

ELY AGUSTIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 158788. April 30, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to annul the Decision[1] of the Court of Appeals (CA) dated January 22, 2003, affirming the Decision of the Regional Trial Court, Branch 24 of Cabugao, Ilocos Sur (RTC) convicting Ely Agustin (petitioner) of the crime of Illegal Possession of Firearms under Presidential Decree (P.D.) No. 1866, and the CA Resolution[2] dated June 23, 2003, denying petitioner's Motion for Reconsideration.

The records reveal that on October 1, 1995, at 7:20 in the evening, armed men robbed the house of spouses George and Rosemarie Gante in Barangay Pug-os, Cabugao, Ilocos Sur, forcibly taking with them several valuables, including cash amounting to P600,000.00.[3] Forthwith, the spouses reported the matter to the police, who, in turn, immediately applied for a search warrant with the Municipal Trial Court (MTC) of Cabugao, Ilocos Sur.[4] The MTC issued Search Warrant No. 5-95,[5] directing a search of the items stolen from the victims, as well as the firearms used by the perpetrators. One of the target premises was the residence of petitioner, named as one of the several suspects in the crime.

On October 6, 1995, armed with the warrant, policemen searched the premises of petitioner's house located in Sitio Padual, Barangay Pug-os, Cabugao, Ilocos Sur. The search resulted in the recovery of a firearm and ammunitions which had no license nor authority to possess such weapon, and, consequently, the filing of a criminal case, docketed as Criminal Case No. 1651-K, for violation of P.D. No. 1866 or Illegal Possession of Firearms, against petitioner before the RTC. The Information against petitioner reads as follows:

That on or about the 6th day of October 1995, in the municipality of Cabugao, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one (1) revolver caliber .38 (Cebu Made) with Serial No. 439575 with five (5) live ammunitions, without the necessary license or authority to possess and carry the same being usual instrument in the commission of crimes or acts of violence.

Contrary to law.[6]

Thereafter, trial ensued. The prosecution presented eight witnesses namely: (1) P/Insp. Anselmo Baldovino[7] (P/Insp. Baldovino), a police investigator and the applicant for the search warrant; (2) Rosemarie Gante (Gante), the victim of the robbery and private complainant; (3) Ignacio Yabes (Yabes), a Municipal Local Government Operations Officer of the Department of Interior and Local Government who was the civilian witness to the search; (4) P/Supt. Bonifacio Abian[8] (P/Supt. Abian), Deputy Provincial Director of the Philippine National Police and part of the search team; (5) SPO4 Marino Peneyra (SPO4 Peneyra); (6) SPO1 Franklin Cabaya (SPO1 Cabaya); (7) SPO1 James Jara (SPO1 Jara); and (8) SPO2 Florentino Renon (SPO2 Renon).

For his defense, petitioner and his wife Lorna Agustin (Lorna) testified.

The prosecution's case centered mainly on evidence that during the enforcement of the search warrant against petitioner, a .38 caliber revolver firearm was found in the latter's house.[9] In particular, SPO1 Cabaya testified that while poking at a closed rattan cabinet near the door, he saw a firearm on the lower shelf.[10] The gun is a .38 caliber revolver[11] with five live ammunitions,[12] which he immediately turned over to his superior, P/Insp. Baldovino.[13]

Petitioner anchored his defense on denial and frame-up. The petitioner and his wife Lorna assert that petitioner does not own a gun.[14] Lorna testified that she saw a "military" man planting the gun.[15]

After trial, the RTC rendered its Decision[16] dated July 7, 1999, finding petitioner guilty beyond reasonable doubt, as follows:

WHEREFORE, finding the accused, Ely Agustin @ "Belleng" GUILTY beyond reasonable doubt of Illegal Possession of Firearm, he is hereby sentenced to a prison term ranging from FOUR (4) YEARS and TWO (2) MONTHS, as minimum, to SIX (6) YEARS, as maximum, both of prison correccional, with the accessories of the law [sic], to pay a fine of P15,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The gun (Exh. "G") is confiscated and forfeited in favor of the Government.

