

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICO CALUMPANG AND JOVENAL OMATANG, APPELLANTS.

G.R. NO. 158203. March 31, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the Decision[1] dated November 29, 2002, of the Regional Trial Court of Dumaguete City, Branch 36, in Criminal Case No. 10152, convicting appellants Rico Calumpang and Jovenal Omatang of two counts of murder and sentencing each of them to suffer the penalty of reclusion perpetua, and ordering them to pay damages to the heirs of the victims.

Appellants were charged under an Information which reads:

That on or about July 14, 1991 at 7:00 o'clock in the evening, more or less, at Pamplona Coconut Plantation, Pamplona, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault, stab and hack ALICIA CATIPAY and SANTIAGO CATIPAY with the use of bolos, with which the said accused were then armed and provided, thereby inflicting upon ALICIA CATIPAY, the following injuries:

- Hacked Wound -located at the Right Temporal area involving the temporal bones 4 inches in length
- Hacked Wound -located at the left occipital area involving the occipital bone and the brain tissues
- Incised Wound - located at the medial part of the left hand
- Incised Wound - located at the medial part of the left wrist joint
- Incised Wound - located at the middle medial part of the left forearm

and upon SANTIAGO CATIPAY, the following injuries:

- Hacked Wound -located at the left side of the face extending from the ear to the lateral part of the orbital bones.
- Stabbed Wound -located at the antero-lateral part of the left chest wall measuring 4 inches in depth 2 inches in width
- Stabbed Wound -located at the abdomen 2 inches above the navel protruding the intestines
- Stabbed Wound -located at the sternal area 3 inches in depth and 1 inch in width
- Stabbed wound -located at the left lateral part of chest wall 6 (six) inches below the armpit 5 inches in depth, 3 inches in width
- Incised Wound -located at the left dorsal part of the little and the ring finger.

which wounds or injuries caused the death of said ALICIA CATIPAY and SANTIAGO CATIPAY shortly thereafter.

Contrary to Article 248 of the Revised Penal Code.[2]

On arraignment, appellants entered a plea of not guilty. Thereafter trial ensued.

The prosecution presented three witnesses: Magno Gomez, Dr. Rogelio Kadili, and Alexander Ebias.[3] Their testimonies constitute the version of the case according to the prosecution's point of view.

Magno Gomez testified that around 6:30 p.m. of July 14, 1991, he was at Talay, Pamplona, Negros Oriental, walking home to Sitio Makapa, Mangoto, Pamplona. He was with his neighbors, the spouses Santiago and Alicia Catipay. On their way, they stopped at the store of Ana Andagan, located near the Pamplona Coconut Plantation, and decided to have some beer. Magno added that Santiago saw appellants drinking tuba inside Ana's store, and offered them a glass of beer, but appellants refused. Santiago just drank the glass of beer he was offering.[4] After that, Magno and the spouses left the store and took a shortcut through the coconut plantation.

Magno saw appellants follow them. He suspected that appellants were planning something sinister because they followed too closely and were concealing something at their backs. Magno cautioned Santiago, but the latter just told him not to worry about appellants.[5] Magno and the spouses simply continued walking for another half-kilometer until they reached the narrow waterway that let water from the river into the plantation. Magno removed his slippers and started to cross ahead of the spouses. Santiago and Alicia stayed slightly behind because Santiago had to remove his shoes.[6]

When Magno had crossed five feet of the waterway, Magno turned around to wait for his companions and saw appellants attacking the spouses. With a bolo, appellant Calumpang hacked Santiago on the head and stabbed his abdomen. At the same time, appellant Omatang attacked Alicia.[7]

Scared that appellants would also attack him, Magno ran away. After 50 meters, he reached Alexander Ebias's house. He asked Alexander for a torch then continued walking towards Sitio Makapa, Mangoto, Pamplona. After a kilometer, however, he saw the house of his cousin Rolando Retada.[8] He decided to spend the night there.[9]

