FRANCISCO SALVADOR B. ACEJAS III, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 156643. June 27, 2006

Ponente: PANGANIBAN, C.J.

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PANGANIBAN, C.J.:

This Court defers to the Sandiganbayan's evaluation of the factual issues. Not having heard any cogent reasons to justify an exception to this rule, the Court adopts the anti-graft court's findings. In any event, after meticulously reviewing the records, we find no ground to reverse the Sandiganbayan.

The Case

Before us are consolidated Petitions for Review[1] assailing the March 8, 2002 Decision[2] and the January 3[3] and 14, 2003[4] Resolutions of the Sandiganbayan in Criminal Case No. 20194. Francisco SB. Acejas III and Vladimir S. Hernandez were found guilty beyond reasonable doubt of direct bribery penalized under Article 210 of the Revised Penal Code.

Vladimir S. Hernandez, Victor D. Conanan, SPO3 Expedito S. Perlas, Francisco SB. Acejas III and Jose P. Victoriano were charged on February 8, 1994, in an Information that reads thus:

> "That on or about January 12, 1994, or sometime prior thereto in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused VLADIMIR S. HERNANDEZ and VICTOR CONANAN, being then employed both as Immigration officers of the Bureau of Immigration and Deportation, Intramuros, Manila, hence are public officers, taking advantage of their official positions and committing the offense in relation to office, conspiring and confederating with Senior Police Officer 3 EXPEDITO S. PERLAS of the Western Police District Command, Manila, together with co-accused Atty. FRANCISCO SB. ACEJAS III, of the LUCENARIO, MARGATE, MOGPO, TIONGCO & ACEJAS LAW OFFICES, and co-accused JOSE P. VICTORIANO, a private individual, did then and there, willfully, unlawfully and feloniously demand, ask, and/or extort One Million (P1,000,000.00) PESOS from the spouses BETHEL GRACE PELINGON and Japanese TAKAO AOYAGI and FILOMENO PELINGON, JR., in exchange for the return of the passport of said Japanese Takao Aoyagi confiscated earlier by co-accused Vladimir S. Hernandez and out of said demand, the complainants Bethel Grace Pelingon, Takao Aoyagi and Filomeno Pelingon, Jr. produced, gave and delivered the sum of Twenty-Five Thousand (P25,000.00) Pesos in marked money to the above-named accused at a designated place at the Coffee Shop, Ground Floor, Diamond Hotel, Ermita, Manila, causing damage to the said complainants in the aforesaid amount of P25,000.00, and to the prejudice of government service."[5]

After trial, all the accused — except Victoriano — were convicted. The challenged Decision disposed as follows:

> "WHEREFORE, premises considered, accused Vladimir S. Hernandez, Victor D. Conanan, Expedito S. Perlas and Francisco SB. Acejas III are hereby found GUILTY beyond reasonable doubt of the crime of Direct Bribery, and are sentenced to suffer the indeterminate penalty of four (4) years, nine (9) months and ten (10) days of prision correccional, as minimum, to seven (7) years and four (4) months of prision mayor, as

maximum, and to pay a fine of three million pesos (P3,000,000.00). Accused Vladimir S. Hernandez and Victor D. Conanan shall also suffer the penalty of special temporary disqualification. Costs against the accused.

"On ground of reasonable doubt, accused Jose P. Victoriano is hereby ACQUITTED of the crime charged. The surety bond he posted for his provisional liberty is cancelled. The Hold Departure Order against him embodied in this Court's Order dated July 24, 2000 is recalled."[6]

The first Resolution acquitted Conanan and denied reconsideration of the other accused. The second Resolution denied Petitioner Acejas' Motion for New Trial.

Hence, petitioners now seek recourse in this Court.[7]

The Facts

The facts[8] are narrated by the Sandiganbayan as follows:

"At around 4:00 to 5:00 p.m. of December 17, 1993, accused Bureau of Immigration and Deportation (BID) Intelligence Agent Vladimir Hernandez, together with a reporter, went to the house of Takao Aoyagi and Bethel Grace Pelingon-Aoyagi at 27 Pacific Drive, Grand Villa, Sto. Niño, Parañaque, Metro Manila. His purpose was to serve Mission Order No. 93-04-12 dated December 13, 1993, issued by BID Commissioner Zafiro Respicio against Takao Aoyagi, a Japanese national. Hernandez told Takao Aoyagi, through his wife, Bethel Grace, that there were complaints against him in Japan and that he was suspected to be a Yakuza big boss, a drug dependent and an overstaying alien.

"To prove that he had done nothing wrong, Takao Aoyagi showed his passport to Hernandez who issued an undertaking (Exh. 'B') which Aoyagi signed. The undertaking stated that Takao Aoyagi promised to appear in an investigation at the BID on December 20, 1993, and that as a guarantee for his appearance, he was entrusting his passport to Hernandez. Hernandez acknowledged receipt of the passport.

"On December 18, 1993, Bethel Grace Aoyagi called accused Expedito 'Dick' Perlas[9] and informed him about the taking of her husband's passport by Hernandez. Perlas told her he would refer their problem to his brother-in-law, Atty. Danton Lucenario of the Lucenario, Margate, Mogpo, Tiongco and Acejas III Law Firm. It was at the Sheraton Hotel that Perlas introduced the Aoyagis to Atty. Lucenario. They discussed the problem and Atty. Lucenario told the Aoyagis not to appear before the BID on December 20, 1993.

"As advised by Atty. Lucenario, Takao Aoyagi did not appear before the BID. Instead, Atty. Rufino M. Margate of the Lucenario Law Firm filed with the BID an Entry of Appearance (Exh. '6' – Acejas). Atty. Margate requested for copies of any complaint-affidavit against Takao Aoyagi and asked what the ground was for the confiscation of x x x Aoyagi's passport.

"Hernandez prepared a Progress Report (Exh. '5' – Hernandez) which was submitted to Ponciano M. Ortiz, the Chief of Operations and Intelligence Division of the BID. Ortiz recommended that Takao Aoyagi, who was reportedly a Yakuza and a drug dependent, be placed under custodial investigation.

