

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARCELINO ABARE, APPELLANT.

G.R. No. 172973. December 18, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

For review before this Court is the July 18, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00764 which affirmed the Decision[2] dated January 18, 2002 of the Regional Trial Court (RTC) of Calapan City, Oriental Mindoro, Branch 40, finding Marcelino Abare (appellant) guilty of murder qualified by treachery and sentencing him to suffer the penalty of reclusion perpetua.

The Information in Criminal Case No. C- 5351 reads as follows:

That on or about the 24[th] day of November 1997 at around 7:30 o'clock in the evening, in Barangay Bucayao, Municipality of Calapan, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to take the life of SAMSON CUYOGAN and with treachery and evident premeditation, did then and there willfully, unlawfully, feloniously, unexpectedly and treacherously attack, assault, and hack the latter with a scythe, wounding him on the neck and on the different parts of his body, which wounds being necessarily mortal, thereby causing the direct and immediate death of the said SAMSON CUYOGAN.

Contrary to law.[3]

When arraigned, appellant pleaded "not guilty." [4] Thereafter trial ensued.

The prosecution presented three witnesses: Armando Yabut (Yabut), Magdaleno Gameng (Gameng) and Dr. Angelita Legaspi. The defense presented appellant and Senior Police Officer 1 Agapito Marasigan.

The CA narrated the evidence presented by the parties, to wit:

Armando Yabut, 36 years old and a resident of Bucayao, Calapan City, Oriental Mindoro, testified that at around 7:30 in the evening of November 24, 1997, he was at the living room of his house at Barangay Bucayao, Calapan City together with Magdaleno Gameng, Antonio Bernardino and the victim, Samson Cuyogan who were among his guests in his birthday celebration. The accused Marcelino Abare earlier arrived at his house at around 11:30 in the morning and left at around 7:30 in the evening. Incidentally, the accused is his brother-in-law, the accused being his wife's cousin.

While waiting for the liquor they requested to be bought, the witness, together with Gameng, Bernardino and the victim Cuyogan, engaged in a conversation. He and the victim were seated with their backs turned against the window of the living room. He was about two (2) feet away from the left side of the victim who was leaning against the window pane, while on his left was Gameng and on Gameng's left was Bernardino. They were seated in such a way that they formed a slightly curved line, with Gameng and Bernardino facing him and the victim. During the conversation, the witness suddenly saw the victim fall forward with blood oozing from his neck. He also saw the accused standing outside holding a bloodied scythe. He then went outside and

approached the accused and asked him, "Bakit mo nagawa ang bagay na yan? Bakit mo siya pinatay? Ano ang kanyang kasalanan?" To which the accused replied, "Amanos na kami, solved na ang problema ko." The witness then grabbed the hand of the accused and wrested the scythe from him and threw it towards the side of the house. After a few minutes, several people arrived including the victim's wife who became hysterical after seeing what happened to her husband. Thereafter, he and several neighbors brought the victim to the Provincial Hospital where the latter was pronounced dead on arrival.[5]

On cross-examination, the witness stated that prior to the incident, no altercation transpired between the victim and another person. He did not actually see the accused hack the victim and when he wrested the scythe from the accused, the latter did not resist.[6]

On the other hand, Magdaleno Gameng testified that he arrived at the house of Armando Yabut at around 5 o'clock in the afternoon of November 24, 1997 and joined the drinking session in celebration of Yabut's birthday. He was seated at the left side of Yabut facing the latter. By 7:30 in the evening of said date, he and his companions Yabut, Bernardino, and Cuyogan were already tipsy, having consumed a lot of liquor and they ordered for more. While waiting for the liquor they requested to be bought, the victim suddenly fell face down (sumubasob) and his neck was bloodied and almost severed from the body. He then saw the accused outside the window holding a scythe with blood flowing down from it. After a while, he saw Yabut go out of the house and confront the accused about what the latter just did.

