a rule, its findings of fact are given great weight and respect by appellate courts.[11] The same deference is accorded its evaluation of the credibility of witnesses, because it passes firsthand judgment on whether or not they are telling the truth.[12] Hence, unless it is shown to have overlooked or misapprehended some facts or circumstances of weight and influence,[13] its findings will not be disturbed or overturned by this Court. In the present case, a

review of the records turned up nothing to suggest that the trial court had erred in its appreciation of the facts.

Positive Identification of Appellant

First, appellant was positively identified as Cerna's armed assailant. Pactor testified to this fact consistently during the rigorous and prolonged cross-examination on five[14] separate hearing dates. His narration of how he had opened the window after hearing two shots was clear and straightforward. Though appellant questions this supposedly unusual reaction, we find that it was not altogether far-fetched for the former to look outside to find out what had caused the explosion. This, too, was a natural human reaction under the circumstances, especially since Pactor was seated right next to the window.

It is axiomatic that positive identification -- when categorical, consistent and showing no ill motive on the part of the witness testifying on the matter -- prevails over the alibi and the denial proffered by the accused.[15]

Sufficiency of Illumination

Second, the transcript of the stenographic notes of the testimony of Pactor as well as the Affidavit[16] he executed on April 3, 1997, adequately show that sufficient illumination was provided by three kerosene lamps in the kitchen and by another one hanging outside Garsula's house. The witness testified as follows:

“COURT: (TO THE WITNESS)

x x x x x x x x

Q How many were you who were outside of the house conversing?

A We were seven (7) conversing with each other excluding the children.

Q Was there light in the place where you were conversing outside the house?

A Yes, the fire which [was] used for cooking and the lamps outside.

Q How many lamps were placed outside?

A Only one (1).

Q What kind of lamp?

A A gas lamp (tingkarol).

Q You describe[e] to us that gas lamp, how big [was it]?

A Empty kulafu bottle placed with x x x kerosene and cork with a paper wick.

Q How long did your conversation take?

A More than one (1) hour.

Q After that time of one hour, what happened?

A We went upstairs.

Q Why?

A Because my brother-in-law called us to go upstairs because the supper [had] already [been] prepared.

Q What time did the supper start?

A We started our supper at about 9:00 o'clock, more or less.

Q Where did you take your supper?

A We ate our supper in the kitchen and on the table.

Q How big?

A Small table placed inside the kitchen.

Q Where did Bemboy Cerna sit at that time that he took his supper?

A He sat with his back against the wall.

Q Was there a window [on] that wall situated at the back of Bemboy Cerna?

A Yes, there was a window x x x at the back of Bemboy Cerna.

Q Who were sitting on the left side of Bemboy Cerna?

A I was at his left side.

Q Who [were] the persons sitting at the right side of Bemboy Cerna?

A A child.

Q How many persons were sitting in front of the table?

A We were five (5) eating on the table.

Q How many lamps were in that kitchen?

A Three (3) lamps.

Q You describe to us these lamps?

A

A homemade gas lamp with a wick and the kulafu bottle gas lamp also x x x with kerosene [and a] cork with a paper wick [were] on the table. x x x [T]he other one was a homemade gas lamp with [a] wick that was h[u]ng [in] the kitchen.

Q What time did the supper start?

A About 9:00 o'clock in the evening.

Q Did you start to eat the supper?

A Yes, Your Honor.

Q While Bemboy Cerna was taking [his] supper, what happened?

A While we were eating together, I heard a gunshot.

Q How many gunshots?

A I heard two (2) gunshots.

Q Coming from what direction?

A [From] the back of the wall where Bemboy Cerna was sitting.

Q Were [the] gunshots fired successively?

A Yes, successive burst[s] of the gun.

Q And what happened to Bemboy Cerna?

A

When I heard the two (2) gunshots I immediately looked back because the window is near x x x my back and also at the back of Bemboy Cerna.

Q And what did you see?

A I saw one fellow in the person of Lolito Estoya.

Q Did you see other persons aside from Lolito Estoya?

A No, your Honor.

Q Do you mean to say that you were able to see only one (1) person?

A Yes, [I saw] only one person x x x at the back of the wall.

Q Why did you see Lolito Estoya when that was evening time?

A Because he was illuminated by the gas lamp when I look[ed] back at the window, because he [was] x x x very near to me.

Q What was the position of Lolito Estoya [at the] time you [saw] him?

