

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ESPERIDION BALAIS, APPELLANT.

*G.R. No. 173242. September 17, 2008*

Ponente: QUISUMBING, J.

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### QUISUMBING, J.:

On appeal is the March 15, 2006 Decision[1] of the Court of Appeals in CA-G.R. CR. H.C. No. 00163, which affirmed with modification the Decision[2] dated November 18, 2003 of the Regional Trial Court (RTC) of Carigara, Leyte, Branch 13, in Criminal Case No. 2593. The RTC had found the accused-appellant Esperidion Balais (Balais) guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the maximum penalty of death. The Court of Appeals had modified Balais' sentence to reclusion perpetua.

In an Information dated October 28, 1996, Balais was charged before the RTC as follows:

That on or about the 20[th] day of May, 1989, in the municipality of Barugo, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent, with treachery and evident prem[e]ditation, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab one FRANCISCO ALA with long sharp pointed weapons ([sundang]) which the accused have provided themselves for the purpose, thereby inflicting upon the latter the following wounds, to wit:

- Incised wound over the right parietal region extending from the right outer canthus, 22 cms. long up to behind the right ear x 2.5 cm. wide, cutting completely the skull, exposing the brain.
- Incised wound below the No. 1 wound, extending the right parietal region to behind the right ear, 12 cms. x 1 cm., scalp deep.
- Incised wound, chopping completely the tip of the nose and the upper mandible.
- Incised wound over the right clavicular region, 2 cm. x 1 cm., muscle deep.
- Incised wound over the right paraxillary region, 2 cms. x 1 cm. muscle deep.
- Stabbed wound over the right mid chest, 7 cms. x 5 cms., penetrating thoracic cavity, wound lower lobe, lung, right.
- Incised wound, linear in shape, cutting subcutaneous tissue, extending from the left inner angle of the clavicle up to the left chest, 18 cms. long.
- Wound in[c]ised, over the left outer clavicular region, 9 cms. x 2 cms. muscle deep.
- Stabbed wound over the left mid axillary region, lower chest, 2.5 cms. x 1 cm., penetrating thoracic cavity, directed medialwards, wounding the left lower lobe, lung.
- Stabbed wound over the left iliac region, 6 cms. x 1.4 cms. directed upwards, cutting muscles only.

- Chopping wound over the posterior aspect, upper 3rd arm, (L) subcutaneous deep.
- Stabbed wound over the left lower 3[rd] arm, posterior aspect, 3.2 cms. x 2 cms., muscle deep.
- Incised wound over the platero-lateral aspect, lower 3[rd], arm, left, 4 cms. x 1.5 cms., muscle deep.
- Incised wound, over the posterior aspect, upper 3[rd] forearm, left 4.2 cms. x 1.2 cm., muscle deep.
- Complete amputating wound over the right wrist.
- Incised wound over the lateral side, body, 12 cms[.] x 3.5 cms., muscle deep.
- Stabbed wound over the right lumbar region, 4 cms. x 1 cm., directed upwards, muscle deep.
- Amputating wound, complete over the left wrist.
- Incised wound over the anterior aspect, lower 3[rd], thigh, right 4.1 cms. x 0.5 cm. subcutaneous deep.
- Incised wound over the posterior aspect, lower 3[rd] thigh, level of the right knee.

which wounds caused the death of said Francisco Ala.

CONTRARY TO LAW.[3]

A Warrant of Arrest was issued on January 6, 1997 for the arrest of Balais. However, on November 10, 1997, the case was archived due to the failure of the police to arrest the accused.[4] It was only on October 25, 2002[5] that Balais was arrested by virtue of an Alias Warrant of Arrest[6] issued by the RTC on December 15, 1997. Consequently, the case was revived.

On November 4, 2002, Balais was arraigned. Balais pleaded not guilty to the charge of murder.[7] Thereafter, trial ensued.

The prosecution presented the following witnesses: Roman Garsain and Lucrecia Acebo, the nephew and the wife, respectively, of the deceased Francisco Ala, and Ricardo Negado, Municipal Civil Registrar of Barugo, Leyte.