On cross-examination, the witness said that while he did not actually see the manner by which the accused stabbed or hacked the victim, the accused was the only one who was holding a scythe outside the window after the victim fell face down. Finally, he claimed that he did not know if any altercation had transpired between the accused and the victim prior to the incident.[7]

Finally, Dr. Angelita Legaspi, the rural health physician of Calapan City, testified that she conducted the autopsy on the cadaver of the victim on November 25, 1997, and issued a Necropsy Report[8] x x x.

x x x x

Dr. Legaspi explained that the victim suffered abrasions on the chin, left side of the chest, upper forearm and the left 3rd and 4th fingers probably caused by a sharp object or by rubbing on a rough surface, as in this case when the victim fell down on the floor. She also stated that the victim sustained a hack wound on the front portion of the neck which is about eight (8) inches long probably caused by a sharp object like a bolo or scythe. She opined that the assailant could have been in front, at the side or at the back of the victim when he inflicted the injury on the neck of the victim. She claimed the injury on the neck was fatal because it contained major blood vessels including the carotid artery and these blood vessels were cut. She concluded that the victim died because of loss of blood resulting from the wound on his neck.[9]

In his defense, accused-appellant testified that while he was at his house on November 24, 1997, Armando Yabut came to fetch him to attend the former's birthday celebration. At around 5:00 o'clock in the afternoon, Yabut requested him to buy one case of beer after which they, together with Gameng and Bernardino, engaged in a drinking spree. At around 6:00 p.m., the victim Samsom Cuyogan arrived somewhat drunk, requesting that more beer be bought. After one and half (1 ½) cases more beer were bought, the group continued drinking. After a while, the accused demanded from the victim the amount of P200.00 as his wages for the excavation and installation of a deep-well tank in Barangay Natulo, Naujan, Oriental Mindoro. Apparently, the victim was a contractor in the installation of deep-well tanks while the accused was one of the victim's workers. When the victim told him that he had no money, he replied that he could give him rice. The victim, however, told him, "problema mo na yan, hindi ko problema yan!" The witness then saw a scythe on top of the table which they were then using to cut calamansi fruits, and he and the victim grappled for it. He was able to take possession of the scythe and when the victim turned his back on him, he struck the former with a scythe thinking that the victim would just be hit on the shoulders. He then went out of the door, taken aback by what he did. He claimed that he had not intention to kill the victim. Thereafter, a number of people arrived, among those was

his aunt who patted him on the left shoulder and told him, "Takbo na!" He then got scared and ran towards his father's house. His father instructed him to go to Barangay Biga, Calapan City, together with his brother. They then proceeded to the house of his brother-in-law where he slept for a while. At twelve midnight, his brother and father fetched him to surrender him to the police authorities. Finally, he reiterated that he did not intend to kill the victim.[10]

On cross-examination, he testified that he had an altercation with the victim when he demanded the full payment of wages due him for the the installation of a deep-well in Naujan, Oriental Mindoro. He got angry about the victim's reply and struck the latter. He did not intend to hit the victim on the neck and did not see any blood coming out of the body of the victim. He did not remember having told Yabut, "Ay amanos na kami, solved na ang aking problema." He claimed he voluntarily surrendered to the police.[11]

The last witness to take the stand was SPO1 Agapito Marasigan, a member of the Philippine National Police, who testified that on the night of November 24, 1997, somebody arrived at his residence in Bucayao, Calapan City and informed him about the killing of the victim Samson Cuyogan. He then proceeded to the crime scene and on his way thereto, he met the father of the accused who told him that his son was involved in the killing of Cuyogan and intended to surrender the accused to him. The father of the accused then fetched the former from where he was staying at that time. The witness then brought the accused to the police detachment in Barangay Sta. Isabel, Calapan City and called up the Calapan City Police Station. When police investigators from the police station arrived, he informed them that the accused voluntarily surrendered to him but he was not aware if the same was recorded in the police blotter or any relevant police record.[12] (Emphasis supplied)

The RTC upheld the prosecution evidence and found appellant guilty of the crime of murder.

