

PEOPLE OF THE PHILIPPINES, Appellee, vs. CHRISTOPHER TABUELOG y CLAOR, Appellant.

G.R. No. 178059. January 22, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Assailed in the instant petition for review on certiorari is the Decision of the Court of Appeals dated November 30, 2006 in CA-G.R. CR No. 01038[1] affirming the Decision of the Regional Trial Court of Laoag City, Branch 16 in Crim. Case No. 10408-16[2] finding appellant Christopher Tabuelog guilty of murder and sentencing him to suffer the penalty of reclusion perpetua.

On October 14, 2002, an Information[3] was filed charging appellant with murder committed as follows:

That on or about the 12[th] day of October, 2002, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously stabbed from behind Clinton Badinas on the left side of his body that resulted to his instantaneous death.

CONTRARY TO LAW.

Appellant pleaded not guilty when arraigned on October 25, 2002.[4]

During pre-trial conference, the parties agreed on the following stipulation of facts, to wit:

That the defense admits that whenever prosecution witnesses mentioned the name Christopher Tabuelog they would be referring to the accused who is charged and arraigned under the Information;

That on October 12, 2002 accused was a student of Abra Valley Colleges, Bangued, Abra;

That said accused joined a field trip in Calayab Beach, Laoag City;

That his group was at the Calayab Beach at 4:00 o'clock in the afternoon;

That the accused admits that he stabbed Clinton Badinas on or about that time on said place and as a consequence of the wound he sustained Clinton Badinas died.

The prosecution and defense agreed into the following issues:

Whether or not the stabbing of Clinton Badinas by the accused was attended by treachery and whether or not the accused acted in self defense in stabbing Clinton Badinas.[5]

Trial on the merits thereafter ensued.

The facts as found by the trial court are as follows:

The witnesses for the prosecution were Jay-arr Martinez, Dr. Rodrigo Catcatan of the Laoag City General Hospital and the mother of the deceased who testified on the civil aspect.

Jay-arr Martinez testified that:

On October 12, 2002, the students of Abra Valley College has a field trip to Fort Ilocandia, Brgy. 37, Calayab, Laoag City. He went with Great Ceasar Martinez, Banie Mosilet, Clinton Badinas and Tom Tejada in an owner-type jeep arriving at the place at 9:30 o'clock in the morning. As the jeep was parked near one of the cottages in the area, the victim was conversing with a (former) teacher inside a cottage about two (2) meters away, while Great Ceasar Martinez, Tom Tejada, Jay-Arr Martinez and Banie Mosilet were at the jeep. Suddenly, Roger Domingo came and shouted to Great Ceasar Martinez "You are fooling; I am from Bangued (Abra)!" The latter was allegedly mad and drunk at that instance. The victim came to pacify Roger Domingo by placing his arm over his shoulder and saying "pacencia ka ta nabartek." The victim eventually led Domingo away. At that juncture, the accused came behind the victim and Domingo, and when near, drew a knife. Using his left hand, he stabbed the left side of the body of the victim. Immediately, the accused ran towards the mini-bus (presumably their vehicle for the field trip) eighty (80) meters away, chased by the victim, Banie Mosilet and Great Ceasar Martinez. They were not able to catch the accused though because the victim pleaded to be rushed to the hospital. Using the jeep, the victim was brought to the Laoag City General Hospital where he was pronounced dead.

According to Dr. Rodrigo Catcatan the victim sustained the following wounds: Stab wound, 3-4 centimeters, level 6-7 Intercostal Space (ICS), left. The penetration could have damaged the heart and lungs of the victim, which caused his death and the assailant could have been southwest of the victim.

The defense, on the other hand, presented a different scenario. According to the accused, they were on a field trip together with the other Criminology students of the Abra Valley College at the Fort Ilocandia Beach Resort (Calayab Beach), Brgy. Calayab, Laoag City. After hearing a lecture on Police Photography, they had a drinking session inside one of the cottages, together with Roger Domingo, Adrian Benabese and others. The victim, Great Ceasar Martinez and Jay-Arr Martinez likewise participated in the drinking session. About five together with Great Ceasar Martinez and Jay-Arr Martinez used in joining the field trip.