SO ORDERED.[17]

Petitioner filed an appeal with the CA, docketed as CA-G.R. CR No. 25452.

The CA rendered herein assailed Decision[18] dated January 22, 2003, affirming with modification the decision of the trial court, thus:

WHEREFORE, except for the MODIFICATION reducing and changing the maximum of the prison term imposed to Five (5) Years Four (4) Months and Twenty (20) Days, the appealed Decision is otherwise AFFIRMED.

SO ORDERED.[19]

Hence, the instant Petition for Review, on the principal ground that the CA gravely erred in finding that the guilt of petitioner has been proven beyond reasonable doubt; and more specifically, in giving weight and credence to the testimonies of the police officers who searched the house of the petitioner which are replete with material and irreconcilable contradictions and in giving SPO1 Cabaya the presumption of regularity in the performance of duty despite the claim of Lorna that the .38 caliber revolver was planted.

Petitioner insists that the trial court and the CA committed reversible error in giving little credence to his defense that the firearm found in his residence was planted by the policemen. He also alleges material inconsistencies in the testimonies of the policemen as witnesses for the prosecution, which amounted to failure by the prosecution to prove his guilt beyond reasonable doubt.

The petition has merit.

The paramount issue in the present case is whether the prosecution established the guilt of petitioner beyond reasonable doubt; and in the determination thereof, a factual issue, that is, whether a gun was found in the house of petitioner, must necessarily be resolved.

It is a well-entrenched rule that appeal in criminal cases opens the whole case wide open for review.[20]

In convicting petitioner, the RTC relied heavily on the testimony of SPO1 Cabaya, who testified that he discovered the subject firearm in a closed cabinet inside the former's house. The trial court brushed aside

petitioner's defense of denial and protestations of frame-up. The RTC justified giving full credence to Cabaya's testimony on the principles that the latter is presumed to have performed his official duties regularly; that he had no ill motive to frame-up petitioner; and that his affirmative testimony is stronger than petitioner's negative testimony.[21]

For its part, the CA justified its affirmation of the trial court's decision on the basis of long-standing principles that denials, such as the one made by petitioner, "cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters," and reiterated that "absent evidence x x x that the prosecution witness was moved by improper motive, the presumption is that no such ill motive exists, and his testimony is entitled to full faith and credit." [22] The CA upheld the trial court's findings of presumption of regular performance of duty on the part of the searching policemen and the weakness of the petitioner's defense of frame-up.[23]

Weighing these findings of the lower courts against the petitioner's claim that the prosecution failed to prove its case beyond reasonable doubt due to the material inconsistencies in the testimonies of its witnesses, the Court finds, after a meticulous examination of the records that the lower courts, indeed, committed a reversible error in finding petitioner guilty beyond reasonable doubt of the crime he was charged with. The RTC and the CA have overlooked certain facts and circumstances that would have interjected serious apprehensions absolutely impairing the credibility of the witnesses for the prosecution.

The conflicting testimonies of the prosecution witnesses as to who actually entered the house and conducted the search, who "discovered" the gun, and who witnessed the "discovery" are material matters because they relate directly to a fact in issue; in the present case, whether a gun has been found in the house of petitioner; or to a fact to which, by the process of logic, an inference may be made as to the existence or non-existence of a fact in issue.[24] As held in *United States v. Estraña*, [25] a material matter is the main fact which is the subject of inquiry or any circumstance which tends to prove that fact or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry or which legitimately affects the credit of any witness who testifies.

The evidence of prosecution is severely weakened by several contradictions in the testimonies of its witnesses. Especially damaged is the credibility of SPO1 Cabaya, none of whose declarations on material points jibes with those of the other prosecution witnesses. In the face of the vehement and consistent protestations of frame-up by petitioner and his wife, the trial court and the CA erred in overlooking or misappreciating these inconsistencies. To repeat, the inconsistencies are material as they delve into the very bottom of the question of whether or not SPO1 Cabaya really found a firearm in the house of petitioner.