"In the evening of December 22, 1993 at the Diamond Hotel, the Aoyagis met accused Atty. Francisco Acejas III who was then accompanied by Perlas. Atty. Acejas informed them that it would be he who would handle their case. A Contract for Legal Services (Exh. 'D') dated December 22, 1993 was entered into by Takao Aoyagi and Atty. Acejas, who represented the Lucenario Law Firm.

"In the morning of December 23, 1993, Perlas and Atty. Acejas accompanied the Aoyagis to the Domestic Airport as the latter were going to Davao. It was here that Takao Aoyagi paid Atty. Acejas P40,000.00, P25,000 of which is 50% of the acceptance fee, and the P15,000.00 is for filing/docket fee (Exh. 'O'). The Aoyagis were able to leave only in the afternoon as the morning flight was postponed.

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> "On December 24, 1993, while attending a family reunion, Bethel Grace Pelingon-Aoyagi informed her brother, Filomeno 'Jun' Pelingon, Jr., about her husband's passport.
>
> "On January 2, 1994, Jun Pelingon talked to BID Commissioner Zafiro Respicio in Davao and told the latter of Takao Aoyagi's problem with the BID. Respicio gave Pelingon his calling card and told Pelingon to call him up in his office. That same day, Jun Pelingon and Mr. and Mrs. Aoyagi flew back to Manila.
>
> "On January 5, 1994, Jun Pelingon, Dick Perlas, Atty. Acejas, Vladimir Hernandez, Vic Conanan and Akira Nemoto met at the Aristocrat Restaurant in Roxas Boulevard.
>
> "Another meeting was arranged at the Manila Nikko Hotel in Makati on January 8, 1994 with Jun Pelingon, Perlas, Atty. Acejas and Hernandez attending.
>
> "On January 11, 1994, on account of the alleged demand of P1 million for the return of Takao Aoyagi's passport, Jun Pelingon called up Commissioner Respicio. The latter referred him to Atty. Angelica Somera, an NBI Agent detailed at the BID. It was Atty. Carlos Saunar, also of the NBI, and Atty. Somera who arranged the entrapment operation.
>
> "On January 12, 1994, Vladimir Hernandez returned the passport to Takao Aoyagi at the Coffee Shop of the Diamond Hotel. The NBI Team headed by Attorneys Saunar and Somera arrested Dick Perlas, Atty. Acejas and Jose Victoriano after the latter picked up the brown envelope containing marked money representing the amount being allegedly demanded. Only Perlas, Acejas and Victoriano were brought to the NBI Headquarters."[10]

Version of the Prosecution

Testifying for the prosecution were Bethel Grace Pelingon Aoyagi, Filomeno "Jun" Basaca Pelingon, Jr., and Carlos Romero Saunar.[11]

The prosecution evidence showed that it was during a meeting on January 5, 1994, when P1 million as consideration for the passport was demanded. Conanan averred that Aoyagi was a drug trafficker and Yakuza member. The money was to be used to settle the alleged "problem" and to facilitate the processing of a permanent visa. When Pelingon negotiated to lower the amount demanded, Conanan stated that there were many of them in the Bureau of Immigration and Deportation (BID).[12]

During the second meeting held at Hotel Nikko, Pelingon was informed that the press and government enforcers were after Aoyagi. Hernandez asked for a partial payment of P300,000, but Pelingon said that the whole amount would be given at just one time to avoid another meeting.[13]

After talking to Commissioner Respicio on January 11, 1994,[14] Pelingon called up Dick Perlas to schedule the exchange.

Regarding the involvement of Petitioner Acejas, the Office of the Solicitor General (OSG) adds the following facts:

> "1.2. On 5 January 1994, [Acejas] and Perlas met Pelingon at the Aristocrat Restaurant. [Acejas] informed Pelingon that he would file a P1 million lawsuit against the BID agents who confiscated the passport of Takao Aoyagi. [Acejas] showed Pelingon several papers, which allegedly were in connection with the intended lawsuit. However, when Hernandez and Conanan arrived at the Aristocrat Restaurant, [Acejas] never mentioned to the BID agents the P1 million lawsuit. [Acejas] just hid the papers he earlier showed to Pelingon inside his [Acejas'] bag.
>
> "1.3. [Acejas] was present when Hernandez proposed that Takao Aoyagi pay the amount of P1 million in exchange for the help he would extend to him (Takao) in securing a permanent visa in the Philippines.

[Acejas], who was Aoyagi's lawyer, did nothing.

"1.4. On 10 January 1994, [Acejas], Pelingon, Perlas and Hernandez met at the Hotel Nikko. Thereat, Hernandez informed the group that certain government officials and even the press were after Takao Aoyagi. Hernandez said that Takao Aoyagi can make a partial payment of P300,000.00. Pelingon however, assured the group that Takao Aoyagi would pay in full the amount of P1 million so as not to set another meeting date. [Acejas] kept quiet throughout the negotiations.

x x x x x x x x x

"1.5.a. [Acejas] was present during the entrapment that took place at the Diamond Hotel. Hernandez handed the passport to [Acejas], who handed it then to Perlas and thereafter to Takao Aoyagi. After Takao Aoyagi went over his confiscated passport, Bethel Grace handed to Hernandez the envelope[15] containing the supposed P1 million. Hernandez refused and motioned that [Acejas] be the one to receive it. [Acejas] willingly got the envelope and placed it beside him and Perlas.

x x x before Hernandez handed out Aoyagi's passport, he reminded the group of their earlier agreement of 'kaliwaan,' i.e., that after the passport is released, the Aoyagis should give the P1 million."[16]

Version of the Defense

Vladimir S. Hernandez, Expedito S. Perlas, Francisco SB. Acejas III, Victor D. Conanan and Ponciano M. Ortiz testified for the defense.[17]

To the Sandiganbayan's narration, Hernandez adds:

"6. x x x [Hernandez], an intelligence agent of the Bureau of Immigration and Deportation (BID), went to the house of Private Respondents Takao and Bethel Grace Aoyagi to enforce and serve a Mission Order issued and assigned to him by BID Commissioner Zafiro Respicio on December 13, 1993, for the arrest of Takao Aoyagi.