Roman Garsain testified that on May 20, 1989, he was at the house of Brgy. Captain Elena Cubilla at Brgy. Picas, Barugo, Leyte. It was the eve of the fiesta of Brgy. Picas, and he was with his uncle, the deceased Francisco Ala, who was a resident of Brgy. Pongso, Barugo, Leyte. His uncle accompanied him because he will pick up a package from his child in Brgy. Picas. At about 11:30 p.m., they decided to go home because they were informed that Roman's wife was about to deliver their baby. On their way home, his uncle was walking ahead of him when they were accosted by Balais and other persons, numbering 5 to 6, whose names Roman does not know. Suddenly, Balais delivered hacking blows on his uncle. At that time, they were about 250 meters away from the house of Brgy. Captain Cubilla and 50 meters across the river which they had to cross. Roman testified that he saw Balais hit Francisco twice on the head and his other companions also delivered hacking blows. When Francisco retreated to the tall grasses, Balais and his companions followed him and continued hacking him. Roman narrated that he was able to see Balais because it was a moonlit night. Roman then ran away towards the house of Brgy. Captain Cubilla to ask for assistance. Brgy. Captain Cubilla sought the help of the police but when they returned to the place of the incident, they found Francisco already dead.[8]

Lucrecia Acebo testified that on May 20, 1989, she and her eight children were in their house in Brgy. Pongso, Barugo, Leyte sleeping when she was awakened by Antonio Elizondo who told her that her husband, Francisco Ala, was already dead. She cried and later went to the place of incident and took the body of her husband from the river and brought it to their house. She testified that she incurred P50,000.00 as funeral expenses.[9]

Ricardo Negado, the Municipal Civil Registrar of Barugo, Leyte, read in open court the entries relative to the death of Francisco Ala, including Francisco's cause of death which is irreversible shock, severe hemorrhage and multiple wounds.[10]

The Autopsy Report[11] dated May 23, 1989 and signed by Dr. Editha Decena-Tiu states that Francisco Ala's death was due to irreversible shock, severe hemorrhage and multiple wounds. The Post-Mortem Findings[12] confirmed twenty incised, stabbing and chopping wounds including complete amputating wounds over the victim's right and left wrists.

The defense presented the following witnesses: Lolito Andrales,[13] Arturo Balais and the accused himself.

Taken together, the testimonies of the defense witnesses established that on May 20, 1989 at about 2:00 p.m., Balais was in the house of Lolito Andrales having a drinking spree when he was informed that his friend, Noel Andrales, was stabbed. At about 5:00 p.m., Balais allegedly proceeded to the Carigara District Hospital where he found out that Noel Andrales was no longer there but had been referred to the EVRMC Hospital in Tacloban City. Balais allegedly proceeded to and arrived at EVRMC Hospital in Tacloban City at about 7:00 p.m. Since that time, he purportedly stayed there and attended to Noel Andrales until he left the hospital on May 22, 1989 at about 6:00 a.m.[14]

On November 18, 2003, the RTC rendered a Decision finding Balais guilty of the crime of murder and imposed upon him the penalty of death. The dispositive portion of the decision reads:

WHEREFORE, premises considered, pursuant to Art. 248 of the Revised Penal Code as amended, and further amended by R.A. 7659 (The Death Penalty Law), the Court found ESPERIDION BALAIS, GUILTY, beyond reasonable doubt of the crime of MURDER and sentenced to suffer the maximum penalty of DEATH and to pay civil indemnity ex [delicto], to the heirs of Francisco Ala the sum of Seventy-Five Thousand (P75,000.00) Pesos and pay temperate damages in the amount of Twenty-five Thousand (P25,000.00); and

Pay the Cost.

SO ORDERED.[15]

The case was automatically elevated to this Court because the penalty imposed was death. However, pursuant to our ruling in the case of *People v. Mateo*,[16] the case was transferred to the Court of Appeals.

The Court of Appeals, in a Decision promulgated on March 15, 2006, affirmed with modification the trial court's ruling and reduced the penalty to reclusion perpetua. The dispositive portion of the appellate court's decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING with MODIFICATION the Decision dated November 18, 2003 of the RTC in Carigara, Leyte in Criminal Case No. 2593 such that the accused-appellant is hereby sentenced to suffer the penalty of reclusion perpetua instead of death and he is hereby ordered to pay to the heirs of Francisco Ala the sum of P50,000.00 as civil indemnity ex [delicto] (*People vs. Samson*, 377 SCRA 25) instead of P75,000.00, the sum of P50,000.00 as moral damages, and the sum of P25,000.00 as exemplary damages.

