

GIOVANI SERRANO Y CERVANTES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 175023. July 05, 2010

Ponente: BRION, J.

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BRION, J.:

We review in this petition for review on certiorari[1] the decision[2] dated July 20, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 29090, entitled "People of the Philippines v. Giovanni Serrano y Cervantes." The CA modified the decision dated October 25, 2004[3] of the Regional Trial Court[4] (RTC), Branch 83, Quezon City, and found petitioner Giovanni Serrano y Cervantes (petitioner) guilty beyond reasonable doubt of attempted homicide, instead of frustrated homicide.

THE FACTS

The case stemmed from a brawl involving 15 to 18 members of two (2) rival groups that occurred at the University of the Philippines, Diliman, Quezon City (UP) on the evening of March 8, 1999. The incident resulted in the stabbing of Anthony Galang (victim). Pinpointed as the victim's assailant, the petitioner was charged on March 11, 1999,[5] with frustrated homicide in an Information that reads:

That on or about the 8[th] day of March 1999, in Quezon City, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ANTHONY GALANG Y LAGUNSA, by then and there stabbing him on the stomach with a bladed weapon, thus performing all the acts of execution which should have produced the crime of homicide, as a consequence but which nevertheless did not produce it, by reason of some causes independent of the will of the accused; that is the timely and able medical assistance rendered to said ANTHONY GALANG Y LAGUNSA which prevented his death, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[6]

On March 20, 2000, the petitioner pleaded not guilty. During the pre-trial, the prosecution and the defense agreed to dispense with the testimonies of SPO2 Isagani dela Paz and the records custodian of East Avenue Medical Center on the basis of the following stipulations: (1) SPO2 dela Paz was the one who conducted the investigation; (2) SPO2 dela Paz took the statement of the victim at the East Avenue Medical Center; (3) the victim was able to narrate the story of the incident to SPO2 dela Paz before he underwent surgery; (4) SPO2 dela Paz prepared a referral-letter to the city prosecutor; (5) SPO2 dela Paz had no personal knowledge of the incident; and (6) the victim was confined for treatment at the East Avenue Medical Center from March 8, 1999, and the documents referring to his confinement and treatment were duly executed and authenticated.[7] After these stipulations, trial on the merits immediately followed.

The Prosecution's Evidence

The prosecution presented the victim, Arlo Angelo Arceo, Sgt. Rolando Zoletto, and SPO2 Roderick Dalit.

These witnesses testified that, at around 9:30 p.m. of March 8, 1999, the victim and his two friends, Arceo and Richard Tan, were on their way to Fatima II in Pook Dagohoy, UP Campus when they came across Gener Serrano, the petitioner's brother, who was with his group of friends. The victim, Arceo and Tan approached Gener and his friends to settle a previous quarrel between Gener and Roberto Comia. While the victim and Gener were talking, Comia suddenly appeared and hurled invectives at Gener. Irked, Gener challenged Comia to a fistfight to settle their quarrel once and for all; Comia rose to the challenge.

It was at this point that the petitioner appeared with other members of his group. He was a guest at a party nearby, and was informed that a fight was about to take place between his brother and Comia. Members of the victim's group also started to show up.

The petitioner watched Gener fight Comia. When Gener lost the fight, the petitioner sought to get back at the victim and his friends. Thus, the one-on-one escalated into a rumble between the members of the two groups. During the rumble, and with the aid of the light emanating from two Meralco posts, the victim and Arceo saw that the petitioner had a knife and used it to chase away the members of their group. The petitioner also chased Arceo away, leaving the victim alone; the petitioner's group ganged up on him.

The petitioner went to where the victim was being beaten by Gener and one Obet Orieta. It was then that the victim was stabbed. The petitioner stabbed the left side of his stomach while he was standing, with Gener and Orieta holding his arms. The petitioner, Gener and Orieta thereafter continued to beat and stone the victim until he fell into a nearby creek. The petitioner and his group left him there.

From his fallen position, the victim inspected his stab wound and saw that a portion of his intestines showed. On foot, he went to find help. The victim was initially taken to the UP Infirmary, but was referred to the East Avenue Medical Center where he underwent surgery. The victim stayed at the hospital for a week, and thereafter stayed home for one month to recuperate.

In the investigation that immediately followed, the victim identified the petitioner as the person who stabbed him. In court, the victim likewise positively identified the petitioner as his assailant.

THE DEFENSE'S EVIDENCE

The defense presented the testimonies of the petitioner, Gener, and George Hipolito.