Magno further testified that he did not tell either Alexander or Rolando about what he saw at the waterway because he was afraid. Magno added that he left Rolando's house around 6:30 the next morning to report the incident at the municipal hall in the poblacion of Pamplona, but was arrested for questioning by members of the Philippine Army on his way out of the store of Picio Yan, where he had to attend to some personal business. Magno declared that he did not report to them that appellants killed the spouses.[10] It was only after he was turned over to the police authorities of Pamplona and brought to the police station that he reported what he saw the day before at the waterway in the plantation.[11]

Dr. Rogelio M. Kadili, Municipal Health Officer of the Rural Health Unit, Pamplona, Negros Oriental, testified that he conducted the post-mortem examination of the victims at around 7:00 a.m. on July 15, 1991.[12] The results of his examination showed the wounds on Santiago and Alicia Catipay as follows:

[Santiago Catipay]

- Hacked Wound - located at the left side of the face extending from the ear to the lateral part of the orbital bones
- Stabbed Wound - located at the antero-lateral part of the left chest wall measuring 4 inches in depth 2 inches in width
- Stabbed Wound - located at the abdomen 2 inches above the navel protruding the intestines

- Stabbed Wound - located at the sternal area 3 inches in depth and 1 inch in width
- Stabbed wound - located at the left lateral part of chest wall 6 (six) inches below the armpit 5 inches in depth, 3 inches in width
- Incised Wound - located at the left dorsal part of the little and the ring finger;[13]

[Alicia Catipay]

- Hacked Wound - located at the Right Temporal area involving the temporal bones 4 inches in length
- Hacked Wound - located at the left occipital area involving the occipital bone and the brain tissues
- Incised Wound - located at the medial part of the left hand
- Incised Wound - located at the medial part of the left wrist joint
- Incised Wound - located at the middle medial part of the left forearm.[14]

Dr. Kadili likewise identified the death certificates of Santiago and Alicia Catipay which showed the cause of death as hemorrhage shock.[15]

Alexander Ebias, who lives near the waterway at the Pamplona Coconut Plantation, testified that around the time Santiago and Alicia were murdered, he heard noise from the direction of the waterway, but did not do anything to investigate. Moments later, he heard Magno calling from outside the house. Magno wanted some dried coconut leaves to make a torch. He gave Magno what he wanted then asked about the noise from the waterway. Magno said he did not know.[16]

For its part, the defense contradicted the version of the prosecution and presented Analyn Andagan, Conchito Nilas,[17] Joseph Rabor and appellants to prove that appellants were nowhere near the waterway at the precise time that Santiago and Alicia Catipay were murdered.

Analyn Andagan testified that on July 14, 1991, she was tending the store of her mother, Ana Andagan, at Talay, Pamplona, Negros Oriental. Around 3:00 p.m. appellants Calumpang and Omatang arrived with one Conchito Nilas. The three ordered a gallon of tuba and started drinking. Around 6:30 p.m., Magno and the spouses arrived. They each had one bottle of beer and immediately left after finishing their beers. Analyn further testified that appellants did not follow Magno, Santiago and Alicia when the three left her mother's store. Appellant Omatang stayed until 7:00 p.m. and continued talking with his two companions, appellant Calumpang and Conchito Nilas. He left when his 12-year-old nephew, defense witness Joseph Rabor, came to fetch him for supper. Appellant Calumpang, for his part, stayed until 8:00 p.m. and helped her close the store. He walked home with her and Conchito Nilas.[18]

Conchito Nilas's testimony dovetailed Analyn Andagan's testimony. He added that he saw his friend appellant Calumpang go inside the latter's house.[19]

Joseph Rabor corroborated Analyn's testimony that he fetched his uncle, appellant Omatang, from the store around 7:00 p.m. upon the order of his mother. He added that he and appellant Omatang slept in the same room that night.[20]

Appellant Omatang likewise corroborated Analyn's testimony that he left around 7:00 p.m. with Joseph. He also claimed he had nothing to do with the killing of the spouses and averred that he was at home in the same room with Joseph, sleeping, when the spouses were murdered. He claimed that he learned of the murders only upon his arrest the next day.[21]

Appellant Calumpang vehemently denied killing the spouses. He declared that Santiago and Alicia had no known enemies and were good people. He corroborated all of Analyn's testimony, and added that Magno and Santiago were arguing when the two came into the store. Appellant Calumpang likewise averred that after helping Analyn close the store, he went home, ate supper, and went to bed.[22]