It was after the group finished drinking at about three to four o'clock in the afternoon that the accused heard Roger Domingo and Great Ceasar Martinez quarreling in front of the cottage. Next, he heard Great Ceasar shouted "Uncle Clinton, come here!" Clinton Badinas then appeared in front of the cottage coming from the back, and in the process picked up a bottle and broke it (by using) a post.

Afterwards, the victim chased Domingo around the jeep. The accused, seeing the circumstances unfolding, shouted for Roger to stop, to which the victim reacted by next facing the accused. At a distance of one to two (1-2) meters away from each other, the victim tried to stab the chest of the accused, reason for which the latter moved backwards in an attempt to evade the stabbing act. Unfortunately, he fell down to the ground as result. The victim allegedly continued going near the accused, stopping to stab him, to which the latter responded by wiggling and sliding back to avoid the attack. While doing so, the victim was continuously assaulting him with the broken bottle he was holding. The accused consequently threw a water pitcher hitting the breast of the victim, and likewise continued to wiggle backwards and attempted to hold a knife used in chopping ice. However, the victim still tried to stab him by going "on top of him" when accused was sitting on his buttocks and wiggled away with his two hands. The victim pushed him on his breast while holding the broken bottle and accused was leaning backward, supporting himself with his two hands. In that position, the accused was able to grasp the knife and swayed it upward with his right hand. The knife hit the area below the armpit of the victim. The accused then took this opportunity to run at the parked mini bus.[6]

The trial court found the version of the prosecution credible thus rejecting appellant's theory of self-defense. On May 6, 2005, the trial court rendered a Decision finding appellant guilty of murder, the dispositive portion of which reads:

WHEREFORE, premises considered, for failure of the accused to prove self-defense, complete or incomplete,

and the fact that the prosecution was able to prove the qualifying aggravating circumstance of treachery beyond reasonable doubt in the killing of CLINTON BADINAS, the accused CHRISTOPHER TABUELOG is hereby found GUILTY of the crime of Murder under Article 248 of the Revised Penal Code and the penalty of Reclusion Perpetua with all its accessory penalties is imposed upon him.

He is also Ordered to pay the heirs of CLINTON BADINAS Fifty Thousand Pesos (P50,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages; and One Hundred Thirteen Thousand Seven Hundred Seventy Six Pesos (P113,776.00) as actual damages being the amount agreed upon during the trial; and the Costs.

SO ORDERED.[7]

On appeal, the Court of Appeals affirmed in toto the Decision of the trial court.

Hence, this petition.

Appellant alleges that the justifying circumstance of self-defense was not properly considered in his favor; that assuming the killing was committed not in self-defense, still the courts below erred in appreciating the qualifying circumstance of treachery.

The petition is partly meritorious.

In invoking self-defense, whether complete or incomplete, the onus probandi is shifted to the accused to prove by clear and convincing evidence all the elements of justifying circumstance, namely: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.[8]

The accused, in cases of self-defense, must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence since he admits the commission of the alleged criminal act. One who admits the infliction of injuries which caused the death of another has the burden of proving self-defense with sufficient and convincing evidence, for even if the evidence of the prosecution were weak, it could not be disbelieved after the accused himself had admitted the killing. Self-defense, like alibi, is a defense which can easily be concocted. If the accused's evidence is of doubtful veracity, and it is not clear and convincing, the defense must necessarily fail.[9]

We agree with the findings of the trial court as affirmed by the Court of Appeals that the defense miserably failed to establish the elements of self-defense namely: a) unlawful aggression on the part of the victim; b) the reasonable necessity of the means employed to prevent or repel it; and c) lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression presupposes not merely a threatening or an intimidating attitude, but an actual, sudden and unexpected attack or an imminent danger thereof, which imperils one's life or limb. It is the first and primordial element of self-defense. Without it, the justifying circumstance cannot be invoked.[10]

In the instant case, appellant failed to establish unlawful aggression on the part of the victim; moreover, his narration of the events was unbelievable. As correctly observed by the trial court, considering the alleged disadvantageous position of the appellant and the relentless assault from the victim, it is surprising that appellant remained unscathed. The presence of a pitcher and a knife conveniently within the reach of appellant was highly suspect and coincidental. As noted by the trial court, "the presence of a pitcher of water which the accused picked up to repel the attack of the deceased and the knife which the accused was able to grasp and swung it to the (victim) hitting him near the left armpit seems to suggest that pitchers and knives are scattered around Fort Ilocandia." [11] Moreover, if it were true that the victim was pursuing Roger Domingo with a broken bottle, then

it is preposterous for the appellant to shout at and order Domingo, instead of the victim, to stop, thus putting Domingo's life at risk. Further, if Domingo stopped as narrated by appellant, then it is inconceivable that he was not harmed by his alleged pursuer.