First material inconsistency:

On SPO1 Cabaya's companions
and the circumstances of his
discovery of the subject firearm

SPO1 Cabaya testified that he entered the house with four other policemen, among whom were SPO1 Jara, SPO4 Peneyra, SPO3 Bernabe Ocado (SPO3 Ocado) and another one whose name he does not remember.[26] While searching, he discovered the firearm in the kitchen, inside a closed cabinet near the door.[27] He said that SPO1 Jara was standing right behind him, at a distance of just one meter, when he (Cabaya) saw the firearm; [28] and that he picked up the gun, held it and showed it to SPO1 Jara.[29] He asserted that SPO2 Renon was not one of those who went inside the house.[30] The following is the testimony of SPO1 Cabaya on direct examination:

Q.

You mentioned that you were able to recover a firearm from the house of Ely Agustin. Who actually recovered the firearm?

A.

I was the one, sir.

Q.

In what particular place in the house of Ely Agustin were you able to recover the firearm?

A.

Inside a cabinet, sir.

Q.

Where is that cabinet located in relation to the main house?

A.

At the door of the house, sir.

Court

Q.

Before or after the door?

A.

Inside the house already, Your Honor.

Court

Q.

Continue, Fiscal.

APP Gascon

Q.

Will you describe that cabinet?

A.

It is made of rattan, sir.

Q.

Does it have covers and doors of its own?

A.

Yes, sir.

Q.

What part of the cabinet did you discover the firearm?

A.

On the lower shelf, sir.

Q.

That lower shelf, was it closed or opened when you discovered the firearm?

A.

It was closed, sir.

Q.

How far was that cabinet to the door?

A.

About 70 centimeters, sir.

Q.

How many police officers including you entered the house of Ely Agustin to conduct the search?

A.

Five (5), sir.

Q.

When you discovered that firearm, do you remember who was or were the persons near you?

A.

SPO1 James Jara, sir.

Q.

Who else, if any, aside from SPO1 James Jara?

A.

SPO4 Marino Peneyra, sir.

Q.

Who else?

A.

SPO3 Bernabe Ocado, sir.

Q.

Were those the only police officers who were with you when you discovered the firearm?

A.

Yes, sir.

x x x x

Q.

So, who were with you then inside the house when you discovered the firearm?

A.

SPO4 Peneyra, SPO3 Ocado and SPO1 Jara, sir.

Q.

You mentioned a while ago that there were five (5) of you who conducted the search?

A.

I cannot recall the other one, sir.

Q.

Do you know SPO2 Florentino Renon?

A.

Yes, sir, but he was not there at the time.

x x x x

Q.

Not even any one of your companions who were inside the house actually witnessed the taking of the gun inside that cabinet?

A.

They saw it, sir.

Q.

You mean to say that SPO4 Peneyra, SPO3 Ocado and SPO1 Jara witnessed the taking of the gun by you inside the cabinet?

A.

SPO1 Jara only, sir.

Q.

How about SPO4 Peneyra and SPO3 Ocado?

A.

They were inside the sala, sir.

Q.

You did not call for them before you took the gun from the cabinet?

A.

I shouted, sir.

Q.

But they did not come to your place?

A.

They did not, sir.

Q.

And who was that companion of yours whom you said witnessed the taking of the gun?

A.

SPO1 Jara was at my back, sir.

Q.

But you were already holding the gun when SPO1 Jara saw the gun?

A.

Yes, sir.

x x x x

Q.

And where was SPO1 Jara when you discovered the firearm?

A.

He was at my back, sir.

Q.

How near or how far was he to you when you discovered the firearm?

A.