"7. When Bethel Grace showed [Hernandez] her husband's passport, [Hernandez] found out that the latter's [authority] to stay had already been duly extended. He invited private respondents to go with him to the BID office. They declined, but made a written undertaking to appear at the BID office for investigation on December 20, 1993. As security for said undertaking, Bethel Grace Aoyagi entrusted to [Hernandez] her husband's passport, receipt of which [Hernandez], in return, acknowledge[d] in the same instrument.

"8. On January 19, 1994, [Hernandez] signified that the record of Aoyagi has been cleared and that he can pick up his passport at the BID office. In connection therewith, [Hernandez] was invited by Perlas to make the return at a lunchtime meeting to be held at the Diamond Hotel Coffee Shop. Upon arrival thereat, [Hernandez] gave the passport to Atty. Acejas, Aoyagi's counsel, and within less than ten minutes, he left the coffee shop."[18]

In his Petition, Acejas narrates some more occurrences as follows:

"1. 18[th] December 1993 – The law firm of Lucenario Margate Mogpo Tiongco & Acejas was engaged by the spouses Takao Aoyagi and Bethel Grace Pelingon Aoyagi. x x x.

x x x x x x x x x

"3. 22[nd] December 1993 –

"a) The managing partner of the law firm, Atty. Lucenario, briefed [Acejas] about the facts regarding the confiscation by agents of the BID of the passport belonging to a Japanese client. x x x.

"b) Thereafter, [Acejas] was tasked by Atty. Lucenario to 'meet his brother-in-law Mr. Expedito Perlas, who happened to be a policeman and a friend of Mr. Takao Aoyagi.' Thus, [Acejas] 'met Mr. Perlas for the first

time in the afternoon' of this date.

"c) Also, for the first time, [Acejas] met the clients, spouses Aoyagis, at the Diamond Hotel, where they were staying. x x x [Acejas] advised them that the law firm decided that the clients 'can file an action for Replevin plus Damages for the recovery of the Japanese passport.'

"d) The CONTRACT FOR LEGAL SERVICES was signed between the client and the law firm, thru [Acejas] as partner thereof. x x x The amount of Fifty Thousand Pesos (Php. 50,000.00) was agreed to be paid by way of 'Case Retainer's/Acceptance Fees,' which was supposed to be payable 'upon (the) signing (t)hereof,' and the sum of Php. 2,000.00 by way of appearance fee. However, the client proposed to pay half only of the acceptance fee (Php. 25,000.00), plus the estimated judicial expenses for the filing or docket fees (Php. 15,000.00). x x x It was then further agreed that the 'balance of Php. 25,000.00 was supposed to be given upon the successful recovery of the Japanese passport.'

"e) The clients informed [Acejas] that 'they are supposed to leave for Davao the following day on the 23[rd] because they will spend their Christmas in Davao City; but they promised that they will be back on the 26[th], which is a Sunday, so that on the 27[th], which is a Monday, the complaint against the BID officers will have to be filed in Court.'

x x x x x x x x x

"6. 27[th] December 1993 – '(T)he law office received word from Mr. Perlas that the Japanese did not come back on the 26[th] (December), x x x so that the case cannot be filed on the 27[th] instead (it has) to wait for client's instruction.'

"7. 4[th] January 1994 – 'In the late afternoon, the law firm received a telephone call from Mr. Perlas informing (it) that the Japanese is already in Manila and he was requesting for an appointment with any of the lawyer of the law firm on January 5, 1994.'

"8. 5[th] January 1994 – [Acejas] 'met for the first time Mr. Filomeno Pelingon Jr.' including a certain Nimoto Akira. x x x.

"b) [Acejas] 'told Mr. Pelingon Jr. that all the pleadings are ready for filing but, of course, the Japanese client and the wife should first read the complaint and sign if they want to pursue the filing of the complaint against the BID agents.'

"c) For the first time, 'Mr. Pelingon advised against the intended filing of the case.' x x x He 'instead suggested that he wants to directly negotiate with the BID agents.'

"d) Thereafter, 'Mr. Pelingon instructed Mr. Dick Perlas to contact the BID agent who confiscated the Japanese passport.' 'Mr. Perlas and Mr. Pelingon were able to contact the BID agent.'

"e) For the 'first time [Acejas] saw Mr. Hernandez,' when the latter arrived and also accused Victor Conanan. In the course of the meeting, a confrontation ensued between [Acejas] and [Hernandez] concerning the legal basis for the confiscation of the passport. [Acejas] demanded for the return of the Japanese passport x x x. Mr. Hernandez 'said that if there are no further derogatory report concerning the Japanese client, then in a matter of week (from January 5 to 12), he will return the passport.'

"f) [Acejas] 'gave an ultimatum to Mr. Hernandez that if the Japanese passport will not be returned in one (1) week's time, then (the law firm) will pursue the filing of the replevin case plus the damage suit against him including the other BID agents.'

"g) 'x x x Mr. Pelingon Jr. for the second time advised against the filing thereof saying that his Japanese brother-in-law would like to negotiate or in his own words 'magbibigay naman [i.e. will give money anyway].'

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"9. 8[th] January 1994 –

"a) Again, 'Mr. Perlas called the law office and informed x x x that the Japanese client is now in Manila.' Petitioner attended the meeting they arranged in '(Makati) and meet Dick Perlas, Vladimir Hernandez and Pelingon Jr. x x x.

"b) x x x according to Pelingon Jr., the Japanese does not want to meet with anybody because anyway they are willing to pay or negotiate.

"c) [Hernandez was also] present at the meeting and [Acejas] 'met him for the second time. x x x [Acejas] said that if [Hernandez] will not be able to return the passport on or before January 12, 1994, then the law firm will have no choice but to file the case against him x x x. Again, for the third time Mr. Pelingon warned against the filing of the case because he said that he would directly negotiate with the BID agents.'

"d) The Makati meeting ended up 'with the understanding that Mr. Hernandez will have to undertake the return [of] the Japanese passport on or before January 12, 1994.'