The petitioner denied that he stabbed the victim. While he admitted that he was present during the fistfight between Gener and Comia, he claimed that he and Gener left as soon as the rumble started. The petitioner testified that as he and Gener were running away from the scene (to get back to the party), bottles and stones were being thrown at them.

Hipolito, a participant in the rumble and a member of the petitioner's group, narrated that the rumble happened fast and he was too busy defending himself to take note of everything that happened. He testified that he did not see the petitioner and Gener during the fight. He also testified that the place where the rumble took place was near a steel manufacturing shop which provided some light to the area. He further testified that the victim was left alone at the scene and he alone faced the rival group.

The RTC Ruling

After considering the evidence, the trial court found the petitioner guilty beyond reasonable doubt of frustrated homicide. It held, thus:

The bare statement of Giovanni Serrano that he did not stab Anthony and he really does not know who might

have stabbed Anthony is outweighed by the positive identification by Anthony that Giovanni stabbed him frontally while they faced each other and also the circumstantial evidence pointing to him as the wielder of the knife. Naturally, Giovanni Serrano would feign ignorance as to who stabbed Anthony but there is no way that he can avoid said direct and circumstantial evidences.[8]

Accordingly, the RTC decision disposed:

WHEREFORE, the prosecution having established the guilt of accused GIOVANI SERRANO Y CERVANTES of the offense of FRUSTRATED HOMICIDE beyond reasonable doubt, this Court finds him GUILTY thereof and hereby sentences him to undergo imprisonment of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as minimum to TEN (10) YEARS of prision mayor as maximum.

Accused Giovanni Serrano is hereby ordered to reimburse to complainant Anthony Galang the medical expenses incurred by the latter in his hospitalization and treatment of his injuries in the amount of FIFTEEN THOUSAND PESOS (P15,000.00) and loss of income for one (1) month in the amount of FOUR THOUSAND PESOS (P4,000.00) or the total amount of NINETEEN THOUSAND PESOS (P19,000.00).

Costs against the accused.

SO ORDERED.[9]

The petitioner appealed to the CA. He claimed that the inconsistencies in the victim's testimony rendered it incredible, but the RTC disregarded the claim. The RTC also disregarded the evidence that the dimness of the light in the crime scene made it impossible for the victim to identify his assailant.

THE CA RULING

In its decision, the CA agreed with the RTC that the petitioner had been positively identified as the victim's assailant. The CA, however, ruled that the crime committed was attempted homicide, not frustrated homicide. The CA ruled that the prosecution evidence failed to conclusively show that the victim's single stab wound was sufficient to cause death without timely medical intervention. In support of its conclusion, the CA said that:

Thus, in *Paddayuman v. People* (G.R. No. 120344, 23 January 2002), appellant's conviction for attempted homicide was upheld because there was no evidence that the wounds suffered by the victim were fatal enough as to cause her demise. Thus:

x x x petitioner stabbed the victim twice on the chest, which is indicative of an intent to kill. x x x This can be gleaned from the testimony of Dr. Pintucan who did not categorically state whether or not the wounds were fatal. x x x (I)n *People v. Pilonas*, this Court held that even if the victim was wounded but the injury was not fatal and could not cause his death, the crime would only be attempted.

Similarly, in the case of *People v. Costales* (G.R. No. 141154, 15 January 2002), where the offense charged was frustrated murder, the trial court rendered a verdict of guilty for attempted murder because the prosecution failed to present a medical certificate or competent testimonial evidence which will prove that the victim would have died from her wound without medical intervention. Citing *People v. De La Cruz*, the Supreme Court sustained the trial court and stressed that:

x x x the crime committed for the shooting of the victim was attempted murder and not frustrated murder for the reason that "his injuries, though no doubt serious, were not proved fatal such that without timely medical intervention, they would have caused his death.[10]

Thus, the CA modified the RTC decision. The dispositive portion of the CA decision reads:

WHEREFORE, with the MODIFICATIONS that:

1) Appellant is found GUILTY beyond reasonable doubt of the crime of ATTEMPTED HOMICIDE and sentenced to suffer the indeterminate penalty of imprisonment of SIX (6) MONTHS of arresto mayor as minimum to FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as maximum;

2) The actual damages is REDUCED to P3,858.50; and

3) The award of loss earnings is DELETED,

The appealed decision is AFFIRMED in all other respects.

SO ORDERED.[11]

Undaunted, the petitioner filed this present petition.

THE ISSUES

The petitioner raises the following issues for the Court's consideration:

A

THE COURT OF APPEALS ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

B

THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION, WHICH WERE BASED ON MERE SPECULATION AND CONJECTURE.