In addition to the above witnesses, the defense presented Rolando Retada and Visitacion Rabor. Rolando confirmed that Magno spent the night at his house on July 14, 1991, and left very early the next morning without drinking coffee. Visitacion Rabor, on the other hand, testified that she overheard Santiago berating Magno when they passed her store around 6:30 p.m. on July 14, 1991. Santiago was mad at Magno because Magno did not want to help Santiago clean the dam at Mangoto, Pamplona, as Magno was supposed to. She added that Santiago continued calling Magno useless at Ana's store until Alicia prevailed upon Santiago to go home. When Santiago and Alicia left, Magno followed them.[23]

The trial court gave credence to the testimony of Magno Gomez and accepted his account of the murders. Said the trial court:

The testimony of the lone eyewitness describing vividly the events prior, during and after the killing offers a complete picture of the incident that only an eyewitness could supply. Moreover, the actuation of witness Magno Gomez of not telling other people of the crime he just experience[d] for fear of his life, and his coming back to town after sunrise. Even declining Retada's offer of a cup of coffee [and] to report to the authorities the incident that he witnessed the night before, is consistent with human behavior and should be accorded great respect and given more weight. (sic) His conduct after the incident added more credibility to his testimony. As to the fear he exhibited after the killing of the spouses, the Supreme Court has this to say "there is no standard form of behavior when one is confronted by a shocking incident especially if the assailant (assailants in this case) is physically near. No standard form of behavioral response, quite often said, could be expected from everyone when confronted with a strange, startling or frightful occurrence.[24]

In its judgment dated November 29, 2002, the trial court convicted appellants as follows:

WHEREFORE, in view of the foregoing, each accused, RICO CALUMPANG and JOVENAL OMATANG are hereby sentenced to suffer imprisonment of the maximum penalty of reclusion perpetua, and further ordered to indemnify jointly and severally the heirs of the spouses Santiago and Alicia Catipay the amount of Php100,000.00, and to pay moral damages in the amount of Php100,000.00. The bail bond posted by both accused for their temporary liberty during the trial of this case is hereby cancelled.

SO ORDERED.[25]

Hence, this appeal.

Appellant now assigns the following as errors:

I

THE TRIAL COURT ERRED IN BELIEVING THE TESTIMONY OF MAGNO GOMEZ SINCE HE WAS A PRINCIPAL SUSPECT HIMSELF. HIS TESTIMONY IS REplete WITH MATERIAL INCONSISTENCIES, AND MANY OF HIS CLAIMS ARE CONTRARY TO HUMAN EXPERIENCE;

II

THE TRIAL COURT ERRED IN COMPLETELY DISREGARDING THE EVIDENCE OF THE DEFENSE;
AND

III

THE TRIAL COURT COMMITTED A GRAVE MISTAKE IN CONCENTRATING ON THE DEFENSE OF

ALIBI BY THE ACCUSED, INSTEAD OF LOOKING INTO THE VAGUENESS AND WEAKNESS OF THE UNCORROBORATED TESTIMONY OF THE PROSECUTION'S LONE EYEWITNESS.[26]

Essentially, for our resolution is the issue of whether the appellants' guilt for double murder has been proven beyond reasonable doubt.

Appellants argue that the trial court erred in giving credence to Magno Gomez's testimony, which is false and unbelievable. They stress that Magno's testimony that he never saw Santiago try to escape during the attacks contradicts his statements in his affidavit, executed during preliminary examination, that Santiago tried to escape but was overtaken by appellants.[27] They suspect that Magno was himself the killer, and posit that because he was already a prime suspect, Magno accused appellants of the murder to save himself.[28] Appellants likewise argue that the trial court erred in dismissing their defense of alibi on the ground that it was a weak defense.[29]

Significantly, for the State, the Office of the Solicitor General contends that reasonable doubt concerning the guilt of the appellants exist in this case. The OSG stresses that material inconsistencies exist between Magno's testimony in court and his affidavit, which he executed during the preliminary examination.[30] The OSG cites that Magno testified that the spouses were simultaneously attacked by appellants, with appellant Calumpang attacking Santiago and appellant Omatang attacking Alicia. However, during the preliminary examination, Magno declared that both appellants attacked Alicia first and that Santiago was hacked because Santiago attempted to save his wife.[31] Further, the fact that Magno was a principal suspect and that he did not choose to exonerate himself right away when he was arrested for questioning by members of the Philippine Army, render his credibility suspect.[32] In addition, the OSG stresses that it was not shown in this case that appellants had any ill motive to kill Santiago and Alicia Catipay.[33] The OSG concludes that appellants deserve acquittal on reasonable doubt.