The testimony of Roger Domingo who was presented as a defense witness did not help or strengthen the defense's theory. In fact, Domingo's testimony was full of inconsistencies and improbabilities that it deserves no credence at all. Prosecution witness Jay-arr Martinez, as well as the appellant, testified that the stabbing incident was precipitated by an argument between Great Ceasar Martinez and Roger Domingo, to wit:

Testimony of Jay-arr Martinez:

q

After Roger Domingo went near the passenger seat in front of the owner jeep, what happened again?

a

I heard him uttered, you are fooling, I am from Bangued.

q

And to whom did Roger Domingo addressed?

a

Great Ceasar Martinez, madam.

q

At the time what did you observe with this Roger Domingo?

a

He was mad.[12]

Testimony of appellant Christopher Tabuelog:

q

While you were there inside the cottage, what happened?

a

I heard somebody quarelling, sir.

q

And do you recognized who are those persons quarelling?

a

Yes, sir.

q

And, who are they, Mr. Witness?

a

Roger Romindo (Domingo) and Great Cesar Martinez, sir.

q

Where were they quarelling in relation to you inside the cottage?

a

Infront of the cottage where I stayed, sir.

q

And what did you hear while they were quarelling?

a

Roger Domingo prohibits Great Cesar Martinez to make the niece of Roger Domingo as his girlfriend, sir.

q

While they were quarelling, what happened?

a

I heard Great Cesar Martinez shouted, sir.

q

What did you hear as he shouted?

a

“Uncle Clinton, come here!”

q

How far were you when you heard the shout of Great Cesar Martinez?

a

Five (5) meters away, sir.

q

And after Great Cesar Martinez shouted, “Uncle Clinton, come here!”, do you recall whether there was a person appeared?

a

Yes, sir.

q

And who was that person who appeared responding that call?

a

Clinton Badinas, sir.[13]

However, when Roger Domingo was placed on the witness stand, he denied meeting or talking with the victim,

Clinton Badinas, and Great Ceasar Martinez. He also disavowed witnessing the stabbing incident, thus:

q

You remember encountering the group of the deceased in this case Clinton Badinas?

a

No, sir.

q

When the witness of the prosecution JR Martinez came to court he told the Honorable Court and we are referring now to the sworn statement of the witness that Roger Domingo referring to you and Great Cesar Martines talk to each other on October 12, 2002 at about 4:00 in the afternoon, what can you say as to that?

a

I don't know, sir.

q

Do you mean to say Mr. Witness, you never saw Great Cesar Martinez?

a

I don't know that person, sir

q

But do you remember talking to a man whose name you do not know?

a

None, sir.

q

You did not talk to anybody aside from Christopher Tabuelog on October 12, 2002 at 4:00 o'clock in the afternoon?

a

None, sir.

q

When JR Martinez came to court he also said that you has an argument with Great Cesar Martinez and you said in the vernacular "luklukuen nak sa met taga Bangued dak"?

a

I did not say that remark, sir.

q

And during that conversation, I'm still referring to the testimony of JR Martinez Clinton Badinas came near you Roger Domingo in the vernacular he described it "ginabbay na ni Roger Domingo, do you remember that instance?

a

None, sir.

q

Mr. Witness, in the police blotter which mark as exhibit for the prosecution you were named herein as having a participation in a heated altercation with the victim Clinton Badinas we are referring to the exact copy of the police blotter?

Fiscal Frez

May we pray, your honor, that the police blotter is not our evidence.

Atty. Barba

It's a form part of the record, your honor.

Atty. Barba

Lines 12, 13 and 14.