C

THE COURT OF APPEALS GRAVELY ERRED IN OVERLOOKING THE FACT THAT THE STABBING INCIDENT OCCURRED IN THE MIDDLE OF A STREET BRAWL, WHERE ANYBODY OF THE NUMEROUS PARTICIPANTS COULD HAVE BEEN THE ASSAILANT.

D

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.[12]

The petitioner claims that the lower courts' decisions were erroneous based on two-pronged arguments - first, he cannot be convicted because he was not positively identified by a credible testimony; and second, if he is criminally culpable, he can only be convicted of serious physical injuries as the intent to kill the victim was not sufficiently proven.

THE COURT RULING

We do not find merit in the petitioner's arguments, and accordingly hold that the petition is devoid of merit.

At the outset, we clarify that we shall no longer deal with the correctness of the RTC and the CA's appreciation of the victim's identification of the petitioner as his assailant. This is a question of fact that we cannot entertain in a Rule 45 review, save for exceptional reasons[13] that must be clearly and convincingly shown. As a rule, we accord the greatest respect for the findings of the lower courts, especially the evaluation by the trial judge who had the distinct opportunity to directly hear and observe the witnesses and their testimonies. As we explained in

People v. Lucena[14] -

[It] has been consistently held by this Court that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch - these can reveal if the witness is telling the truth or lying through his teeth.[15]

In this regard, the petitioner cites an exception - the lower courts' misappreciation of the testimonial evidence. Due consideration of the records, however, does not support the petitioner's position. We find that the RTC and the CA did not err in their appreciation of the evidence.

The petitioner was positively identified

The RTC's and CA's conclusions on the petitioner's positive identification are supported by ample evidence. We consider in this regard the following pieces of evidence of the prosecution: (1) the manner of attack which was done frontally and at close range, thus allowing the victim to see his assailant; (2) the lighting conditions at the scene of the stabbing, provided by two Meralco posts;[16] the scene was also illuminated by "white, fluorescent type" light coming from a steel manufacturing shop;[17] and (3) that the victim and the petitioner knew each other also allowed the victim to readily identify the petitioner as his assailant.

The victim's credibility is further strengthened by his lack of improper motive to falsely accuse the petitioner of the crime. Human experience tells us that it is unnatural for a victim to accuse someone other than his actual attacker; in the normal course of things, the victim would have the earnest desire to bring the guilty person to justice, and no other. We consider, too, that the victim consistently and positively, in and out of court, identified the petitioner as his assailant. The victim testified that the petitioner was a neighbor who lived just a few houses away from his house.

We also take into account the evidence that the petitioner was the only one seen in possession of a knife during the rumble. The victim testified that he saw the petitioner holding a knife which he used to chase away others.[18] Prosecution witness Arceo testified that he also saw the petitioner wielding a knife during the rumble.

Based on these considerations, we find the victim's identification of the petitioner as his assailant to be positive and conclusive.

In contrast, we find the inconsistencies attributed to the victim to be minor and insufficient to discredit his testimony. These inconsistencies refer to extraneous matters that happened during the rumble, not directly bearing on the stabbing. They do not likewise relate to the material elements of the crime.

We also cannot give any credit to the petitioner's position that the victim's failure to identify the weapon used to stab him discredited his testimony. The victim's failure to identify the weapon is irrelevant under the circumstances, considering that the identity of the weapon is not an element of the crime charged.

The intent to kill was sufficiently established

The petitioner posits that he can only be held liable for serious physical injuries since the intent to kill, the necessary element to characterize the crime as homicide, was not sufficiently proven. The assailant's intent to kill is the main element that distinguishes the crime of physical injuries from the crime of homicide. The crime can only be homicide if the intent to kill is proven.

Intent to kill is a state of mind that the courts can discern only through external manifestations, i.e., acts and conduct of the accused at the time of the assault and immediately thereafter. In *Rivera v. People*,^[19] we considered the following factors to determine the presence of an intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. We also consider motive and the words uttered by the offender at the time he inflicted injuries on the victim as additional determinative factors.^[20]

In this case, the records show that the petitioner used a knife in his assault. The petitioner stabbed the victim in the abdomen while the latter was held by Gener and Orieta. Immediately after the stabbing, the petitioner, Gener and Orieta beat and stoned the victim until he fell into a creek. It was only then that the petitioner, Gener and Orieta left. We consider in this regard that the stabbing occurred at around 9:30 p.m. with only the petitioner, Gener, Orieta, and the victim as the only persons left in the area. The CA aptly observed that a reasonable inference can be made that the victim was left for dead when he fell into the creek.