"10. 12[th] January 1994 –

"a) Mr. Perlas called up the law office informing that the Japanese client was already in Manila and was requesting for an appointment with the lawyers at lunchtime of January 12 at the Diamond Hotel where he was billeted.

x x x x x x x x x

"c) x x x x x x x x x

"At this meeting, 'the Japanese was inquiring on the status of the case and he was wondering why the Japanese passport is not yet recovered when according to him he has already paid for the attorney fees. And so, [Acejas] explained to him that the case has to be filed and they still have to sign the complaint, the Special Power of Attorney and the affidavit relative to the filing of replevin case. But the Japanese would not fully understand. So, Pelingon Jr. again advised against the filing of the case saying that since there is no derogatory record of Mr. Aoyagi at the BID office, then the BID agents should return the Japanese passport.'

x x x x x x x x x

"e) Thereafter, 'Pelingon, Jr. and Dick Perlas x x x tried to contact Mr. Hernandez.' Since, they were able to contact the latter, 'we waited until around 2:00 p.m.' 'When Mr. Hernandez came, he said that the Japanese client is cleared at the BID office and so, he can return the Japanese passport and he gave it to [Acejas]. x x x 'When [Acejas] received the Japanese passport, (he) checked the authenticity of the documents and finding that it was in good order, (he) attempted to give it to the Japanese client.'

"'Very strangely when [Acejas] tried to hand-over the Japanese passport to the Japanese across the table, the Japanese was motioning and wanted to get the passport under the table. x x x [Acejas] found it strange. (He) x x x thought that it was a Japanese custom to receive things like that under the table. But nonetheless, [Acejas] did not give it under the table and instead passed it on to Mr. Dick Perlas who was seated at (his) right. And so, it was Mr. Dick Perlas who took the passport from [Acejas] and finally handed it over to Mr. Aoyagi.' x x x. 'After that, there was a little chat between Mr. Hernandez and the client, and Mr. Hernandez did not stay for so long and left.'

"Still, thereafter, '(w)hen the Japanese passport was received, Bethel Grace Aoyagi and [Acejas] were talking and she said since the Japanese passport had been recovered, they are now willing to pay the Php. 25,000.00 balance of the acceptance fee.'

"'Mrs. Aoyagi was giving [Acejas] a brown envelope but she want[ed] Mr. Hernandez to receive it while Mr.

> Hernandez was still around standing. But Mr. Hernandez did not receive it.
>
> "Since, the payment is due to the law firm, [Acejas] received the brown envelope.
>
> x x x x x x x x x
>
> "Not long after, [Acejas] saw his companion, accused Mr. Victoriano, who was 'signaling something' as if there was a sense of urgency. [Acejas] immediately stood up and left hurriedly. When [Acejas] approached Mr. Victoriano, he 'said that the car which [Acejas] parked in front of the Diamond Hotel gate, somebody took the car.' [Acejas] 'went out and checked and realized that it was valet parking so it was the parking attendant who took the car and transferred the car to the parking area.' [Acejas] requested 'Mr. Victoriano to get (the) envelope and the coat,' at the table.
>
> "g) 'When [Acejas] went out, [Acejas] already looked for the parking attendant to get the car. When the car arrived, [Acejas] just saw from the doors of the Diamond Hotel Mr. Jose Victoriano and Mr. Dick Perlas coming out already in handcuffs and collared by the NBI agents." They then 'were taken to the NBI,' except the accused Vladimir Hernandez."[19]

Ruling of the Sandiganbayan

The Sandiganbayan ruled that the elements of direct bribery,[20] as well as conspiracy in the commission of the crime,[21] had been proven. Hernandez and Conanan demanded money;[22] Perlas negotiated and dealt with the complainants;[23] and Acejas accepted the payoff and gave it to Perlas.[24]

Victoriano was acquitted on reasonable doubt.[25] Although he had picked up the envelope containing the payoff, this act did not sufficiently show that he had conspired with the other accused.[26]

The Sandiganbayan did not give credence to the alleged belief of Acejas that the money was the balance of the law firm's legal fees.[27] If he had indeed believed that the money was payable to him, he should have kept and retained it. The court then inferred that he had merely been pretending to protect his client's rights when he threatened to file a suit against Hernandez.[28]

The January 3, 2003 Resolution acquitted Conanan and denied the Motions for Reconsideration of Hernandez, Acejas and Perlas. According to the Sandiganbayan, Conanan was not shown to be present during the meetings on January 8 and 12, 1994.[29] His presence during one of those meetings, on January 5, 1994, did not conclusively show his participation as a co-conspirator.

The January 14, 2003 Resolution denied Acejas' Supplemental Motion, which prayed for a new trial.

The Issues

Petitioner Hernandez raises the following issues:

> "I. Whether or not respondent court erred in ruling that [Hernandez] was part of the conspiracy to extort money from private respondents, despite lack of clear and convincing evidence.
>
> "II. Whether or not the Honorable Sandiganbayan gravely abused its discretion when it overlooked the fact that the legal requisites of the crime are not completely present as to warrant [Hernandez'] complicity in the crime charged.
>
> "III. Whether or not respondent Sandiganbayan, 5[th] Division, ruled erroneously when it relied solely on the naked and uncorroborated testimonies of the late Filomeno 'Jun' Pelingon, Jr. in order to declare the existence of a conspiracy to commit bribery, as well as the guilt of the accused.
>
> "IV. Whether or not [respondent] court's acquittal of co-accused Victor Conanan and its conviction of

> [Hernandez] for the offense as charged effectively belies the existence of a conspiracy.
>
> "V. Whether or not the respondent Sandiganbayan committed grave abuse of discretion amounting to lack of, or in excess of jurisdiction when it found [Hernandez] guilty beyond reasonable doubt of the crime of direct bribery."[30]

On the other hand, Petitioner Acejas simply enumerates the following points:

> "1. The Conspiracy Theory
>
> 2. The presence of lawyer-client relationship; duty to client's cause; lawful performance of duties
>
> 3. 'Instigation' not 'entrapment'
>
> 4. Credibility of witness and testimony
>
> 5. Affidavit of desistance; effect: creates serious doubts as to the liability of the accused
>
> 6. Elements of 'bad faith'
>
> 7. Elements of the crime (direct bribery)
>
> 8. Non-presentation of complaining victim tantamount to suppression of evidence"[31]

In the main, petitioners are challenging the finding of guilt against them. The points they raised are therefore intertwined and will be discussed jointly.

The Court's Ruling

The Petitions have no merit.