Atty. Barba

q

During which the victim has heated altercation meaning Clinton Badinas heated altercation to a fellow criminology student Roger Domingo of Bangued, Abra?

a

None, sir.

q

Why are you here in court today Mr. Witness, can you tell us?

a

Because of the subpoena sent to me, sir.

q

Do you remember coming to the Public Attorney's Office on July 7, that was a Monday 2003?

a

Yes, sir.

q

And do you remember talking to me, Mr. Witness?

a

Yes, sir.

q

Do you remember saying to me that you do not want to come to court to testify in this case?

a

Yes, sir.

q

Can you tell us why initially you did not want to come to court to testify in this case?

a

Because I don't witness what happened, sir.

q

And do you remember what was my advised to you regarding your honoring the subpoena?

a

Yes, sir.

q

Do you remember that you told at the Public Attorney's Office?

a

Tell the truth, sir.

q

Do you remember me asking you what you witnessed during the field trip on October 12, 2002?

a

I did not see any crime, sir.[14]

However, after disavowing any knowledge about the stabbing incident, Roger Domingo completely reversed himself by stating, to wit:

q

Do you remember telling me that you were drunk at that time you saw Clinton Badinas the victim in this case armed with a broken bottle?

a

Yes, sir.

q

So you did see the victim Clinton Badinas on October 12, 2002?

a

I saw him but I don't see how he was killed, sir.

q

My question, is, did you see Clinton Badinas armed with a broken bottle on October 12, 2002 at 4:00 o'clock in the afternoon?

a

Yes, sir

q

What was Clinton Badinas doing with a broken bottle?

a

I don't know, he just holding the broken bottle, sir.

q

Was he approaching anybody with the broken bottle?

Fiscal Frez

Leading, your honor.

Court

Sustain.

Atty. Barba

Your Honor, we have it declared this witness as reluctant witness and that we be allowed to ask leading questions because initially he was very consistent in saying he did not know anything even saying he did not even see Clinton Badinas the victim in this case but for now he changed his mind and he is now saying he did see him armed with broken bottle.

Fiscal Frez

Your Honor, the witness said he saw the victim Clinton Badinas holding a broken bottle but he do not know the purpose of that possession.

Atty. Barba

That's why I want to ask leading questions, now, your honor.

Court

Did he execute any affidavit?

Atty. Barba

The court is not yet satisfied, counsel.

Atty. Barba

May we then proceed, your honor.

q

Do you remember telling me at the Public Attorney's Office that you were in a stopper and you were glued to the place where you were standing while you viewed Clinton Badinas armed with broken bottle?

a

Clinton Badinas chased me, sir, I thought I was running.

q

Why do you say you thought you were running you mean to say you did not move at all, Mr. Witness?

Fiscal Frez

Leading your honor.

Atty. Barba

q

What do you mean, I thought I was running?

a

I thought I was running but my classmates told me I was standing, sir.

q

So you have the urge to run?

a

That is my plan, sir.

q

Why did you plan to run, Mr. Witness?

a

Clinton Badinas wanted to hit me with a broken bottle, sir.

Atty. Barba

May we have the word “kursonada” remain on the record, your honor.

q

What do you mean by the word “kursonada”, can you tell us?

a

I was just the subject of their trip, “pinagtripandak”.

Fiscal Frez

May we put on record the word “pinagtrippandak”, your honor.

Court

Put that on record.

Atty. Barba

q

Did you have other altercation with Clinton Badinas prior to the armed of broken bottle?

a

None, sir.

q

What about the other member of the group by the name of Great Cesar Martinez?

Fiscal Frez

Already answered, your honor.

Atty. Barba

q

What about JR Martinez did you have altercation?

a

None, sir.

q

There is another person in that group of Great Cesar Martinez by the name of Boni Mosilet, do you have any misunderstanding with him?

a

None, sir.

q

So, when you said that you tried to run did you see if Clinton badinas was able to approach you?

Fiscal Frez

Objection, your honor, he did not say that he wanted to run he thought he was running but he is standing according to the witness.

Atty. Barba

We will reform, your honor.

Court

Reform.