After a careful review of the records of this case, we find that the trial court overlooked pertinent pieces of evidence favorable to the accused and disregarded several significant facts and circumstances that cast doubt on the veracity of the testimony of the prosecution's lone eyewitness, Magno Gomez, justifying a departure from the settled rule that factual findings of the trial court bind this Court.[34]

While Magno claimed to have witnessed the gruesome killings, the records show that serious discrepancies attended Magno's testimony in court and his sworn statement,[35] executed during the preliminary examination conducted by Judge Ananson E. Jayme on July 15, 1991, at the 1st Municipal Circuit Trial Court of Pamplona-Amlan-San Jose, Negros Oriental.

In his sworn statement, Magno narrated that both appellants "hacked Alicia Catipay first" and that Santiago was attacked after "he attempted to save his wife." Magno declared that Santiago "attempted to run away but he was chased" and "was overtaken and was hacked by both accused." Magno also claimed that appellants tried to hack him after they had hacked Santiago. Magno said,

Q How did the hacking incident happen?

A At first, it was Alicia who was hacked and followed by stabbing immediately Santiago was also hacked and when he attempted to flee by crossing the [waterway] both accused stabbed Santiago and he fell to the river.

Q When Alicia Catipay was hacked was she hit?

A Yes.

Q What part of her body was hit?

A On [the] left side of her ear.

Q And who hacked her?

A Both accused hacked her.

Q And who stabbed Alicia Catipay?

A [Jovenal] Omatang.

Q Was Alicia Catipay hit?

A Yes.

Q What part of her body was hit?

A At the stomach.

Q What weapon did Jovenal Omatang use in hacking and stabbing Alicia Catipay?

A Bolo.

Q You said both accused hacked Alicia Catipay first, what did Santiago Catipay do?

A He attempted to save his wife and instead he was hacked.

Q You said Santiago Catipay was hit what part of his body was hit when he was hacked by the accused?

A He was hit on his arm.

Q After he was hit on his arm what did he do?

A He attempted to run away but he was chased.

Q Did Santiago Catipay succeed in escaping?

A No, he was overtaken and was hacked by both accused.

Q When [Santiago] was overtaken by the accused what part of his body was hit when he was hacked?

A I know he was hit but I do not know what part of his body was hit.

Q When both accused hacked and stabbed Santiago Catipay while running, what happened to Santiago Catipay?

A He fell to the edge of the river.

Q When Santiago Catipay fell to the water, what did the accused do?

A They also hacked me but I ran away.[36]

On the witness stand, however, Magno gave a different version of how the murders happened. Magno testified at direct examination that only appellant Calumpang hacked Santiago and that Alicia was hacked only by appellant Omatang. More important, he averred that the victims were attacked simultaneously. Magno testified:

Q According to you, Santiago Catipay and Alicia Catipay were quarreled by Rico Calumpang and Jovenal Omatang. How was Santiago Catipay quarreled?

A He was hacked at the head.

Q Who hacked him at the head?

A Rico Calumpang.

Q What did Rico Calumpang use in hacking Santiago Catipay?

A A bolo.

Q How many times did Rico Calumpang hack Santiago Catipay?

A Santiago Catipay was stabbed once and he was hacked also once.

Q And where was Santiago Catipay hit by the hacking of Rico Calumpang?

A Head.

Q Will you please point to the portion where Santiago Catipay was hit by the hacking of Rico Calumpang?

A Witness pointing at the left side of his head.

Q And according to you, he was also stabbed by Rico Calumpang, where was Santiago Catipay hit by the stabbing?

A Here – witness pointing to this abdomen which is the lower part on the right side to the breast.

...

Q You testified that Alicia was killed, how was she killed?