The dispositive portion of the RTC decision reads as follows:

Accordingly, this Court finds herein accused Marcelino Abare y Isidro guilty beyond reasonable doubt as principal by direct participation of the crime of Murder qualified by treachery and punishable under Article 248 of the Revised Penal Code. Considering the absence of any other aggravating nor mitigating circumstances, said accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties as provided for by law and to pay the costs, to indemnify the heirs of the victim Samson Cuyogan the amount of P50,000 as civil indemnity and another P50,000 as moral damages.

SO ORDERED.[13]

The RTC decision was appealed to this Court by the appellant; the decision, was, however, referred to the CA pursuant to *People v. Mateo*. [14]

In its Decision dated July 18, 2005, the CA affirmed the decision of the RTC, to wit:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The January 18, 2002 Decision of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40, is hereby AFFIRMED.

SO ORDERED.[15]

Appellant filed a Motion for Reconsideration,[16] which was denied by the CA through a Resolution[17] dated January 27, 2006.

Hence, herein appeal.

In his Brief,[18] appellant raises the following errors:

I.

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF ACCUSED- APPELLANT FOR THE

CRIME OF MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.[19]

The appeal is not meritorious.

Appellant submits that the prosecution was not able to prove beyond an iota of doubt that the crime of Murder was committed, and that treachery was attendant in the case at bar.[20] Appellant argues that there was no direct eyewitness to the alleged hacking incident.[21] More specifically, appellant contends that the testimonies of prosecution witnesses Yabut and Magdaleno reveal that neither of them saw how the hacking commenced.

To bolster his case, appellant relies on this Court's pronouncement in *People v. Lug-aw*[22] (*Lug-aw*), to wit:

"Absent any particulars as to the manner in which the aggression commenced, on how the act which resulted in the death of the victim unfolded, treachery cannot be appreciated to qualify the killing to Murder." x x x.[23]

The reliance of appellant on *Lug-aw* is misplaced, as the factual circumstances therein do not find application to the case at bar. In *Lug-aw*, the Court observed:

The trial court drew conclusion of the presence of treachery because the attack was sudden as Pal-looy was simply going about his task of fencing his kaingin. We find however, that no one witnessed the initial attack. As Sonia herself testified, she heard the first shot, went up a hill, climbed a tree and from there, saw *Lug-aw* shooting her father with the shot reverberating as the second gun report. Nowhere do we find in the records any evidence that she witnessed the first shot nor how her father reacted to it. What she did see was her father trying to repel the assault with a bolo but failed when a second shot hit him. As this Court held in *People v. Castor*, where the lone eyewitness was not able to observe the commencement of the assault, he could not testify on how it all began and developed.[24] (Emphasis and underscoring supplied)

In other words, in *Lug-aw*, the aggravating circumstance of treachery was not appreciated for the following reasons: first, it was only after the eyewitness had gone up a hill and climbed a tree upon hearing the first shot that she saw *Lug-aw* shooting her father for the second time; and second, since the eyewitness never saw the first shot, she therefore could not testify how the attack on her father by the accused therein began and developed. Such circumstances do not obtain in the present case. The eyewitnesses were just seated right beside the victim when they saw appellant behind the victim who had suddenly fallen face down in front of them. The CA is correct in its observation thus:

It is undisputed and was clearly established that when the victim suddenly fell face down with blood oozing from his neck, the witnesses, at that instant, saw the accused-appellant standing by the window just behind the victim, holding a scythe with blood flowing from it. Any man or even a child with sufficient reason could easily deduce that the accused-appellant committed that act, and it could be inferred just as easily that the witnesses did not actually see that act of hacking because of the suddenness of the act.[25] (Emphasis supplied)

Furthermore, considering that the victim was seated when appellant hacked him from behind and that the attack was sudden,[26] only one conclusion can be drawn; that is, the victim had no time to react and defend himself.