Atty. Barba

q

You said you thought you were running but you stayed glued in your post was Clinton Badinas able to reach you?

a

No, sir.

q

Can you tell us why he was not able to reach you, what happened why he was not able to reach you?

a

I don't know, sir.

q

But you were still looking at him, is it not?

a

They were 4 and I'm 2 meters away from them so I turned around and I wanted to run, sir.

q

Did you sustain any injury on October 12, 2002?

a

No, sir.

q

What about the other 3 companions of Christopher Badinas do you remember how they acted when Clinton Badinas was armed with broken bottle?

a

The 3 at the same time approach me, sir.

q

Were the other 3 armed with other weapon?

a

I don't know, sir.

q

You said that you see how Clinton Badinas was stabbed to death but you are sure it is Christopher Tabuelog, is that correct?

a

I did not say that, I just heard it, sir.

q

So when did you first heard that Clinton Badinas was already dead?

a

The following morning when they told me that he died, sir.[15]

Clearly, the testimony of defense witness Roger Domingo was full of inconsistencies and improbabilities that it deserves scant consideration. It was inconsistent with the narration of the appellant that there was an altercation between Domingo and Great Cesar Martinez prior to the stabbing. Appellant's testimony that the victim was

pursuing Domingo likewise contradicted Domingo's version that he was rooted to the ground and was not moving while the victim was pursuing him.

In fine, the trial court correctly held that the defense failed to prove the element of unlawful aggression on the part of the victim. There being no unlawful aggression, there is no need to discuss whether the means employed to repel the attack was reasonable or whether appellant sufficiently provoked the victim into attacking him.[16]

However, we cannot agree with the findings of the trial court that treachery attended the commission of the crime. The trial court appreciated the qualifying circumstance of treachery because "the attack by the accused upon the victim was sudden and coming from behind, thus, precluding any possible way for the victim to defend himself." [17] Nevertheless, mere suddenness of the attack does not amount to treachery.

The only prosecution evidence on the matter was the testimony of Jay-arr Martinez that while the victim and Roger Domingo were walking, the appellant stabbed the victim from behind, thus:

q

You said that Clinton Badinas led Roger Domingo away from the jeep, to what direction did he lead Roger Domingo?

a

They went southward, madam.

q

How far away south in relation to the jeep?

a

Around three to four meters, madam.

q

From the place where you were sitting, please point a distance to show a distance why you estimate three to four meters away?

a

From my seat to the electric fan, madam.

(witness estimating a distance of about three to four meters).

q

When they reached the distance that you were pointing, where were Clinton Badinas and Roger Domingo facing?

a

They were facing north, madam.

q

About you, what did you do?

a

I went to join them, madam.

q

How far away from you from Clinton Badinas and Roger Domingo?

a

Also three to four meters, madam.

q

Why did you go there?

a

I observed what will happen, madam.

q

As you were observing the two, what happened next if any?

a

Christopher Tabuelog came, madam.

q

Where did Christopher Tabuelog go?

a

Behind Clinton and Roger, madam.

q

You said that Roger Domingo and Clinton Badinas were facing north, who was in the east of the two?

a

Clinton, madam.

q

How far away was Clinton to Roger Domingo?

a

They were near each other, madam.

q

You said that Christopher Tabuelog went behind them, what did Christopher Tabuelog do after he was near the two?

a

He drew something, madam.

q

Did you see what Christopher Tabuelog drew?

a

Yes, madam.

q

Will you tell the Court what that something is?

a

A knife, madam.

q

Will you describe to this Court his knife?

a

It was a pointed instrument, madam.

q

After you saw Christopher Tabuelog drew a knife, what did he do with it?

a

He stabbed it, madam.

q

Whom did he stab?

a

Clinton Badinas, madam.

q

When Christopher Tabuelog stabbed Clinton Badinas with the knife, where was Clinton Badinas facing at the time?

a

He was facing north, madam.

q

Immediately before Christopher Tabuelog stabbed Clinton Badinas, was there any heated words between Clinton Badinas and Christopher Tabuelog??

Atty. Grande:

We object. Leading.

Court:

Sustained.

Fiscal:

q

Before the stabbing was made by Christopher Tabuelog, what immediately transpired before that?

a

None, he was defending him.

q

Who was defending?

a

Clinton Badinas defending Roger Domingo.

q

What hand did Christopher Tabuelog used in stabbing Clinton Badinas?

a

His left hand, madam.

q

What part of the body of Clinton Badinas was stabbed that you saw?

a

Left side of his body, madam.

q

How long after Christopher Tabuelog went near the two Roger Domingo and Clinton Badinas that Christopher Tabuelog drew a knife and stabbed Clinton Badinas?

a

Short time, madam.

q

How short it is, is it two seconds? three seconds?

a

Two seconds, madam.

q

After Clinton Badinas was stabbed, what happened next if any?

a

Clinton Badinas shouted, madam.

q

Will you tell what the shout was?

a

He shouted, I was hit, madam.

q

What did you do then?

a

I pointed to the one who stabbed him, Christopher Tabuelog, madam.

q

When Clinton Badinas shouted, I was hit, where did Christopher Tabuelog go, if any?

a

He went backward, madam.

q

And what was the action, if any?