One (1) meter, sir.[31] (Emphasis supplied)

SPO1 Cabaya's testimony is contradicted by the testimonies of four other prosecution witnesses on material points, making Cabaya's testimony in particular, and the prosecution's evidence in general, not credible, and therefore, of no probative weight, thus:

1. SPO1 Jara, the best witness who could have corroborated SPO1 Cabaya's testimony, related a different story as to the circumstances of the firearm's discovery. SPO1 Jara testified that he merely conducted perimeter security during the search and did not enter or participate in searching the house.[32] SPO1 Jara testified that he remained outside the house throughout the search, and when SPO1 Cabaya shouted and showed a gun, he was seven to eight meters away from him.[33] He could not see the inside of the house and could see Cabaya only from his chest up.[34] He did not see the firearm at the place where it was found, but saw it only when Cabaya raised his arm to show the gun, which was a revolver.[35] He is certain that he was not with Cabaya at the time the latter discovered the firearm.[36] He further testified that SPO3 Ocado, who, according to SPO1 Cabaya was one of those near him when he (Cabaya) discovered the firearm, stayed outside and did not enter or search the house.[37]
2. P/Insp. Baldovino testified that only SPO2 Renon conducted the search and entered the house together with SPO1 Cabaya,[38] directly contradicting SPO1 Cabaya's testimony that he, together with SPO1 Jara, SPO4 Peneyra, SPO3 Ocado, and another one whose name he cannot recall, were inside the house when he discovered the gun[39] and that SPO2 Renon did not enter the house of petitioner.[40]

3. P/Supt. Abian categorically testified that it was SPO4 Peneyra, not SPO1 Cabaya, who recovered the firearm from petitioner's house.[41]

4. SPO4 Peneyra contradicted SPO1 Cabaya and P/Supt. Abian. He testified that he did not enter the house, but stayed outside, during the search.[42] He also said that it was SPO1 Cabaya and SPO2 Renon who discovered the firearm.[43]

5. SPO2 Renon contradicted SPO4 Peneyra and SPO1 Cabaya when he (Renon) testified on rebuttal that Cabaya was alone in the kitchen[44] when the latter allegedly discovered the gun.[45]

Second inconsistency:

On the reaction of petitioner
to SPO1 Cabaya's alleged
discovery of the subject firearm

SPO1 Cabaya testified that when he turned over the firearm to his superior, P/Insp. Baldovino, petitioner was present and did not utter a single word of protest.[46] This was contradicted, however, by P/Insp. Baldovino, who testified that petitioner protested, claimed that he did not know anything about the gun and refused to sign the certification that a search was conducted in his house.[47] Likewise, prosecution witnesses - P/Supt. Abian, SPO4 Peneyra and SPO1 Jara - all confirmed that petitioner vehemently denied possession of the firearm as soon as its "discovery" was announced.[48]

Third inconsistency:

On the witnessing of the actual
discovery of the subject firearm
by civilian Yabes

At first, SPO1 Cabaya testified that Municipal Local Government Operations Officer Yabes was outside the house when the firearm was discovered, but later, he clarified that Yabes was actually inside the house when it happened.[49] He informed Yabes of the discovery by shouting,[50] but he did not call Yabes to witness the actual taking of the gun from its hiding place because he had to show it to his officer;[51] and that Yabes saw the gun when he showed the gun outside.[52] However, Yabes contradicted SPO1 Cabaya. Yabes claimed to have seen the gun in an open shelf, after hearing the shouts of a policeman who was not one of those who entered the house to conduct the search, to wit:

Q.

You said that three (3) policemen entered the house. All the time that they were inside the house, where were you in relation to them?

A.

At the door of the house, sir.

Q.

When they conducted the actual search inside the house, what were you doing?

A.

I was looking at them, sir.

Q.

Will you describe the inside of the house of Ely Agustin?

A.

On the northeast corner of the house, there is a bed, no room, sir.

Q.

Where did and the three (3) policemen conduct the search?

A.

They requested Mrs. Agustin to make the "halungkat" and they were only watching her, sir.

Q.

Aside from you, Mrs. Agustin and the three (3) policemen, who else was or were inside the house?

A.

No more, sir.

Q.

How about Ely Agustin?

A.

He was conversing with the Chief of Police, sir.

Q.

And while Mrs. Agustin was the one who was actually making the search, as requested by the three (3) policemen, what happened?

A.