Main Issue:
Finding of Guilt

The crime of direct bribery exists when a public officer 1) agrees to perform an act that constitutes a crime in consideration of any offer, promise, gift or present; 2) accepts the gift in consideration of the execution of an act that does not constitute a crime; or 3) abstains from the performance of official duties.[32]

Petitioners were convicted under the second kind of direct bribery, which contained the following elements: 1) the offender was a public officer, 2) who received the gifts or presents personally or through another, 3) in consideration of an act that did not constitute a crime, and 4) that act related to the exercise of official duties.[33]

Hernandez claims that the prosecution failed to show his involvement in the crime. Allegedly, he was merely implementing Mission Order No. 93-04-12, which required him to investigate Takao Aoyagi.[34] The passport was supposed to have been voluntarily given to him as a guarantee to appear at the BID office, but he returned it upon the instruction of his superior.[35]

The chain of circumstances, however, contradicts the contention of Hernandez. It was he who had taken the passport of Takao Aoyagi.[36] On various dates,[37] he met with Takao and Bethel Grace Aoyagi, and also Pelingon, regarding the return of the passport. Hernandez then asked for a down payment on the payoff,[38] during which he directed Bethel Grace to deliver the money to Acejas.[39]

Bethel Grace Aoyagi's testimony, which was confirmed by the other witnesses, proceeded as follows:

> "PROSECUTOR MONTEMAYOR:

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"Q:

When Vlademir Hernandez arrived, what happened?

"A:

He got the passport from his pocket and passed it on to Atty. Acejas, sir.

"Q:

What happened after he gave the passport to Atty. Acejas?

"A:

[Acejas] gave the passport to Mr. Expedito Perlas, sir.

"Q:

After that, what happened?

"A:

Then, [Perlas] gave it to Mr. Aoyagi, sir.

"Q:

The passport?

"A:

Yes, sir.

"Q:

And when Mr. Aoyagi received the passport, what did you do or what did Mr. Aoyagi do?

"A:

He checked all the pages and he kept it, sir.

x x x x x x x x x

"Q:

What did you do with that money after Mr. Aoyagi received the passport?

"A:

Because our agreement is that after giving the passport we would give the money so when Mr. Perlas handed to my husband the passport, I gave the money placed on my lap to my husband and he passed it to Mr.

Hernandez who refused the same.

"ATTY. ACEJAS:

"Your Honor, please, may I just make a clarification that when the witness referred to the money it pertains to the brown envelope which allegedly contains the money x x x.

"AJ ESCAREAL:

"Noted.

"PROSECUTOR MONTEMAYOR:

"Q:

Did Mr. Hernandez got hold or touched the envelope?

"A:

No, sir.

"Q:

When he [did] not want to receive the envelope, what did your husband do?

"A:

When Mr. Vlademir Hernandez refused to receive the money, he pointed to Atty. Acejas so my husband handed it to Atty. Acejas who received the same and later on passed it to Mr. Perlas.

"Q:

When Mr. Hernandez pointed to Atty. Acejas, did he say anything?

"A:

None, sir, he just motioned like this.

"INTERPRETER:

"Witness motioning by [waving] her two (2) hands, left and right.

"PROSECUTOR MONTEMAYOR:

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"Q:

And at the same time pointed to Atty. Acejas?

"A:

Yes, sir.

"Q:

And your husband gave the envelope to Atty. Acejas?

"A:

Yes, sir.

"Q:

And Atty. Acejas, in turn, handed the said envelope to whom?

"A:

Expedito Perlas, sir.

"Q:

Did Expedito Perlas [receive] that envelope?

"A:

Yes, sir.

"Q:

After that, what happened?

"A:

Mr. Perlas put the money on his side in between him and Atty. Acejas, sir.

"Q:

And then, what happened?

"A:

After the money was placed where it was, we were surprised, I think, it happened in just seconds[.] Mr. Vlademir Hernandez immediately left and then all of a sudden somebody came and picked up the envelope, sir."[40]

Significantly, Hernandez does not address the lingering questions about why Takao Aoyagi or his representatives

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had to negotiate for the retrieval of the passport during the meetings held outside the BID. Ponciano Ortiz, chief of the Operation and Intelligence Division of the BID, testified that it was not a standard operating procedure to officially return withheld passports in such locations.[41] It can readily be inferred that Hernandez had an ulterior motive for withholding the passport for some time despite the absence of any legal purpose.

Also, Hernandez cannot claim innocence based on Conanan's acquittal.[42] While the testimony of Pelingon was the only evidence linking Conanan to the conspiracy,[43] there was an abundance of evidence showing Hernandez's involvement.

Acejas, on the other hand, belies his involvement in the conspiracy. He attacks the prosecution's version that he was silent during the negotiations for the return of the passport.[44] According to him, he kept giving Hernandez an ultimatum to return the passport, with threats to file a court case.

Acejas testified that he had wanted to file a case against Hernandez, but was prevented by Spouses Aoyagi. His supposed preparedness to file a case against Hernandez might have just been a charade and was in fact belied by Pelingon's testimony regarding the January 5, 1994 meeting:

> "ATTY. VALMONTE:
>
> "Q:
>
> Who arrived first at Aristocrat Restaurant, you or Acejas?
>
> "A:
>
> Acejas arrived together with Dick Perlas[. T]hey arrived ahead of me, sir.
>
> x x x x x x x x x
>
> "Q:
>
> When the three (3) of you were talking that was the time that Atty. Acejas was showing you documents that he was going to file [a] P1 million damage suit against Hernandez?
>
> "A:
>
> Yes, sir.
>
> "Q:
>
> Now, is it not that when Hernandez and Cunanan arrived and you were talking with each other, Atty. Acejas also threatened, reiterated his threat to Hernandez that he would file [a] P1 million damage suit should Hernandez [fails] to return the passport?
>
> "A:
>
> When the group [was] already there, the P1 million [damage suit] was not [anymore] mentioned, sir."[45]

Even assuming that Acejas negotiated for the return of the passport on his client's behalf, he still failed to justify

his actions during the entrapment operation. The witnesses all testified that he had received the purported payoff. On this point, we recount the testimony of Bethel Grace Aoyagi:

"PROSECUTOR MONTEMAYOR:

x x x x x x x x x

"Q:

When he [did] not want to receive the envelope, what did your husband do?