Moreover, even the cited cases in *Lug-aw* do not find application to the case at bar. In *People v. Castor*,[27] *United States v. Perdon*,[28] and *United States v. Pangilion*,[29] the Court ruled out the presence of treachery because of one of the following circumstances: first, the presence of numerous stab wounds would indicate the possibility of a frontal attack; second, there was a possibility that the victim could have offered resistance; third, there was no proof that the hacking was sudden or unexpected; fourth, the presence of several wounds (one at the

back) makes it impossible to ascertain which blow was inflicted first; fifth, there was a possibility that a fight occurred before the hacking; sixth, there was evidence to show that there was a struggle before the eyewitnesses arrived at the scene of the crime. None of these circumstances are present in the case at bar.

The defense of appellant that he had acted on impulse^[30] deserves scant consideration. Appellant would have this Court believe that he felt aggrieved when the victim refused to pay his salary and even further commented, "Problema mo 'yan, hindi ko problema 'yan!" It was allegedly this feeling that caused him to attack the victim. On this score, this Court agrees with the observation of the RTC, to wit:

His (the accused) asseverations that after having an altercation with the victim relative to the payment for the excavation and installation of the a deep-well tank for which the victim uttered, "Problema mo 'yan, hindi ko problema yan," he saw a scythe on top of a table and thereafter, he and the victim grappled for the possession of the same and after getting hold of the scythe, the victim turned his back for which he struck the latter hitting the neck is not only unbelievable but runs counter to the normal course of human behavior. It is quite unnatural for a person who is quarreling with somebody to just turn his back from his assailant knowing fully well that the latter is armed with a scythe.^[31] x x x"

Moreover, appellant testified that Lupito Bernardino and Gameng were inside the house when he hit the victim.^[32] If an altercation and subsequent struggle between appellant and the victim really transpired, then someone should have seen or at the very least heard the commotion. On the contrary, Yabut and Gameng testified that prior to the incident, no altercation transpired between the victim and appellant. More importantly, Yabut testified that appellant left his house at 7:30 in the evening, and that the latter was not with their group while they were waiting for liquor.^[33] This was corroborated by Gameng who testified that only the victim, Yabut and Bernardino were with him while they were waiting for liquor.^[34] No altercation between appellant and the victim could have transpired if appellant was not there in the first place. Thus, even the contention of appellant to the effect that during the altercation he did not intend to use a scythe, but that it was the first weapon he saw on the table, is unbelievable considering that no actual altercation between him and the victim took place.

The following elements must concur in the appreciation of the aggravating circumstance of treachery:

- that at the time of the attack, the victim was not in a position to defend himself; and
- that the offender consciously adopted the particular means, method or form of attack employed by him.^[35]

In the case at bar, considering that the victim was suddenly hacked on his neck as he was seated with his back turned against the window and that appellant was outside the window when he hacked the victim, the first element has been satisfied, because no man could have offered any type of defense under those circumstances. In addition, since it has been established that no altercation transpired between appellant and the victim prior to the incident, the conclusion is inevitable that appellant has consciously chosen a scythe and deliberately hacked the victim from behind. Thus, there exists no cogent reason to disturb the finding of the lower court on the existence of treachery in the case at bar.

In addition, appellant's claim that he only intended to hit the shoulders of the victim^[36] and his insistence that the victim got mad at him when he demanded payment for his services^[37] do not serve to mitigate his liability. The mitigating circumstances of no intention to commit so grave a wrong as that committed^[38] and that sufficient provocation on the part of the offended party immediately preceded the act,^[39] find no application to the case at bar. In the first place, the mitigating circumstance of no intention to commit so grave a wrong cannot be appreciated in cases of murder qualified by treachery.^[40] Moreover, the reply of the victim, "Problema mo 'yan, hindi ko problema yan," can hardly be considered a sufficient provocation to warrant the appreciation of a mitigating circumstance.