A I saw him holding a handgun.”[17] (Italics supplied)

Assailant Unidentified
in the Police Report

Third, it was only in the Report[18] of Paculanang that Cerna’s assailant was described as an “unidentified person.” It is worth mentioning that the former was not present when the incident happened. In a separate Report[19] filed by Nonita, the wife of the victim, the police blotter entry did not at all refer to the assailant.

It was not Pactor who reported the incident to the police on March 30, 1997. The transcript of stenographic notes adequately reveals that while he was with both Nonita and Barangay Captain Paculanang when the two went to the police station to report the incident,[20] he remained outside while awaiting the arrival of the victim’s body for the postmortem examination.[21] We stress that entries in the police blotter should not be given undue significance or probative value, for these are normally incomplete and inaccurate,[22] especially when made by persons with no personal knowledge of the circumstances surrounding the incident. Hence, the fact that Cerna’s assailant was unnamed in the police blotter does not affect the credibility of the other pieces of evidence on record, positively pointing to appellant as the killer.

Weakness of Alibi and Denial

We now look into the defense resorted to by appellant. His witnesses[23] testified that on the night of March 29, 1997, until dawn of the next day, he was in another barangay -- Owakan or Emporium -- some three kilometers away from the scene of the crime. Hence, it is his contention that he was nowhere near Garsula’s house, where

Cerna was shot to death.

Jurisprudential rules and precepts guide this Court in assessing the proffered defense. One, alibis and denials are generally disfavored by the courts for being weak.[24] Two, they cannot prevail over the positive identification of the accused as the perpetrators of the crime.[25] Three, for alibi to prosper, the accused must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to be at the scene of the crime at the time of its commission.[26] Fourth, alibi assumes significance or strength only when it is amply corroborated by credible and disinterested witnesses. [27] Fifth, alibi is an issue of fact that hinges on the credibility of witnesses, and the assessment made by the trial court -- unless patently and clearly inconsistent -- must be accepted.[28]

In the present case, Pactor positively identified appellant as Cerna's assailant. Moreover, the latter's whereabouts around seven o'clock of March 29, 1997, was categorically placed by Nonita Cerna to be in Barangay Eli. According to her, appellant and a certain Jerry Estoconing came looking for her husband at their house.[29] In particular, her testimony throws overboard the alibi of appellant that he was already at Barangay Owakan around seven o'clock of the night in question. Besides, granting that he was there at the time, it was not altogether impossible for him to have been at Barangay Eli later that night at nine o'clock, since he was only three kilometers away -- a distance of about an hour by foot or a half-hour by horseback.[30]

As to the defense witnesses, we note that the trial court found Zosimo de la Zerna to be lying[31] because of the discrepancy in his answers as to the time Estoya and companions had started[32] and finished[33] drinking. On the other hand, the testimony of Estoconing that he was drinking with appellant around seven o'clock in Barangay Owakan was shattered by the positive and categorical testimony of Nonita that she had seen and talked with Estoya during that same time at Barangay Eli. We find no reason to overturn the trial court's judgment upholding her testimony over that of Estoconing. The latter witness was unable to explain satisfactorily why he had not immediately informed police authorities that he was with Estoya on March 29, 1997 -- if indeed he was -- upon knowing in June 1997 of appellant's indictment.[34]

Second Issue: Credibility of the Witness' Testimony

Assailing the testimony of the prosecution eyewitness, Estoya maintains that it was the former who had both the motive and the opportunity to kill Cerna. Appellant avers that it was highly suspicious that 1) without any special occasion, Pactor went to the house of his brother-in-law together with Cerna, whom he had fetched before proceeding there; 2) Pactor took a circuitous route to the houses of Benlot and Faburada, instead of going to the barangay captain's house or directly to the victim's house to inform Nonita; and 3) Pactor, Faburada and Benlot did not name the assailant when they broke the news to the victim's wife. The testimony of Pactor, added Estoya, was riddled with serious material inconsistencies as to the gun used and the way the former had opened the window to look at the gunman.

We reject appellant's arguments. Again, it must be stressed that the findings of the RTC on these evidentiary matters are best left undisturbed, since there is no adequate showing that it erred in its evaluation of the material facts. A thorough review of the records shows that there was nothing suspicious about the behavior of Pactor. Neither was there any serious inconsistency in his testimony. Candid and straightforward was his averment therein that he had fetched Cerna to partake of dog meat at the house of the former's brother-in-law Garsula. Much as appellant would want this Court to believe otherwise, there is no showing that Pactor harbored any ill motive against the victim.