"A:

When Mr. Vlademir Hernandez refused to receive the money, he pointed to Atty. Acejas so my husband handed it to Atty. Acejas who received the same and later on passed it to Mr. Perlas.

"Q:

When Mr. Hernandez pointed to Atty. Acejas, did he say anything?

"A:

None, sir, he just motioned like this.

"INTERPRETER:

"Witness motioning by [waving] her two (2) hands, left and right.

"PROSECUTOR MONTEMAYOR:

"Q:

And at the same time pointed to Atty. Acejas?

"A:

Yes, sir.

"Q:

And your husband gave the envelope to Atty. Acejas?

"A:

Yes, sir.

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"Q:

And Atty. Acejas, in turn, handed the said envelope to whom?

"A:

Expedito Perlas, sir.

"x x x x x x x x x

"Q:

After that, what happened?

"A:

Mr. Perlas put the money on his side in between him and Atty. Acejas, sir.

"Q:

And then, what happened?

"WITNESS:

"A:

After the money was placed where it was, we were surprised, I think, it happened in just seconds[.] Mr. Vladimir Hernandez immediately left and then all of a sudden somebody came and picked up the envelope, sir.

"PROSECUTOR MONTEMAYOR:

"Q:

Do you know the identity of that somebody who picked up the envelope?

x x x x x x x x x

"A:

Victoriano, sir."[46]

Acejas failed to justify why he received the payoff money. It would be illogical to sustain his contention that the envelope represented the balance of his firm's legal fees. That it was given to Hernandez immediately after the

return of the passport leads to the inescapable conclusion that the money was a consideration for the return. Moreover, Acejas should have kept the amount if he believed it to be his. The Court agrees with the Sandiganbayan's pronouncement on this point:

> "x x x. If he believed that the brown envelope contained the balance of the acceptance fee, how come he passed it to Perlas? His passing the brown envelope to Perlas only proves that the same did not contain the balance of the acceptance fee; otherwise, he should have kept and retained it. Moreover, the three prosecution witnesses testified that the brown envelope was being given to Hernandez who refused to accept the same. This further shows that the brown envelope was not for the balance of the acceptance fee because, if it were, why was it given to Hernandez.
>
> x x x x x x x x x
>
> "Acejas' defense was further weakened by the fact that his testimony as to why he left immediately after the brown envelope was given to him was uncorroborated. He should have presented accused Victoriano to corroborate his testimony since it was the latter who allegedly called him and caused him to leave their table. This, he did not do. The ineluctable conclusion is that he was, indeed, in cahoots with his co-accused."[47]

Lawyer's Duty

Acejas alleges that the Sandiganbayan failed to appreciate his lawyer-client relationship with the complainants. He was supposedly only acting in their best interest[48] and had the right to be present when the passport was to be returned.[49]

True, as a lawyer, it was his duty to represent his clients in dealing with other people. His presence at Diamond Hotel for the scheduled return of the passport was justified. This fact, however, does not support his innocence

Acejas, however, failed to act for or represent the interests of his clients. He knew of the payoff, but did nothing to assist or protect their rights, a fact that strongly indicated that he was to get a share. Thus, he received the money purporting to be the payoff, even if he was not involved in the entrapment operation. The facts revealed that he was a conspirator.

The Court reminds lawyers to follow legal ethics[50] when confronted by public officers who extort money. Lawyers must decline and report the matter to the authorities.[51] If the extortion is directed at the client, they must advise the client not to perform any illegal act. Moreover, they must report it to the authorities, without having to violate the attorney-client privilege.[52] Naturally, they must not participate in the illegal act.[53]

Acejas did not follow these guidelines. Worse, he conspired with the extortionists.

Instigation

Also futile is the contention of petitioners that Pelingon instigated the situation to frame them into accepting the payoff.[54] Instigation is the employment of ways and means to lure persons into the commission of an offense in order to prosecute them.[55] As opposed to entrapment, criminal intent originates in the mind of the instigator.[56]

There was no instigation in the present case, because the chain of circumstances showed an extortion attempt. In other words, the criminal intent originated from petitioners, who had arranged for the payoff.

During the cross-examination of Bethel Grace Aoyagi, pertinent was Associate Justice Escareal clarifying question as follows:

> "AJ ESCAREAL:

> "[Q:]
>
> Did Mr. Hernandez say anything when he returned the passport to your husband?
>
> "A:
>
> He did not say anything except that he instructed [the] group to abide with the agreement that upon handing of the passport, the money would also be given immediately ('magkaliwaan')."[57]

Alleged Discrepancies

According to Acejas, Pelingon's testimonies given in his Complaint-Affidavit, Supplemental-Affidavit, inquest testimony, testimony in court, and two Affidavits of Desistance were contradictory.[58] He cites these particular portions of Pelingon's Affidavit:

> "5. That having been enlightened of the case, and conscious that I might be prosecuting innocent men, I have decided on my own disposition, not to further testify against any of the accused in the Sandiganbayan or in any court or tribunal, regarding the same cause of action.
>
> "6. That this affidavit of desistance to further prosecute is voluntarily executed, and that no reward, promise, consideration, influence, force or threat was executed to secure this affidavit."[59]

Pelingon testified that he had executed the Affidavit of Desistance because of a threat to his life.[60] He did not prepare the Affidavit; neither was it explained to him. Allegedly, his true testimony was in the first Complaint-Affidavit that he had executed.[61]

By appearing and testifying during the trial, he effectively repudiated his Affidavit of Desistance. An affidavit of desistance must be ignored when pitted against positive evidence given on the witness stand.[62]

Acejas has failed to identify the other material points that were allegedly inconsistent. The Court therefore adopts the Sandiganbayan's finding that these were minor details that were not indicative of the lack of credibility of the prosecution witnesses.[63] People v. Eligino[64] is in point:

> "x x x. While witnesses may differ in their recollections of an incident, it does not necessarily follow from their disagreement that all of them should be disbelieved as liars and their testimony completely discarded as worthless. As long as the mass of testimony jibes on material points, the slight clashing statements neither dilute the witnesses' credibility nor the veracity of their testimony. Thus, inconsistencies and contradictions referring to minor details do not, in any way, destroy the credibility of witnesses, for indeed, such inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed."[65]

Suppression of Evidence

Acejas further raises the issue of suppression of evidence. Aoyagi, from whom the money was supposedly demanded, should have been presented by the prosecution as a witness.[66]

The discretion on whom to present as prosecution witnesses falls on the People.[67] The freedom to devise a strategy to convict the accused belongs to the prosecution.[68] Necessarily, its decision on which evidence, including which witnesses, to present cannot be dictated by the accused or even by the trial court.[69] If petitioners believed that Takao Aoyagi's testimony was important to their case, they should have presented him as their witness.[70]

Finally, Acejas claims that his Comment/Objection to the prosecution's Formal Offer of Evidence was not resolved by the Sandiganbayan.[71] In that Comment/Objection, he had noted the lateness in the filing of the

Formal Offer of Evidence.