Atty. Grande:

Already answered. He went backward.

Fiscal:

q

He went backward, how far Clinton Badinas go?

a

Around two meters, madam.

q

After he went backward two meters away from Clinton Badinas, what did Christopher Tabuelog do?

a

He ran away, madam.

q

To what direction did he run to?

a

Northeast, madam.

q

Did you see him went?

a

Yes, madam.

q

Where did he go?

a

At the mini bus, madam.[18]

It bears stressing that treachery cannot be presumed. It must be proved with the same quantum of evidence as the crime itself. The fact that the victim might have been unaware or helpless when he was stabbed does not constitute proof of treachery. The prosecution has the burden to prove that at the time of the attack, the victim was not in a position to defend himself, and that the offender consciously and deliberately adopted the particular means, method and forms of attack employed by him.[19] In the instant case, there was no proof that appellant consciously adopted the mode of attack, hence he may only be held liable for homicide, not murder.

The penalty for homicide is reclusion temporal. There being neither mitigating nor aggravating circumstances in the commission of the crime, the maximum imposable penalty is reclusion temporal in its medium period, pursuant to Article 64, paragraph 1 of the Revised Penal Code, the range of which is from 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the minimum imposable penalty is prision mayor the range of which is from 6 years and 1 day to 12 years. Hence, the penalty of imprisonment that should be imposed on appellant should be 10 years of prision mayor, as minimum, up to 17 years and 4 months of reclusion temporal, as maximum.

The trial court correctly awarded P50,000.00 as civil indemnity and P50,000.00 as moral damages in line with prevailing jurisprudence. However, we cannot sustain the trial court's award for actual damages in the amount of P113,776.00. While the victim's mother, Marqueza Badinas, testified on the civil aspect of the case, she only presented a list of expenses without submitting the corresponding receipts.[20] The trial court awarded the same noting that it was "agreed upon during trial." [21] This is not allowed. The award of actual damages is proper only if the actual amount of loss was proven with a reasonable degree of certainty. It should be supported by receipts.[22] Thus, actual or compensatory damages cannot be awarded.

Current jurisprudence, however, allows the grant of P25,000.00 as temperate damages when it appears that the heirs of the victim suffered pecuniary loss but the award thereof cannot be established with certainty.[23]

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals dated November 30, 2006 in CA-G.R. CR No. 01038 finding appellant guilty of murder is **MODIFIED**. We find appellant guilty of Homicide and is hereby sentenced to suffer the penalty of imprisonment of 10 years of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum. He is also ordered to pay the heirs of Clinton Badinas the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as temperate damages.

SO ORDERED.

Austria-Martinez, Corona, Nachura, and Reyes, JJ., concur.

* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

[1] Rollo, pp. 2-14; penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Edgardo P. Cruz and Jose C. Reyes, Jr.

[2] CA rollo, pp. 64-73; penned by Judge Conrado A. Ragucos.

- [3] Records, p. 1.
- [4] Id. at 22.
- [5] Id. at 27.
- [6] Id. at 122-125.
- [7] Id. at 129-130.
- [8] *People v. Concepcion*, G.R. No. 169060, February 6, 2007.
- [9] Id.
- [10] Id.
- [11] Records, p. 126.
- [12] TSN, January 31, 2003, p. 5.
- [13] TSN, January 11, 2005, pp. 9-10.
- [14] TSN, July 16, 2003, pp. 7-10.
- [15] Id. at 10-15.
- [16] *Pelonia v. People*, G.R. No. 168997, April 13, 2007.
- [17] CA rollo, p. 72.
- [18] TSN, January 31, 2003, pp. 7-10.
- [19] *People v. Concepcion*, supra note 8.
- [20] TSN, March 11, 2003, p. 6.
- [21] Records, p. 130.
- [22] *People v. Abesamis*, G.R. No. 140985, August 28, 2007.
- [23] Id.

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