As a result of the foregoing finding, and as conceded by appellant,[41] it would be unnecessary to discuss the second issue, as the impossible penalty would not change even if this Court were to appreciate the mitigating circumstance of voluntary surrender. As correctly observed by the CA:

Be that as it may, whether or not We appreciate the mitigating circumstance of voluntary surrender is already immaterial as its existence, as correctly pointed out by the Solicitor General, does not warrant modification of the penalty imposed upon accused-appellant. Article 63 of the Revised Penal Code provides:

Article 63. Rules for the application of indivisible penalties.

x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.@

In this case, the crime committed is Murder, and under Article 48 of the Revised Penal Code, the impossible penalty is reclusion perpetua to death. Reclusion Perpetua and death are indivisible penalties. Since there is no aggravating circumstance in the instant case, even if We are to appreciate the mitigating circumstance of voluntary surrender, the lower penalty of reclusion perpetua shall still be applied.[42] (Emphasis and underscoring supplied)

Lastly, even if this Court were to appreciate the mitigating circumstances of voluntary surrender with the mitigating circumstances of no intention to commit so grave a wrong as that committed[43] or that sufficient provocation or threat on the part of the offended party immediately preceded the act,[44] the penalty of reclusion perpetua would still be imposed as provided for in paragraph 3, Article 63 of the Revised Penal Code.

In conclusion, following current jurisprudence, for the death of Samsom Cuyogan, civil indemnity is awarded in the amount of P50,000.00 without need of proof other than the commission of the crime.[45] Moreover, pursuant to this Court's ruling in *People v. Ortiz*,[46] moral damages in the amount of P50,000.00 are likewise awarded. Lastly, exemplary damages in the amount of P25,000.00 are warranted because of the presence of the aggravating circumstance of treachery.[47]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00764 dated July 18, 2005, finding appellant Marcelino Abare guilty beyond reasonable doubt of Murder is **AFFIRMED** with modification as to the damages awarded. Appellant is sentenced to suffer the penalty of Reclusion Perpetua and **ORDERED** to pay the heirs of the victim, Samson Cuyogan, the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED

Quisumbing,[*] Ynares-Santiago, (Chairperson), Chico-Nazario, and Reyes, JJ., concur.

* Per raffle dated December 10, 2008.

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with the concurrence of Associate Justices Jose L. Sabio, Jr. and Edgardo P. Cruz; rollo, pp. 3-17.

- [2] CA rollo, pp. 16-22.
- [3] CA rollo, p. 16.
- [4] Records, p. 38.
- [5] TSN, September 8, 1998, pp. 4-17.
- [6] TSN, April 20, 1999, pp. 9-12.
- [7] TSN, June 1, 1999, 5-12.
- [8] RTC Records, pp. 24-25.
- [9] TSN, August 2, 2000, pp. 15-25.
- [10] TSN, January 22, 2001, pp. 4-18.
- [11] Id. at 24-36.
- [12] TSN, June 4, 2001, pp. 5-12.
- [13] CA rollo, pp. 21-22.
- [14] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.
- [15] Rollo, pp. 16-17.
- [16] CA rollo, pp. 102-106.
- [17] Id. at 114-117.
- [18] Id. at 37-52.
- [19] CA rollo, p. 39.
- [20] Id. at 46.
- [21] Id.
- [22] G.R. No. 85735, January 18, 1994, 229 SCRA 308.
- [23] CA rollo, p. 49.
- [24] *People v. Lug-aw*, supra note 22, at 321.
- [25] CA rollo, pp. 98-99.
- [26] TSN, June 1, 1999, p. 10.
- [27] G.R. No. 93664, December 11, 1992, 216 SCRA 410, 421-422; Quoted hereunder are the pertinent portions, to wit:

x x x Treachery was not likewise established. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. In the instant case, Robert Mingoa, the lone eyewitness, was not able to observe the commencement of the assault; he could, therefore, not testify on how it all began and developed. In *United States vs. Perdon* and *United States vs. Pangilion*, this Court ruled that where no particulars are known as to the manner in which the aggression was

made or how the act which resulted in the death of the victim began and developed, treachery cannot be appreciated to qualify the killing. Thus, it cannot be considered where the lone eyewitness did not see the commencement of the assault. In the instant case, the victim sustained two (2) stab wounds in his chest and two (2) stab wounds in his back. The chest wounds could have very well resulted from an initial frontal attack on the victim; thus, it is possible that the latter could have even offered some resistance by parrying the thrusts of the assailants. This is evidenced by the "[W]ound incised, 3.0 cm. . . . anterior aspect, chest, left." The possibility of this initial frontal attack and the absence of any proof that the same was unexpected and sudden sustain a rejection of the qualifying circumstance of treachery. (Emphasis supplied)