None, sir. They did not see anything. Nothing was found.

Q.

In what place of the house did Mrs. Agustin do the "halungkat" or the search?

A.

At the "duag" (extension). We entered from the north which is actually the "duag" (extension) of the house and then proceeded towards the west, and then, towards the south, and then, we entered the main building, sir.

Q.

Then, what happened next?

A.

While we were already about through, a certain policeman shouted that he found something near the door of the annex, sir, the place where we first entered. But that policeman was not one of those who entered the house to conduct the search.

Q.

The three (3) policemen, you and Mrs. Agustin were still inside the main house when that policeman shouted

that he found something?

A.

Yes, sir.

Q.

What were the three (3) policemen actually doing when you heard the shout of that policemen?

A.

They were still inside the house, but I did not pay particular attention what they were actually doing, sir.

x x x x

Q.

After hearing the shouts of that policeman that he found something, what did you, personally, do?

A.

I was taken aback and so I went out to see what it was all about, sir.

Q.

Among you five (5), who went out of the house first?

A.

I was the one, sir.

Q.

Who followed you next?

A.

I cannot remember who followed me, sir.

Q.

You said you went out to see what they found. What did you see?

A.

There was a sort of an open shelf and on the second rung where they placed the floor mat, the gun was there, sir.

Q.

You said there was a floor mat and then the gun. Which was exposed, the floor mat or the gun?

A.

Only the barrel of the gun was hidden, sir.

Court

Q.

The body of the gun was exposed when you saw it?

A.

Yes, Your Honor.[53]

x x x x(Emphasis and underscoring supplied)

Yabes had to go out of the house to see what was found at the "duag" or extension.[54] Yabes further testified:

Q.

From the time you heard the shouts of the policemen, up to the time you went out and saw the barrel covered by the floor mat, how many seconds or minutes elapsed?

A.

Less than a minute because I rushed outside, sir.

Q.

From the time you rushed outside after hearing the shouts that something was found, did you see any person near the place?

A.

Some policemen, sir.

Q.

What were those policemen doing when you saw them?

A.

They were looking at the gun, sir.

Court

Q.

Did you see any policeman placed [sic] the gun there?

A.

No, your Honor, because I was far.

App Gascon

Q.

The place where you were standing near the door of the main house, could you see the place where the shelf is?

A.

No, sir.

Court

Q.

Let us clarify this. Is that shelf outside [or] inside of the extension?

A.

Inside the extension, just beside the door, Your Honor.[55]

Although Yabes did not see that the gun was planted, neither could he attest that the gun was not planted. In fact, P/Insp. Baldovino testified that Yabes refused to sign the receipt, Exhibit "O",[56] wherein it is stated that the seizure was done in the presence of Yabes, for reasons he (Baldovino) does not know.[57] And yet, Yabes, when asked about Exhibit "O", testified, thus:

Q.

Showing to you another document related to this which you were earlier confronted by the Fiscal, Exh. "O", there is a statement here that the seized property was found in the presence of Ignacio Yabes and that in his testimony before this court, Police Inspector Baldovino testified that when you were asked [sic] to sign this piece of paper, you refused. Can you recall now?

A.

I was not shown any paper, except Exh. "E", Your Honor.

Q.

What can you say then to the testimony of Police Inspector Baldovino that you refused to sign Exh. "O"?

A.

I never refused, Your Honor, to sign Exh. "O". I could not have refused because they did not show any paper and had they shown to me, I must have uttered some derogatory remarks against them.

Q.

Exh. "O" purports to show that a gun, caliber .38 with serial number 439575 with five (5) live ammunitions for caliber .38 were seized from the residence of Ely Agustin at Sitio Padual, Brgy. Pug-os, Cabugao, Ilocos Sur on October 6, 1995. What can you say then with respect to the contents of Exh. "O"? Do you agree that a gun, caliber .38, with five (5) live ammunitions were seized from the house of Ely Agustin, in your presence?

A.