The records also reveal that Pactor did not report the incident first to Barangay Captain Paculanang, because Garsula had already done so.[35] On the other hand, the fact that it took the witness some time to inform Nonita

of the incident is understandable, as it is usually a difficult and delicate task to notify a wife of the sudden and violent death of her husband.

As to the alleged inconsistency in the description by Pactor of the gun used in killing Cerna, it is enough to say that the former is not a firearms expert and is therefore not well-versed in the classification of guns. Moreover, it appears from the testimony of Police Inspector Alet I. Virtucio that a long arm could be held by both hands, consistent with Pactor's testimony describing how Estoya held the gun.[36]

Futile is the attempt of appellant to cast doubt on the testimony of Pactor by alluding to alleged inconsistencies in the latter's description of the window -- from one that could be opened by sliding the frame, to one that could be pushed open. This discrepancy is not material and does not deviate from the fact that shortly after hearing two shots, Pactor opened the window and heard Estoya shout "Withdraw Bay." It is a well-settled rule that inconsistencies in minor details in the testimonies of witnesses strengthen rather than weaken their credibility, because any suspicion that the testimony was rehearsed is thereby erased.[37]

Third Issue:

Appellant's Subsequent Flight

Finally, appellant refutes the trial court's finding that he took flight and eluded arrest after Cerna had been shot to death. Estoya points out that, on the contrary, he was in Barangay Eli the very next morning after the incident and did not leave the place until April 3, 1997. On the same day that he left, he went down to the poblacion of La Libertad to file his certificate of candidacy at the office of the Commission on Elections, which was about 15 meters from the police station. When he was arrested on April 7, 1997, he said that he had gone to the police station to verify the bandilyo that a warrant of arrest had been issued against him.[38]

There is merit in this argument. A review of the records shows that the Warrant of Arrest[39] was issued by acting Municipal Circuit Trial Court (MCTC) Judge Hector B. Barillo on April 3, 1997, after the preliminary examination of the criminal Complaint against the former.[40] The Warrant was served on Estoya on April 7, 1997, at 4:00 p.m.[41] It was later clearly shown that from that day onwards, he had been in jail. He continued to be confined there, even when his case was transferred to the RTC of Negros Oriental,[42] and a new Warrant of Arrest[43] issued on July 23, 1997, by acting Presiding Judge Felix C. Gaudiel Jr. of the RTC of Bais City, Negros Oriental (Branch 45).

Moreover, the prosecution did not present evidence that Estoya had evaded arrest. Questioning by the prosecutor established that, quite the contrary, he had gone to La Libertad to file his certificate of candidacy on April 3, 1997, but that he had to go back on April 7, 1997, to finish filing it.[44] Indeed, if he had been in hiding since April 3, 1997 -- when the warrant for his arrest was issued -- he would not have returned to the Comelec office on April 7 and gone to the police station thereafter to inquire about the warrant.

Additional Issue: Treachery

The trial court ruled that treachery had attended the killing of Cerna; hence, it convicted appellant of murder. Though the assigned errors did not include this and the issue of appropriate penalty and damages, we deem it proper to review them, in line with the principle that an appeal in a criminal case opens the whole proceedings to review.[45]

There is treachery when the offender commits any of the crimes against persons by employing -- in the execution thereof -- such means, method or form that directly and specially ensures its execution without risk to the offender arising from the defense that the offended party might make.[46] Two elements must therefore concur to prove treachery: 1) the means of execution employed gives the person attacked no opportunity for self-defense or retaliation; and 2) the means of execution is deliberately or consciously adopted.[47]

In this case, it is clear that Cerna had no opportunity to defend himself or to retaliate when he was shot from behind while eating inside Garsula's house. The suddenness of the attack, however, does not by itself qualify the killing to murder.[48] The prosecution should also establish beyond reasonable doubt that such mode of attack was consciously adopted by appellant. There are, however, no other particulars showing that he did, except for Pactor's testimony that two shots were fired successively from outside. No circumstance was cited to show that he had particularly ascertained and aimed at the exact position of Cerna. The victim was then seated -- his back against the window -- with Pactor and the latter's nephew at either side. [49]

It has been held that treachery cannot be considered where no witness has testified on how the assault began and developed.[50] Considering that the existence of any qualifying circumstance such as treachery cannot be inferred, but must be proven as fully as the crime itself,[51] any doubt as to its existence must be resolved in favor of appellant. Hence, we rule out treachery as a qualifying circumstance in the killing of Cerna.