[28] 4 Phil. 141, 143-144 (1905); Quoted hereunder are the pertinent portions, to wit:

The prosecution in his instance holds that the facts in the case should be considered as constituting murder, owing, in his opinion, to the fact that the crime was committed with the concurrence of the qualifying circumstance of treachery (alevosia).

The evidence of the records does not justify this conclusion sufficiently. The only witness who saw the commission of the crime from a certain distance states nothing more than that when he turned his face at the cries of the deceased's infant sons who were with the latter, he saw the defendant inflicting blows with a bolo upon the said deceased, and he then hastened his steps lest the defendant should also kill him. Neither this witness nor any other gives any particulars whatever as to the manner in which the aggression was made, nor how the act which resulted in the death of the deceased began and developed; and this being the case, it can not be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that the accused had employed means tending to insure its success without any danger to his person, which constitutes treachery (alevosia) as defined by the Penal Code. The circumstances specifying an offense or aggravating the penalty thereof must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence according to law. No matter how truthful these suppositions or presumptions may seem, they must not and can not produce the effect of aggravating the condition of the defendant.

Neither is the fact that one of the wounds of the deceased was in the back conclusive enough to establish that supposition in this concrete case; the deceased having received several wounds, it can not be known which one of them was the first inflicted by his aggressor, and the one in the back might have possibly been the last inflicted for the purpose of finishing more quickly and at once with the deceased, or it might have been inflicted by accident during the course of the fight, pressed by the circumstances of the same, in the possible event, since there is no evidence to the contrary, that a fight really took place between the aggressor and the deceased before the latter succumbed in consequence of the wounds which he received. (Emphasis supplied)

[29] 34 Phil. 786, 792-793 (1986); quoted hereunder are the pertinent portions, to wit:

The Attorney-General recommends that the crime be qualified as murder and not as homicide, claiming that the evidence establishes beyond a reasonable doubt that the crime was qualified by alevosia. It is true that two witnesses for the prosecution testified that the deceased was attacked from behind suddenly and unexpectedly and that he was given no opportunity to defend himself. But it also appears, as the trial court in considering this branch of the case, correctly says, that these witnesses, according to their own statements, did not see the beginning of the struggle. Their evidence shows that the struggle had been in progress for sometime before they became eye witnesses. Indeed, both Candida Ancero and Sixta Cortes state that they heard the deceased call for help, and that they were obliged to go some distance after they heard the call before they came in sight of the struggling men. This fact demonstrates that they did not see the beginning of the fight; and, that being the case, it is impossible to determine whether the attack was treacherous or not. We are of the opinion that the trial court was

justified in its conclusion that the crime should be qualified as homicide instead of murder. (Emphasis supplied)

[30] CA rollo, p. 106.

[31] CA rollo, p. 20.

[32] TSN, January 22, 2001, p. 14.

[33] TSN, September 8, 1998, pp. 8, 10.

[34] TSN, June 1, 1999, p. 6.

[35] Reyes, THE REVISED PENAL CODE, 15th ed., 2001, p. 426.

[36] TSN, January 22, 2001, p. 13.

[37] Id. at 11.

[38] Revised Penal Code of the Philippines, Article 13, Section 3.

[39] Id. Section 4.

[40] People v. Pajenado, 161 Phil. 233, 244 (1976).

[41] CA rollo, p. 106.

[42] CA rollo, p. 100.

[43] REVISED PENAL CODE OF THE PHILIPPINES, Article 13, Section 3.

[44] Id. at Section 4.

[45] People v. Segobre, G.R. No. 169877, February 14, 2008, 545 SCRA 341, 349.

[46] 413 Phil. 592, 617 (2001).

[47] People v. Segobre, *supra* note 45, at 350.

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