Under these circumstances, we are convinced that the petitioner, in stabbing, beating and stoning the victim, intended to kill him. Thus, the crime committed cannot be merely serious physical injuries.

Frustrated homicide versus attempted homicide

Since the victim did not die, the issue posed to us is the stage of execution of the crime. The lower courts differed in their legal conclusions.

On one hand, the RTC held that the crime committed reached the frustrated stage since the victim was stabbed on the left side of his stomach and beaten until he fell into a creek.^[21] The RTC also took into account that the victim had to be referred by the UP Infirmary to the East Avenue Medical Center for medical treatment.^[22]

On the other hand, the CA ruled that the crime committed only reached the attempted stage as there was lack of evidence that the stab wound inflicted was fatal to cause the victim's death.^[23] The CA observed that the attending physician did not testify in court.^[24] The CA also considered that the Medical Certificate and the Discharge Summary issued by the East Avenue Medical Center fell short of "specifying the nature or gravity of the wound."^[25]

Article 6 of the Revised Penal Code, as amended defines the stages of a felony in the following manner:

ART. 6. Consummated, frustrated, and attempted felonies. - Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. [Emphasis and italics supplied.]

In *Palaganas v. People*,^[26] we made the following distinctions between frustrated and attempted felony as follows:

- 1.) In frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in attempted felony, the offender merely commences the commission of a felony

directly by overt acts and does not perform all the acts of execution.

2.) In frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.[27]

The crucial point to consider is the nature of the wound inflicted which must be supported by independent proof showing that the wound inflicted was sufficient to cause the victim's death without timely medical intervention.

In discussing the importance of ascertaining the degree of injury sustained by a victim and its importance in determining criminal liability, the Court in *People v. Matyaong*, said:[28]

In considering the extent of injury done, account must be taken of the injury to the function of the various organs, and also the danger to life. A division into mortal and nonmortal wounds, if it could be made, would be very desirable; but the unexpected complications and the various extraneous causes which give gravity to the simplest cases, and, on the other hand, the favorable termination of some injuries apparently the most dangerous, render any such classification impracticable. The general classification into slight, severe, dangerous, and mortal wounds may be used, but the possibility of the slight wound terminating with the loss of the person's life, and the apparently mortal ending with only a slight impairment of some function, must always be kept in mind. x x x

The danger to life of any wound is dependent upon a number of factors: the extent of the injury, the form of the wound, the region of the body affected, the blood vessels, nerves, or organs involved, the entrance of disease-producing bacteria or other organisms into the wound, the age and constitution of the person injured, and the opportunities for administering proper surgical treatment.

When nothing in the evidence shows that the wound would be fatal without medical intervention, the character of the wound enters the realm of doubt; under this situation, the doubt created by the lack of evidence should be resolved in favor of the petitioner. Thus, the crime committed should be attempted, not frustrated, homicide.[29]

Under these standards, we agree with the CA's conclusion. From all accounts, although the stab wound could have been fatal since the victim testified that he saw his intestines showed, no exact evidence exists to prove the gravity of the wound; hence, we cannot consider the stab wound as sufficient to cause death. As correctly observed by the CA, the victim's attending physician did not testify on the gravity of the wound inflicted on the victim. We consider, too, the CA's observation that the medical certifications issued by the East Avenue Medical Center merely stated the location of the wound.[30] There was also no proof that without timely medical intervention, the victim would have died.[31] This paucity of proof must necessarily favor the petitioner.

The view from the "frustrated" stage of the crime gives the same results. The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[32] Since the prosecution failed to prove the second element, we cannot hold the petitioner liable for frustrated homicide.

THE PENALTY

Article 51 of the Revised Penal Code, as amended, provides that the imposable penalty for an attempted crime shall be lower by two degrees than that prescribed by law for the consummated felony.

Under Article 249, the crime of homicide is punished by reclusion temporal. Applying Article 61 (Rules of graduating penalties) and Article 71 (Graduated scales), two (2) degrees lower of reclusion temporal is prison

correccional which has a duration of six (6) months and one (1) day to six (6) years.

Under the Indeterminate Sentence Law, the maximum term of the indeterminate sentence shall be taken, in view of the attending circumstances that could be properly imposed under the rules of the Revised Penal Code, and the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.[33] Thus, the maximum term of the indeterminate sentence shall be taken within the range of prision correccional, depending on the modifying circumstances. In turn, the minimum term of the indeterminate penalty to be imposed shall be taken from the penalty one degree lower of prision correccional, that is arresto mayor with a duration of one (1) month and one (1) day to six (6) months.