A She [was] hacked and stabbed.

Q Who hacked and stabbed her?

A It was Jovenal Omatang.

Q According to you Alicia Catipay was hacked and stabbed by Jovenal Omatang, was Alicia hit by the hacking of Jovenal Omatang?

A Yes, she was hit.

...

Q Was the attack of Santiago Catipay by Rico Calumpang and the attack of Jovenal Omatang on Alicia Catipay simultaneous or they were hacking and stabbing almost at the same time by these two accused performing their own individual acts? (sic)

A Yes, it was simultaneous.

Q After seeing Santiago Catipay hacked and stabbed by Rico Calumpang and Alicia Catipay hacked and stabbed by Jovenal Omatang, what did you do?

A I ran.

Q You ran after they were killed or they were still under attack?

A They were still attacking when I ran away.[37]

Magno never said that appellants also tried to hack him and even claimed that they were still hacking the victims when he ran away. Magno also never mentioned that Santiago tried to save his wife or that Santiago was chased or even that Santiago tried to run. In fact, during cross-examination, he averred that he never saw Santiago run away. Magno testified,

Q During that hacking of Santiago Catipay, was Santiago Catipay able to run?

A I do not know whether he was able to run or not. What I saw is that he was hacked and stabbed.

Q And you are very sure of that, Mr. Gomez, that you did not see Santiago Catipay run?

A That is what I can say. What I saw was he was hacked and stabbed. After that, I ran away.

Q That is why you told this Honorable Court that you did not see Santiago Catipay run when he was being hacked and stabbed by Rico Calumpang?

A Regarding that question, what I can say is that I saw the hacking and stabbing incident. After that, I ran away.[38]

Generally, an affidavit, being taken ex parte, is considered almost always incomplete and often inaccurate or lacking in details and is deemed inferior to the testimony given in open court. Jurisprudence, however, forewarns that when serious and inexplicable discrepancies exist between a previously executed sworn statement of a witness and his testimonial declarations, with respect to a person's participation in a serious imputation such as murder, there is raised a grave doubt on the veracity of the witness' account.[39]

The trial court believed that Magno's accusations against appellants are true, basing on the fact that Magno was able to testify on direct examination as to the precise location of the hack wound on Santiago's head and the stab wound on his abdomen.[40] But the court failed to consider that at the preliminary examination, barely a day after the incident, Magno was asked the same questions asked in court, but could not even recall where Santiago was hit when appellants hacked him. No explanation was given how Magno was able to supply during the trial the precise location of Santiago's wounds 19 months after the incident.[41]

Similarly, several portions of Magno's testimony are unworthy of belief. There seems to be no explanation as to why appellants ignored Magno and did not chase him[42] considering that he was only five feet away when he allegedly got an unobstructed view of appellants murdering the spouses. Likewise, it makes no sense why, if it were true that he was running away for fear that appellants might also attack him, Magno chose to run only a short distance of only 50 meters, and while still unsure that appellants did in fact not run after him, Magno took the time to stop by Alexander Ebias's house, called out to Alexander, asked for some dried coconut leaves, and made a torch to light his path. Magno's actions were certainly not the actions of someone seeking to avoid peril to his life. The lighted torch and the noise he made calling out to Alexander would have revealed his location to the very people he said he was running from. Magno's claim that he intended to go to the authorities and report that he saw appellants kill the spouses is far from credible, considering that he did not do so, even for the sake of exonerating himself right away when members of the Philippine Army arrested him for questioning. Well settled is the rule that evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself—such as the common experience and observation of mankind can approve as probable under the circumstances.[43]

Finally, no convincing proof could show that appellants had any reason to kill Santiago and Alicia in cold blood. As the OSG points out, the supposed grudge, which Magno claimed could have motivated appellants to kill the spouses, is too flimsy to be believed. It is highly improbable that appellants would murder the spouses because Santiago had offered appellants a glass of beer and they refused him.[44] If anybody should harbor a grudge from such an incident, it should have been Santiago whose offer appellants refused. But there is no evidence of any grudge between Santiago and the appellants, and as Magno testified, Santiago simply drank the glass of beer himself.[45]