As I have testified earlier, Your Honor, the gun was not found by the policemen who conducted the search of the house. It was only mentioned by a policeman outside that the gun was seen at the shelf, second rung, with a floor mat covering the barrel.[58](Emphasis supplied)

The testimonies of the other prosecution witnesses further muddled the prosecution evidence with more inconsistencies as to matters material to the determination of whether a gun had in fact been found in the house of petitioner. SPO4 Peneyra testified that Yabes stayed outside of the house during the search;[59] whereas SPO1 Jara testified that Yabes was inside, at the sala, but the latter saw the gun only when SPO1 Cabaya raised it.[60]

Such inconsistencies on the material details of the firearm's discovery are so glaring that they ought not to have been ignored or brushed aside by the lower courts. The contradictions of the prosecution witnesses not only undermine all efforts to reconstruct the event in question, but altogether erode the evidentiary value of the prosecution evidence.

Given the incoherent story presented by the prosecution, it is hardly persuasive that SPO1 Cabaya indeed found the firearm in a regular manner. Serious doubts are raised on whether petitioner really possessed or owned that weapon and hid it in his house. On the face of the contradicting evidence presented by the prosecution, petitioner's

denial and his wife's emphatic claim of frame-up from day one, that is, at the time and on the very spot of the alleged discovery of the gun, gained substantial significance.

Although the Court has held that frame-up is inherently one of the weakest defenses,[61] as it is both easily concocted and difficult to prove,[62] in the present case, the lower courts seriously erred in ignoring the weakness of the prosecution's evidence and its failure to prove the guilt of petitioner beyond reasonable doubt. The rule requiring a claim of frame-up to be supported by clear and convincing evidence[63] was never intended to shift to the accused the burden of proof in a criminal case. As the Court held in *People of the Philippines v. Ambih*: [64]

[W]hile the lone defense of the accused that he was the victim of a frame-up is easily fabricated, this claim assumes importance when faced with the rather shaky nature of the prosecution evidence. It is well to remember that the prosecution must rely, not on the weakness of the defense evidence, but rather on its own proof which must be strong enough to convince this Court that the prisoner in the dock deserves to be punished. The constitutional presumption is that the accused is innocent even if his defense is weak as long as the prosecution is not strong enough to convict him.[65] (Emphasis supplied)

In *People of the Philippines v. Gonzales*, [66] the Court held that where there was material and unexplained inconsistency between the testimonies of two principal prosecution witnesses relating not to inconsequential details but to the alleged transaction itself which is subject of the case, the inherent improbable character of the testimony given by one of the two principal prosecution witnesses had the effect of vitiating the testimony given by the other principal prosecution witness.[67] The Court ruled that it cannot just discard the improbable testimony of one officer and adopt the testimony of the other that is more plausible.[68] In such a situation, both testimonies lose their probative value. The Court further held:

Why should two (2) police officers give two (2) contradictory descriptions of the same sale transaction, which allegedly took place before their very eyes, on the same physical location and on the same occasion? We must conclude that a reasonable doubt was generated as to whether or not the "buy-bust" operation ever took place.[69]

In the present case, to repeat, the glaring contradictory testimonies of the prosecution witnesses generate serious doubt as to whether a firearm was really found in the house of petitioner. The prosecution utterly failed to discharge its burden of proving that petitioner is guilty of illegal possession of firearms beyond reasonable doubt. The constitutional presumption of innocence of petitioner has not been demolished and therefore petitioner should be acquitted of the crime he was with.

WHEREFORE, the petition is GRANTED. The Decisions of the Court of Appeals and the Regional Trial Court of Cagayan, Ilocos Sur are REVERSED and SET ASIDE. The petitioner is ACQUITTED of the crime charged in Criminal Case No. 1651-K.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Roberto A. Barrios, with the concurrence of Associate Justices Perlita J. Tria Tirona and Edgardo F. Sundiam; rollo, pp. 104-114.

[2] *Id.* at 128-129.

[3] RTC records, p. 90.

[4] *Id.* at 84.

[5] Id. at 98.

[6] Id. at 1.