It may readily be assumed that the Sandiganbayan admitted the prosecutions Formal Offer of Evidence upon the promulgation of its Decision. In effect, Acejas' Comment/Objection was deemed immaterial. It could not overrule the finding of guilt. Further, it showed no prayer that the Sandiganbayan needed to act upon.[72]

Finally we reiterate that, as a rule, factual findings of the Sandiganbayan are conclusive upon this Court.[73] We are convinced that these were clearly based on the evidence adduced in this case.

In sum, we find that the prosecution proved the elements of direct bribery. First, there is no question that the offense was committed by a public officer. BID Agent Hernandez extorted money from the Aoyagi spouses for the return of the passport and the promise of assistance in procuring a visa. Petitioner Acejas was his co-conspirator. Second, the offenders received the money as payoff, which Acejas received for the group and then gave to Perlas. Third, the money was given in consideration of the return of the passport, an act that did not constitute a crime. Fourth, both the confiscation and the return of the passport were made in the exercise of official duties.

For taking direct part in the execution of the crime, Hernandez and Acejas are liable as principals.[74] The evidence shows that the parties conspired to extort money from Spouses Aoyagi. A conspiracy exists even if all the parties did not commit the same act, if the participants performed specific acts that indicated unity of purpose in accomplishing a criminal design.[75] The act of one is the act of all.

WHEREFORE, the Petitions are DENIED, and the assailed Decision and Resolutions AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

Chico-Nazario, J., no part. Ponente of assailed Resolutions.

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[1] G.R. No. 156643, rollo, pp. 10-56; G.R. No. 156891, rollo, pp. 14-42.

[2] Id. at 179-235; id. at 46-101. Fifth Division. Penned by Justice Minita V. Chico-Nazario (Division chair, now a member of this Court), with the concurrence of Justices Ma. Cristina G. Cortez-Estrada and Francisco H. Villaruz, Jr.

[3] Id. at 303-307; id. at 130-134.

[4] Id. at 309-313; id. at 136-140.

[5] Id. at 179-180; id. at 46-47.

[6] Id. at 233-234; id. at 100-101.

[7] G.R. No. 156643 was submitted for decision on January 10, 2005, upon this Court's receipt of the Memoranda of both petitioner and the respondent. Petitioner Acejas signed his own Memorandum. Respondent's Memorandum was signed by Special Prosecutor Dennis M. Villa-Ignacio, Deputy Special Prosecutor Robert E. Kallos and Acting Director Pilarita T. Lapitan.

G.R. No. 156891 was submitted for decision on October 7, 2005, upon the Court's receipt of the Memorandum of Petitioner Hernandez, signed by Atty. Renato M. Cervantes. His Petition was dismissed on August 17, 2005, for

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failure to comply with the Court's directives. However, in a Resolution dated November 21, 2005, the Court reinstated his Petition. Respondents' Memorandum, signed by the same OMB officials, was filed on January 10, 2005.

[8] See Petitioner Hernandez' Memorandum, pp. 6-9; G.R. No. 156891, rollo, pp. 378-381.

[9] Bethel Grace Aoyagi testified that Perlas had solemnized her marriage with Takao Aoyagi in 1992. Perlas was allegedly a member of the Manila Police Force (TSN, August 15, 1994, p. 19; TSN, August 17, 1994, p. 19).

[10] Assailed Decision, pp. 43-45.

[11] Id. at 3.

[12] Id. at 10.

[13] Id.

[14] Id. at 11.

[15] Pelingon testified that this envelope was "the big one." He was referring to a long brown envelope, measuring 10 by 12 inches, commonly used in storing mail matters or pleadings (TSN, January 16, 1995, p. 25).

[16] Respondent's Comment, pp. 9-11; G.R. No. 156643, rollo, pp. 382-384.

[17] Assailed Decision, p. 3.

[18] Petitioner Hernandez's Memorandum, pp. 9-10; G.R. No. 156891, rollo, pp. 381-382.

[19] Petitioner Acejas' Memorandum, pp. 11-24; G.R. No. 156643, rollo, pp. 492-505.

[20] Assailed Decision, p. 55.

[21] Id. at 52.

[22] Id. at 50-51.

[23] Id. at 52.

[24] Id. at 53.

[25] Id. at 56.

[26] Id. at 54.

[27] Id. at 53.

[28] Id. at 53-54.

[29] Assailed Resolution dated January 3, 2003, p. 3.

[30] Petitioner Hernandez's Memorandum, p. 12; G.R. No. 156891, rollo, p. 384. Uppercase in the original.

[31] Petitioner Acejas' Memorandum, p. 24; G.R. No. 156643, rollo, p. 505. Uppercase and italics in the original.

[32] REVISED PENAL CODE, Art. 210. See also A. GREGORIO, FUNDAMENTALS OF CRIMINAL LAW REVIEW 569 (1997).

[33] Tad-y v. People of the Philippines, 466 SCRA 474, August 11, 2005; Magno v. Commission on Elections, 439 Phil. 339, October 4, 2002; Manipon v. Sandiganbayan, 227 Phil. 249, July 31, 1986; Maniego v. People, 88

Phil. 494, April 20, 1951.

[34] Petitioner Hernandez' Memorandum, p. 13; G.R. No. 156891, rollo, p. 385.

[35] Id.

[36] TSN, August 15, 1994, p. 12.