SO ORDERED.[17]

In his appeal, Balais has assigned the following as errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER.

II.

THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE PENALTY OF DEATH.[18]

We shall now review the assailed decision, focusing on the abovesited assignment of errors. Simply stated, the issues are: (1) Is Balais guilty of murder? and (2) Is the penalty imposed on him correct?

Appellant Balais anchors his defense on alibi. He contends that at the time of the commission of the alleged crime on May 20, 1989 at approximately 11:30 p.m., he was at the EVRMC Hospital in Tacloban City purportedly attending to his friend, Noel Andrales, who was stabbed earlier that day.

His alibi was rejected by the RTC and the Court of Appeals. On this score, we are in agreement. The alibi cannot be sustained. Balais himself admitted that there were available means of transportation from Barugo, Leyte to Tacloban City at the time of the killing of Francisco Ala. It was shown that he himself rode a motorcycle from Barugo, Leyte to Tunga, Leyte, then on a bus going to Tacloban City. Indeed, one could take a round trip in a motor vehicle from Tacloban City to Barugo, Leyte and back to Tacloban City. Thus, it is not physically impossible for Balais to have visited Noel Andrales in the hospital on May 20, 1989 at about 7:00 p.m. and then go back to Brgy. Picas in Barugo, Leyte on the same night to commit the crime against the deceased Francisco Ala.

Alibi as a defense is often viewed with suspicion, because it is inherently weak and unreliable. For this defense to prosper, it must preclude any doubt about the physical impossibility of the presence of the accused at the locus criminis or its immediate vicinity at the time of the incident.[19]

Moreover, Balais' alibi cannot prevail over the positive identification of eyewitness Roman Garsain who positively identified Balais as a perpetrator of the gruesome crime.

The eyewitness testimony of Roman is as follows:

x x x x

Q:

At about 11:30 o'clock in the evening while you and your uncle Francisco Ala were celebrating the [vespers] day, do you recall of any untoward incident that transpired thereat?

A: Yes sir, I remember.

Q: What was that untoward incident that transpired?

A: At the time 11:30 o'clock in the evening, we were about to go home and we were waylaid by a person.

Q: You said we were about to go home, were you in fact going home at 11:30 o'clock in the evening?

A: Yes sir, we are about to go home at that time because I was informed by a person that my wife was about to deliver a baby.

x x x x

Q: Now, were there any other companion of yours other than your uncle Francisco Ala [on] your way home?

A: No sir.

Q: You said that [on] your way home, you were accosted by a person, who was that person who waylaid or accosted you and your uncle Francisco Ala?

A: Esperidion Balais and others.

Q: And who was that other person whom you are referring to that which (sic) was with Esperidion Balais?

A: I was not able to identify their names but they were about 5 to 6 people.

x x x x

Q: Could you describe the stone which (sic) they were hiding themselves?

A: No sir, they were not hiding but they were only sitting on the big stones and on the sides of the road are cogons and talahib grass, a little bit higher compared to an ordinary height of a person.

Q: Now, when this ambush incident came in, how far were you [from] the house of the Brgy. Captain?

A: About 250 meters because we had [to] cross the river.

x x x x

Q: And when you and your uncle [were] ambushed, where did Esperidion Balais place himself during that ambush?

A: Crossing to Brgy. Pongso, he was situated on the left side of the road.

Q: And what did Esperidion Balais do?

A: He delivered hacking blows.

Q: Upon whose person did he deliver hacking blows?

A: Francisco Ala.

Q: Was Francisco Ala hit?

A: Yes sir because before I ran I saw that he delivered 2 hacking blows.

Q: Was Francisco Ala hit by the hacking blows?

A: Yes sir, both hacking blows hit his head.

Q: How about the other companion[s], what did the other person[s] do?

A: They both [sic] delivered hacking blows, my uncle retreated to the place where there were tall grasses and his companions also went to the place where my uncle was and they all both (sic) delivered hacking blows, that's why my uncle's hands [were] decapitated (sic).

x x x x

Q: The incident happened about 11:30 o'clock in the evening, how come that you were able to identify the person of Esperidion Balais and his companion[s]?