Appellants' defense of alibi was indeed weak, since their alibis were corroborated only by their relatives and

friends, and it was not shown that it was impossible for them to be at the place of the incident. However, the rule that an accused must satisfactorily prove his alibi was never intended to change or shift the burden of proof in criminal cases. It is basic that the prosecution evidence must stand or fall on its own weight and cannot draw strength from the weakness of the defense.[46] Unless the prosecution overturns the constitutional presumption of innocence of an accused by competent and credible evidence proving his guilt beyond reasonable doubt, the presumption remains.[47] There being no sufficient evidence beyond reasonable doubt pointing to appellants as the perpetrators of the crime, appellants' presumed innocence stands.

WHEREFORE, the decision dated November 29, 2002, of the Regional Trial Court of Dumaguete City, Branch 36, in Criminal Case No. 10152 is REVERSED. Appellants Rico Calumpang and Jovenal Omatang are ACQUITTED on reasonable doubt. They are ordered released from custody immediately, unless they are being lawfully held for another cause.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

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

[1] Penned by Judge Cesar Manuel U. Cadiz, Jr.; Records, pp. 318-329.

[2] Id. at 1-1-A.

[3] "Ybias" in some parts of the Records.

[4] TSN, 22 February 1993 (morning session), pp. 15-16, 23.

[5] Id. at 13-14, 17, 21-22; TSN, 22 February 1993 (afternoon session), p. 8.

[6] TSN, 22 February 1993 (afternoon session), pp. 5-7.

[7] TSN, 22 February 1993 (morning session), pp. 8-12; TSN, 4 March 1993 (afternoon session), pp. 5, 7-8, 28-29.

[8] "Ritada" in some parts of the Records.

[9] TSN, 22 February 1993 (morning session), pp. 11, 27-29; TSN, 4 March 1993 (afternoon session), pp. 10-11.

[10] TSN, 4 March 1993 (afternoon session), pp. 41, 50-51.

[11] Id. at 46, 49-53.

[12] TSN, 4 March 1993 (morning session), pp. 6-7.

[13] Records, p. 6.

[14] Id. at 17.

[15] Id. at 7, 18.

[16] TSN, 11 March 1993, pp. 4-5.

[17] Sometimes spelled as "Nillas" in the Records.

- [18] TSN, 14 July 1993, pp. 4-8, 10-12, 17-18.
- [19] Id. at 23-25, 29.
- [20] TSN, 28 July 1993, pp. 4-6, 10-11, 13.
- [21] TSN, 10 December 1993, pp. 5-10, 12, 15-16.
- [22] TSN, 3 December 1993, pp. 5-7.
- [23] TSN, 28 July 1993, pp. 23-24, 26-27.
- [24] Records, p. 326. [Citations omitted.]
- [25] Id. at 329.
- [26] Rollo, pp. 69-70.
- [27] Id. at 77-81.
- [28] Id. at 84-85.
- [29] Id. at 82.
- [30] Id. at 305.
- [31] Id. at 316-317.
- [32] Id. at 308-311, 313.
- [33] Id. at 317.
- [34] See *People v. Hugo*, G.R. No. 134604, 28 August 2003, 410 SCRA 62, 71-72.
- [35] Exhibits “2”, “2-a” and “2-c”, Records, p. 21.
- [36] Ibid. (Emphasis supplied.)
- [37] TSN, 22 February 1993 (morning session), pp. 7-11. (Emphasis supplied.)
- [38] TSN, 4 March 1993 (afternoon session), pp. 30-32. (Emphasis supplied.)
- [39] See *People v. Parreno*, G.R. No. 144343, 7 July 2004, p. 17.
- [40] Records, p. 328; TSN, 22 February 1993 (morning session), p. 8.
- [41] Records, p. 21 (see back page).
- [42] TSN, 4 March 1993 (afternoon session), p. 8.
- [43] *People v. Garin*, G.R. No. 139069, 17 June 2004, p. 14.
- [44] TSN, 22 February 1993 (morning session), p. 23.
- [45] Ibid.
- [46] *People v. Cabalse*, G.R. No. 146274, 17 August 2004, p. 15.
- [47] *People v. Jubail*, G.R. No. 143718, 19 May 2004, p. 32.

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