[37] He met Takao and Bethel Grace Aoyagi at the Sportsman Karaoke, Mabini Street on December 17, 1993 (TSN, August 15, 1994, p. 15); Pelingon, Acejas, Perlas and Conanan at the Aristocrat Restaurant, Roxas Boulevard on January 5, 1994 (TSN, January 16, 1995, p. 11); and at the Hotel Nikko on January 8, 1994 (TSN, January 16, 1995, p. 15; TSN, January 17, 1995, p. 25).

[38] TSN, January 16, 1995, p. 15.

[39] TSN, August 16, 1994, p. 20; TSN, January 16, 1995, p. 29; TSN, July 25, 1995, p. 20.

[40] TSN, August 16, 1994, pp. 17-22.

[41] TSN, May 21, 1998, p. 5.

[42] Petitioner Hernandez's Memorandum, p. 23; G.R. No. 156891, rollo, p. 395.

[43] Assailed Resolution, p. 3; G.R. No. 156643, rollo, p. 305.

[44] Petitioner Acejas' Memorandum, p. 24; G.R. No. 156643, rollo, p. 505.

[45] TSN, January 17, 1995, p. 16.

[46] TSN, August 16, 1994, pp. 20-22.

[47] Assailed Decision, p. 53.

[48] Id. at 36; id. at 517.

[49] Petitioner Acejas' Memorandum, p. 33; G.R. No. 156643 rollo, p. 514.

[50] Code of Professional Responsibility.

[51] Canon 1 of the Code of Professional Responsibility requires lawyers to uphold the constitution, obey the laws of the land, and promote respect for law and legal processes.

[52] Rule 15.02 of Canon 12 states: "A lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client." Rule 21.01 of Canon 21 is also pertinent: "A lawyer shall not reveal confidences or secrets of his client except: a) When authorized by the client after acquainting him of the consequences of the disclosure; (b) When required by law; c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action."

[53] Rule 1.01 of Canon 1 states: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

[54] Petitioner Acejas' Memorandum, p. 36; G.R. No. 156643, rollo, p. 517; Petitioner Hernandez' Memorandum, p. 21; G.R. No. 156891, rollo, p. 393.

[55] People v. Eligino, 216 SCRA 320, December 11, 1992; People v. Gatong-o, 168 SCRA 716, December 29, 1988.

[56] Id.

[57] TSN, August 16, 1994, p. 43.

[58] Petitioner Acejas' Memorandum, p. 45; G.R. No. 156643, rollo, p. 526.

[59] Id.

[60] Assailed Decision, p. 13.

[61] Id.

[62] People v. Ocampo, 435 Phil. 684, August 7, 2002; People v. De Guiang, 285 SCRA 404, January 29, 1998.

[63] The portion of the Assailed Decision is reproduced as follows:

"The defense notes certain inconsistencies in the statements of Jun Pelingon and those of the other prosecution witnesses, to wit: (1) While Jun Pelingon, in his complaint-affidavit, declared that Dick Perlas called up his sister, Bethel Grace P. Aoyagi, in Davao City and told her to come back to Manila immediately, his sister, in her testimony in Court, declared she did not talk to Perlas through the phone when she was in Davao; (2) NBI Agent Saunars testimony in Court that the amount handed over to him by the complainants was P50,000.00 run counter to Jun Pelingon's testimony that the amount provided by the spouses Aoyagi was P25,000.00; and (3) Jun Pelingon stated in the inquest proceedings that BID Agents Hernandez and Conanan arrived at the Aristocrat on January 5, 1994 30 to 45 minutes after 10:30 a.m. However, in his complaint, he said the BID agents came at 1:00 p.m.

"The alleged discrepancies relate to (a) whether or not Dick Perlas called complainants in Davao; (b) how much money the complainants gave to the NBI to be used as marked money; [(c)] what time the BID Agents arrived at the Aristocrat Restaurant on January 5, 1994.

"The Court considers these alleged discrepancies to be collateral matters or minor details that do not adversely affect the credibility of the prosecution witnesses or the trustworthiness of the testimonies offered by them. They do not touch upon the commission of the crime itself, which was committed when the demand was made, and when the bribe money was received. It has been ruled that contradictions in the testimonies of prosecution witnesses not on material points are not fatal (People v. Pulo, 147 SCRA 551). Minor contradictions are to be expected but must be disregarded if they do not affect the basic credibility of the evidence as a whole (People v. Ancheta, 148 SCRA 178)." Assailed Decision, pp. 48-49; G.R. No. 156643, rollo, pp. 226-227.

[64] Supra note 55.

[65] Id. at 331, per Melo, J. (citing People v. Manalansan, 189 SCRA 619, September 14, 1990; People v. de los Santos, 200 SCRA 431, August 9, 1991; People v. de la Piñas, 141 SCRA 379; February 19, 1986; People v. Barba, 203 SCRA 436, November 13, 1991; People v. de los Reyes, 203 SCRA 707, November 19, 1991).

[66] Petitioner Acejas' Memorandum, p. 62; G.R. No. 156643, rollo, p. 543.

[67] Respondent's Memorandum, p. 27; G.R. No. 156643, rollo, p. 455.

[68] Bautista v. Court of Appeals, 351 Phil. 411, March 26, 1998. See People v. De Guzman, 194 SCRA 601, March 4, 1991.

[69] People v. Ortiz, 413 Phil. 592, July 17, 2001.

[70] People v. Barellano, 377 Phil. 598, December 2, 1999; People v. Silvestre, 366 Phil. 527, May 12, 1999.

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[71] Petitioner Acejas' Memorandum, p. 63; G.R. No. 156643 rollo, p. 544.

[72] Comment/Objection dated January 5, 1996, GR No. 156643, rollo, pp. 170-178.

[73] Soriquez v. Sandiganbayan, GR No. 153526, October 25, 2005; Domingo v. Sandiganbayan, GR No. 149175 - 149406, October 25, 2005; Mendoza v. People 462 SCRA 160, June 29, 2005.

[74] REVISED PENAL CODE, Art. 17.

[75] People v. Gallo, 376 Phil. 265, November 16, 1999; People v. Regalario, 220 SCRA 368, March 23, 1993; See also Talay v. Court of Appeals, 446 Phil. 256, 277, February 27, 2003; People v. Alonzo, 73 SCRA 483, October 19, 1976.

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