A: Because the moon was bright and situated about 12:00 o'clock position.

Q: It was illuminated by virtue of a moonlight?

A: Yes sir.

Q: And for that reason you were able to identify Esperidion Balais?

A: Yes sir.[20] (Emphasis supplied.)

x x x x

Roman's testimony appears clear, straightforward and convincing. Positive identification of the accused, when categorical and without any ill motive on the part of the witness, prevails over alibi and denial which are negative and self-serving.

It is axiomatic that positive identification by the prosecution witnesses of the accused as perpetrator of the crime is entitled to greater weight than his alibi and denial.[21]

In the face of positive identification, Balais' denial vanishes into thin air. Indeed denial, like alibi, is an insipid and weak defense, being easy to fabricate and difficult to disprove. A positive identification of the accused, when categorical, consistent and straightforward, and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over this defense. When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[22]

Treachery was likewise correctly appreciated by the RTC and the Court of Appeals as qualifying the offense to murder in accordance with Article 248[23] of the Revised Penal Code. Treachery was alleged in the Information and proven during the course of the trial.

The essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked. There is treachery when the attack on the victim was made without giving the latter warning of any kind and thus rendering him unable to defend himself from an assailant's unexpected attack.[24]

In *People v. Javier*,[25] the defense asked this Court to discount the fact that the attack on the victim was executed treacherously, considering that the victim would have been able to see the approach of his would-be attackers. In refusing to discount the fact that treachery attended the crime, we reasoned that while a victim may have been warned of a possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[26] The case at bar presents a similar scenario, for while the victim might have been able to look around after Balais stabbed him, still the victim had no opportunity to defend himself. In fact, he had no inkling that he would be the target of five to six persons who waited for him at a place where he would be utterly defenseless when he left Brgy. Picas. As testified to by eyewitness Roman Garsain, they were merely on their way to Brgy. Roosevelt when they were waylaid and attacked. Clearly, they were in a helpless position.[27]

For *alevosia* to qualify the crime to murder, it must be shown that: (a) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (b) the said means, method and manner of execution were deliberately adopted. Treachery exists when any of the crimes against persons is committed with the employment of means, methods or forms that tend directly and specially to insure its execution, such that the offender faces no risk that may arise from the defense which the offended party might make. The essence of treachery is the swift and unexpected attack on an unsuspecting and unarmed victim who does not give the slightest provocation.[28]

In the instant case, Francisco Ala was attacked by Balais and his companions when Francisco was on his way to Brgy. Roosevelt, Barugo, Leyte. Francisco sustained twenty hacking, stabbing, chopping and amputating wounds all over his body. The skull of the victim was completely cut, exposing the brain, with the left and right wrists completely amputated. From the nature, location and number of stabbing, hacking, amputating wounds sustained by the deceased, it is apparent that treachery was attendant in the commission of the crime. Even if the attack was frontal, the same is treacherous when unexpected and the unarmed victim would be in no position to repel the

attack and avoid it.

We therefore affirm the ruling of the RTC, which was sustained by the Court of Appeals, finding Balais guilty of murder.

As to the second issue of whether or not the penalty of death should be imposed on him, we agree with the Court of Appeals that the RTC erred in finding that the killing was attended by the aggravating circumstances of nighttime and conspiracy.

On record, there is no showing that Balais and his companions deliberately sought nighttime and took advantage thereof to facilitate the perpetration of the crime or insure its commission.[29] By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender and taken advantage of by him to facilitate the commission of the crime to insure his immunity from capture. Stated differently, in default of any showing that the peculiar advantage of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnidad. To be aggravating, this circumstance must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.[30]

Moreover, in *People v. Necerio*,[31] this Court held that nighttime should not have been considered a separate aggravating circumstance as this was absorbed by alevosia.[32]

Beyond question, the crime took place in a well-lighted area which, consequently, enabled a prosecution witness to identify Balais as one of the killers. As held by this Honorable Court in several cases, nocturnity is not aggravating where the place of the commission of the crime was well illuminated.[33]

Since treachery qualified the killing to murder and there being no aggravating nor mitigating circumstance, the penalty imposed should have been reclusion perpetua and not death, applying Article 63[34] of the Revised Penal Code.