[7] Also referred to as "Baldomino" in some parts of the records.

[8] Also referred to as "Avian" in some parts of the records.

[9]Exhibit "G"; TSN, October 1, 1996, p. 3; TSN January 19, 1996, p. 16; TSN, April 18, 1996, pp. 7-8; TSN, June 4, 1996, pp. 6, 15; TSN, August 1, 1996, p. 5; TSN, October 24, 1996, p. 5.

[10]TSN, October 6, 1998, p. 3.

[11] Exhibit "G".

[12] Part of Exhibit "F".

[13] TSN, October 6, 1998, p. 5.

[14] TSN, June 26, 1997, p. 8; TSN, November 5, 1997, p. 8.

[15] TSN, November 5, 1997, pp. 6-8.

[16]Rollo, pp. 38-43.

[17]Id. at 43.

[18]Id. at 104-114.

[19]Id at 113.

[20]Andaya v. People of the Philippines, G.R. No. 168486, June 27, 2006, 493 SCRA 539, 551; Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571, November 11, 2005, 474 SCRA 480, 483.

[21] Rollo, p. 42.

[22]Id. at 111.

[23] Id. at 112.

[24] RULES OF COURT, Rule 128, Section 4; Sibal and Salazar, Compendium on Evidence, 2006, p. 7.

[25]16 Phil. 520, 529 (1910).

[26]TSN, October 1, 1996, pp. 4-5.

[27]TSN, October 6, 1998, pp. 2, 3 and 5.

[28]TSN, October 1, 1996, p. 12; TSN, October 6, 1998, p. 2.

[29] TSN, October 1, 1996, id.

[30] Id. at 5.

[31] TSN, October 1, 1996, pp. 3-5, 11-12; TSN, June 16, 1999, p. 2.

[32] TSN, October 24, 1996, pp. 2-4.

[33] Id. at 5.

- [34]Id. at 6.
- [35] Id. at 6, 12.
- [36]Id. at 13.
- [37] Id. at 12, 14.
- [38] TSN, January 19, 1996, p. 14.
- [39] TSN, October 1, 1996, p. 5.
- [40]TSN, March 26, 1996, pp. 18, 30.
- [41]TSN, June 4, 1996, pp. 6, 15.
- [42]TSN, August 1, 1996, pp. 7, 16, 19.
- [43]Id. at 15.
- [44] TSN, August 25, 1998, p. 6.
- [45]TSN, October 6, 1998, pp. 5-8; TSN, June 16, 1999, pp. 2-3.
- [46] TSN, October 1, 1996, p. 6.
- [47] Exhibit "A"; TSN, March 26, 1996, p. 17.
- [48] TSN, June 4, 1996, p. 16; TSN, August 1, 1996, pp. 7, 20; TSN, October 24, 1996, p. 9.
- [49]TSN, October 1, 1996, pp. 5, 10.
- [50] Id. at 11.
- [51]Id.
- [52]Id. at 10-11.
- [53] TSN, April 18, 1996, pp. 5-7, 8-9.
- [54] Id. at 6-7.
- [55]Id. at 10-11.
- [56]Records, p. 94.
- [57] TSN, March 26, 1996, p. 19.
- [58] TSN, April 18, 1996, pp. 13-14.
- [59] TSN, August 1, 1996, pp. 7, 17 and 18.
- [60] TSN, October 24, 1996, p. 8.
- [61] People of the Philippines v. Bustamante, 445 Phil. 345, 360 (2003); People of the Philippines v. Padao, 334 Phil. 726, 739 (1997).
- [62] People of the Philippines v. Ting Uy, 430 Phil. 516, 527 (2002).
- [63] Id.; People of the Philippines v. Enriquez, 346 Phil. 84, 95 (1997).

[64]G.R. No. 101006, September 3, 1993, 226 SCRA 84.

[65]Id. at 90.

[66] G.R. Nos. 67801-02. September 10, 1990, 189 SCRA 343.

[67] Id. at 352-353.

[68] Id. at 352.

[69] Id. at 353.

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