Additional Issue:

Penalty and Damages

As there is no other circumstance under Article 248 of the Revised Penal Code that would qualify the killing to murder, appellant may be held liable only for homicide. Under Article 249 of the Code, homicide is punishable by reclusion temporal, which in this case is to be imposed in its medium period, as there are no aggravating or mitigating circumstances. [52] Appellant is also entitled to the benefits of the Indeterminate Sentence Law and should thus be sentenced to an indeterminate penalty, the maximum of which is reclusion temporal medium, and the minimum in the range of prision mayor -- the penalty next lower than that prescribed by the Revised Penal Code.

The award of civil indemnity in the amount of P50,000 is affirmed. Because of the absence of sufficient evidence, the trial court was also correct in not granting actual damages, loss of earning capacity and moral damages. In lieu of actual damages, however, temperate damages of P25,000 are awarded, since the heirs undeniably suffered pecuniary loss.[53] Finally, no exemplary damages are granted, because these are proper only when the crime is committed with one or more aggravating circumstances.[54]

WHEREFORE, the appeal is PARTLY GRANTED. The Decision of the Regional Trial Court (RTC) of Dumaguete City (Branch 34) in Criminal Case No. 13734 is hereby MODIFIED as follows:

1. Appellant is found GUILTY of HOMICIDE and is sentenced to suffer an indeterminate prison term ranging from ten (10) years of prision mayor to fourteen (14) years and eight (8) months and one (1) day of reclusion temporal.
2. Appellant is likewise ordered to pay to the heirs of the deceased the amount of P50,000 as civil indemnity ex delicto and P25,000 for temperate damages. Costs against appellant.

SO ORDERED.

Ynares-Santiago, Carpio and Azcuna, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

[1] Rollo, pp. 31-39. Written by Judge Rosendo B. Bandal Jr.

[2] RTC Decision, pp. 8-9; rollo, pp. 38-39.

[3] Signed by 4th Assistant Provincial Prosecutor Elson P. Bustamante and approved by Provincial Prosecutor Felipe R. Pareja.

[4] Rollo, p. 11; records, p. 2.

[5] See Order dated September 15, 1997; records, p. 78. See also Certificate of Arraignment; records, p. 77.

[6] Atty. Edwin B. Abil.

[7] Appellee's Brief, pp. 3-5; rollo, pp. 96-98.

[8] Appellant's Brief, p. 3; id., p. 60.

[9] This case was deemed submitted for decision on October 28, 2003, upon receipt by this Court of appellant's two-page Reply Brief, which was signed by Atty. Edwin B. Abil. Appellee's Brief, signed by Assistant Solicitors General Carlos N. Ortega and Renan E. Ramos and Solicitor Ismael G. Miaral, was received by this Court on July 9, 2003; and appellant's Brief, also signed by Atty. Abil, on March 12, 2003.

[10] Appellant's Brief, p. 1; rollo, p. 58. Original in upper case.

[11] *People v. Flores*, 322 SCRA 779, 785, January 20, 2000; *People v. Rendoque*, 322 SCRA 622, 633, January 20, 2000; *People v. Agsunod Jr.*, 366 Phil. 294, 310, May 3, 1999.

[12] *People v. Guzman*, 372 SCRA 344, 350, December 14, 2001; *People v. Temanel*, 341 SCRA 219, 226, September 28, 2000; *People v. Garces Jr.*, 322 SCRA 834, 846, January 20, 2000.

[13] *People v. Nogar*, 341 SCRA 206, 214, September 27, 2000; *Concepcion v. Court of Appeals*, 324 SCRA 85, 91, January 31, 2000; *People v. Valla*, 323 SCRA 74, 82, January 24, 2000.

[14] Pactor was cross-examined by appellant's counsel on October 8, 1998, September 16, 1999, September 20, 1999, October 4, 1999, and November 8, 1999.

[15] *People v. Lovedorial*, 349 SCRA 402, 412, January 17, 2001; *People v. Blanco*, 324 SCRA 280, 288, February 1, 2000; *People v. Jose*, 324 SCRA 196, 203, January 31, 2000.

[16] Paragraph 6 of Pactor's Affidavit (see records, p. 9) reads:

"6. That because of the light of the kerosene lamp that lighted at the dining that passes though the window, I clearly saw Lolito Estoya[.]"

[17] TSN, April 3, 1997, pp. 5-8.

[18] Exhibit "3"; records, p. 373.