As for damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[35]

The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Hence, the award of civil indemnity of P50,000.00 to the heirs of Francisco Ala is proper.[36]

The RTC correctly awarded moral damages in the amount of P50,000.00 in view of the violent death of the victim and the resultant grief to his family.[37]

The award of exemplary damages[38] is also warranted because of the presence of the qualifying aggravating circumstance of treachery in the commission of the crime. This is in accordance with our ruling in *People v. Catubig*[39] where we emphasized that insofar as the civil aspect of the crime is concerned, exemplary damages in the amount of P25,000.00 is recoverable if there is present an aggravating circumstance (whether qualifying or ordinary) in the commission of the crime.[40]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR. H.C. No. 00163 promulgated on March 15, 2006 affirming with modification the Decision dated November 18, 2003 of the Regional Trial Court of Carigara, Leyte, Branch 13, in Criminal Case No. 2593 is **AFFIRMED**. Appellant Esperidion Balais is found **GUILTY** beyond reasonable doubt of **MURDER** as defined in Article 248 of the Revised Penal Code, qualified by treachery, with no aggravating or mitigating circumstances and he is sentenced to suffer the penalty of Reclusion

Perpetua. The appellant is further ORDERED to pay the heirs of Francisco Ala the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages, all with interest at the legal rate of six percent (6%) per annum from this date until fully paid.

No pronouncement as to costs.

**SO ORDERED.**

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Rollo, pp. 5-14. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzas concurring.

[2] CA rollo, pp. 16-30. Penned by Presiding Judge Crisostomo L. Garrido.

[3] Records, pp. 1-2.

[4] Id. at 13.

[5] Id. at 15.

[6] Id. at 17.

[7] Id. at 20.

[8] Id. at 85. TSN, January 16, 2003, pp. 3-9.

[9] Id. at 86. TSN, February 10, 2003, pp. 3-5.

[10] Id. TSN, March 4, 2003, pp. 2-3.

[11] Exhibit "B," records.

[12] Id.

[13] Adrales in some parts of the record.

[14] Rollo, pp. 9-10.

[15] CA rollo, pp. 29-30.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] Rollo, pp. 13-14.

[18] CA rollo, p. 42.

[19] *People v. Navales*, G.R. No. 135230, August 8, 2000, 337 SCRA 436, 449.

[20] TSN, January 16, 2003, pp. 4-8.

[21] *People v. Manegdeg*, G.R. No. 115470, October 13, 1999, 316 SCRA 689, 704.

[22] *People v. Bacungay*, G.R. No. 125017, March 12, 2002, 379 SCRA 22, 31.

[23] ART. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following

attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
- In consideration of a price, reward or promise.
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
- With evident premeditation.
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by R.A. 7659.) (Emphasis supplied.)

[24] *People v. Ronato*, G.R. No. 124298, October 11, 1999, 316 SCRA 433, 441-442.

[25] G.R. No. 84449, March 4, 1997, 269 SCRA 181.

[26] *Id.* at 196.

[27] *People v. Ronato*, *supra* at 442.

[28] *People v. Bermas*, G.R. Nos. 76416 and 94312, July 5, 1999, 309 SCRA 741, 778.

[29] *People v. Bato*, No. L-23405, December 29, 1967, 21 SCRA 1445, 1448.

[30] *People v. Boyles*, No. L-15308, May 29, 1964, 11 SCRA 88, 94.

[31] G.R. No. 98430, July 10, 1992, 211 SCRA 415.

[32] *Id.* at 422.

[33] *People v. Rosario*, G.R. No. 108789, July 18, 1995, 246 SCRA 658, 670-671; *People v. Bato*, *supra* note 29.

[34] ART. 63. Rules for the application of indivisible penalties. -- In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

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:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of

applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Emphasis supplied.)

[35] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742.

[36] *People v. Piliin*, G.R. No. 172966, February 8, 2007, 515 SCRA 207, 218.

[37] *People v. Tubongbanua*, *supra* at 743.

[38] Civil Code of the Philippines,

#### SECTION 5. - Exemplary or Corrective Damages

ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[39] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[40] *People v. Samson*, G.R. No. 124666, February 15, 2002, 377 SCRA 25, 38.

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