In the absence of any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of prision correccional or two (2) years and four (4) months and one (1) day to four (4) years and two (2) months.[34] The minimum term shall be taken within the range of arresto mayor. Hence, the penalty imposed by the CA against the petitioner of six (6) months of arresto mayor, as minimum term of the indeterminate penalty, to four (4) years and two (2) months of prision correccional, as maximum term of the indeterminate penalty, is correct.

THE CIVIL LIABILITY

We modify the CA decision with respect to the petitioner's civil liability. The CA ordered actual damages to be paid in the amount of P3,858.50. This is erroneous and contrary to the prevailing jurisprudence.

In *People v. Andres*,[35] we held that if the actual damages, proven by receipts during the trial, amount to less than P25,000.00, the victim shall be entitled to temperate damages in the amount of P25,000.00, in lieu of actual damages. The award of temperate damages is based on Article 2224 of the New Civil Code which states that temperate or moderate damages may be recovered when the court finds that some pecuniary loss was suffered but its amount cannot be proven with certainty. In this case, the victim is entitled to the award of P25,000.00 as temperate damages considering that the amount of actual damages is only P3,858.50. The amount of actual damages shall be deleted.

Lastly, we find that the victim is also entitled to moral damages in the amount of P10,000.00 in accordance with settled jurisprudence.[36] Under Article 2219, paragraph 1 of the New Civil Code, the victim is entitled to moral damages in a criminal offense resulting in physical injuries.

WHEREFORE, we hereby DENY the petition. The decision, dated July 20, 2006, of the Court of Appeals in CA-G.R. CR No. 29090, finding petitioner *Giovani Serrano y Cervantes* guilty beyond reasonable doubt of Attempted Homicide, is AFFIRMED with MODIFICATION. The petitioner is ORDERED to PAY the victim, *Anthony Galang*, the following amounts:

- (1) P25,000.00 as temperate damages; and
- (2) P10,000.00 as moral damages.

Costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, [*]Abad, and Villarama, Jr., JJ. concur.

[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 27-42. Penned by CA Associate Justice Rebecca de Guia-Salvador, with Presiding CA Justice (now retired Supreme Court Associate Justice) Ruben T. Reyes and CA Associate Justice (now retired) Monina Arevalo-Zeñarosa concurring.

[3] Criminal Case No. Q-99-81784; id. at 46-73.

[4] Penned by Judge Estrella T. Estrada.

[5] Rollo, p. 46.

[6] Ibid.

[7] Id. at 47.

[8] Id. at 72.

[9] Id. at 73.

[10] Id. at 37-38.

[11] Id. at 41-42.

[12] Id. at 9-10.

[13] They are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and, (11) such findings are contrary to the admissions of both parties; *Pelonia v. People*, G.R. No. 168997, April 13, 2007, 521 SCRA 207.

[14] 408 Phil. 172, 183 (2001).

[15] Id. at 183.

[16] Rollo, p. 33.

[17] Id. at 34.

[18] Id. at 48.

[19] G.R. No. 166326, January 25, 2006, 480 SCRA 188, 197, citing *People v. Delim*, 444 Phil. 430, 450 (2003).

[20] *Epifanio v. People*, G.R. No. 157057, June 26, 2007, 525 SCRA 552, 562.

[21] Rollo, p. 68.

[22] Id. at 69.

[23] Id. at 32.

[24] Ibid.

[25] Ibid.

[26] G.R. No. 165483, September 12, 2006, 501 SCRA 533.

[27] *Id.* at 535.

[28] 411 Phil. 938, 948 (2001), cited in *Epifanio v. People*, *supra* note 21, at 563.

[29] *Epifanio v. People*, *supra* note 21, at 563-564; also see *Paddayuman v. People*, G.R. No. 120344. January 23, 2002, 374 SCRA 278, 288.

[30] *Rollo*, p. 40.

[31] *Ingles v. CA*, G.R. No. 117161, March 3, 1997, 269 SCRA 122, 130.

[32] *Mahawan v. People*, G.R. No. 176609, December 18, 2008, 574 SCRA 737, 758.

[33] Section 1.

[34] Applying Article 64 of the Revised Penal Code, as amended.

[35] G.R. Nos. 135697-98, August 15, 2003, 409 SCRA 141, 152.

[36] *People v. Flores*, G.R. Nos. 143435-36, November 28, 2003, 416 SCRA 612.

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