[19] Exhibit "B"; id., pp. 285-286.

[20] TSN, March 18, 1998, pp. 36-37; TSN, October 4, 1998, pp. 25-29.

[21] TSN, October 4, 1999, pp. 25-29.

[22] *People v. Ulgasan*, 390 Phil. 763, 774, July 11, 2000; *People v. Mejia*, 341 Phil. 118, 147, July 7, 1997, citing *People v. Casinillo*, 213 SCRA 777, 780, September 11, 1992.

[23] *Restituto de la Zerna and Expedito Estoconing*.

[24] *People v. Entila*, 325 SCRA 226, 244, February 9, 2000; *People v. Cortes*, 323 SCRA 131, 141, January 24, 2000; *People v. Alib*, 322 SCRA 93, 100, January 18, 2000.

[25] *People v. Cabuntog*, 368 SCRA 112, 122, October 23, 2001; *People v. Mercado*, 419 Phil. 534, 543, October 12, 2001; *People v. Banela*, 361 Phil. 61, 70-71, January 18, 1999.

- [26] *People v. Dando*, 382 Phil. 290, 309, February 11, 2000; *People v. Mercado*, supra; *People v. Tanail*, 323 SCRA 667, 677, January 28, 2000.
- [27] *People v. Amestuzo*, 413 Phil. 500, 513, July 12, 2001; *People v. Martinez*, 350 SCRA 537, 548, January 30, 2001.
- [28] *People v. Sanchez*, 361 Phil. 692, 718, January 25, 1999.
- [29] TSN, March 18, 1998, pp. 5-8. See also “Exhibit B”; records, p. 285.
- [30] Exhibit “F,” Certification of the Barangay Captain of Barangay Eli as to the distance; id., p. 390.
- [31] TSN, July 31, 2000, p. 16.
- [32] De la Zerna placed the time at 7 p.m., but also said it was at 10 p.m. See TSN, July 31, 2000, pp. 8-16.
- [33] According to De la Zerna, the time was 3:30 a.m. or 5:00 a.m. of March 30, 1997. See TSN, July 31, 2000, pp. 8-16.
- [34] TSN, August 21, 2000, pp. 14-18.
- [35] TSN, September 20, 1999, p. 13.
- [36] TSN, March 7, 2000, p. 33.
- [37] *People v. Navarro*, 351 SCRA 462, 477, February 12, 2001; *People v. Dando*, supra, p. 309; *People v. Villar*, 322 SCRA 393, 401, January 19, 2000.
- [38] TSN, October 23, 2000, pp. 22-28.
- [39] Records, p. 60.
- [40] See Order dated April 3, 1997; records, p. 59-a.
- [41] See Return of Warrant of Arrest; id., p. 62.
- [42] See Resolution dated May 22, 1997, and signed by Judge Barillo; id., pp. 65-66.
- [43] Records, p. 71. See also Return of Warrant of Arrest dated August 12, 1997; records, p. 74.
- [44] TSN, November 10, 2000, pp. 4-6.
- [45] *People v. Tolentino*, 380 SCRA 171, 174, April 3, 2002; *People v. Nuevo*, 420 Phil. 421, 431, October 26, 2001.
- [46] *People v. Almendras*, 372 SCRA 737, 745, December 20, 2001; *People v. Guzman*, 372 SCRA 344, 354, December 14, 2001; *People v. De la Cruz*, 390 Phil. 961, 986, July 14, 2000.
- [47] *People v. Ancheta*, 372 SCRA 753, 762, December 21, 2001; *People v. Solayao*, 372 SCRA 162, 169, December 12, 2001; *People v. Antonio*, 390 Phil. 989, 1018-1019, July 14, 2000.
- [48] *People v. Antonio*, supra, p. 1017.
- [49] TSN, September 20, 1999, p. 4.
- [50] *People v. Ancheta*, supra.
- [51] *People v. Abrazaldo*, 397 SCRA 137, 147, February 7, 2003; *People v. De la Cruz*, supra; *People v.*

Almendras, *supra*, p. 746.

[52] Article 64(1) of the Revised Penal Code.

[53] *People v. Abrazaldo*, *supra*, p. 149; *People v. Mahilum*, 390 SCRA 91, 99, September 27, 2002; *People v. Cañares*, 421 Phil. 917, 928, November 22, 2001.

[54] *Talay v. Court of Appeals*, 398 SCRA 185, 202, February 27, 2003; *People v. Catubig*, 363 SCRA 621, 635, August 23, 2001.

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