HERMAN MEDINA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 182648. June 17, 2015

Ponente: PERALTA,* J.

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PERALTA,[*] J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the January 7, 2008 Decision[1] and April 21, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 29634, which affirmed in toto the March 31, 2005 Decision[3] of the Regional Trial Court (RTC), Branch 35, Santiago City, Isabela, in Criminal Case No. 35-4021 convicting petitioner Herman Medina (Medina) of the crime of simple theft, defined and penalized under Article 308, in relation to Article 309, Paragraph 1 of the Revised Penal Code (RPC).

The Information[4] filed against Medina states:

> That on or about the 27[th] day of April, 2002 and for sometime thereafter, in the City of Santiago, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of the owner thereof, take, steal, and carry away the following to wit: one (1) unit alternator worth Php5,000.00, Starter worth Php5,000.00, battery worth Php2,500.00[,] and two (2) sets of tire 2.75 x 15 with mugs worth Php10,000.00 all valued at Php22,500.00, owned by HENRY LIM, represented by PURTTA LIM[,] to the damage and prejudice of the owner thereof in the total amount of Php22,500.00.
>
> CONTRARY TO LAW[.]

The factual antecedents appear as follows:

Henry Lim (Lim) is a resident of Calao West, Santiago City, Isabela. He is the registered owner of a Sangyong Korando Jeep with Plate No. WPC-207, which was involved in an accident that caused damage to its roof and door. On April 27, 2002, he engaged the services of Medina, who is a mechanic and maintains a repair shop in Buenavista, Santiago City, Isabela. At the time the jeep was delivered to Medina's shop, it was still in running condition and serviceable because the under chassis was not affected and the motor engine, wheels, steering wheels and other parts were still functioning.

A reasonable time elapsed, but no repairs were made on the jeep. So, in the morning of September 4, 2002, Purita Lim (Purita), Lim's sister, instructed Danilo Beltran (Beltran) to retrieve the jeep from Medina's shop on the agreement that he would instead repair the vehicle in his own auto shop. Beltran, however, was not able to get the jeep since its alternator, starter, battery, and two tires with rims worth P5,000.00, P5,000.00, P2,500.00, and P10,000.00, respectively, could not be found. Upon inquiry, Medina told him.that he took and installed them on Lim's another vehicle, an Isuzu pick-up, which was also being repaired in the shop. Beltran went back in the afternoon of the same day and was able to get the jeep, but without the missing parts. He had it towed and brought it to his own repair shop. Before placing the jeep therein, he reported the incident to Purita. Later, the jeep was

fully repaired and put back in good running condition.

On September 12, 2002, a criminal complaint[5] for simple theft was filed by Purita, representing her brother. The City Prosecutor found probable cause to indict Medina.[6] Subsequently, an Information was filed before the court a quo.

In his arraignment, Medina pleaded not guilty.[7] No settlement, stipulation or admission was made by the parties during the pre-trial.[8] During the trial proper, Beltran and Lim were presented as witnesses for the prosecution, while Medina and a certain Angelina Tumamao, a former barangay kagawad of Buenavista, Santiago City, testified for the defense. Eventually, the case was submitted for decision, but without the formal offer of evidence by the defense.[9]

The trial court found Medina guilty beyond reasonable doubt of the crime charged. The fallo of the March 31, 2005 Decision reads:

> WHEREFORE, judgment is hereby rendered, finding the accused guilty beyond reasonable doubt, and considering the absence of mitigating [or] aggravating circumstances and applying the Indeterminate Sentence Law, the accused is hereby sentenced to suffer the penalty of imprisonment of three (3) years, six (6) months and twenty-one (21) days of prision correccional as minimum, to eight (8) years, eight (8) months and one (1) day of prision mayor as maximum. The accused is likewise ordered to indemnify Henry Lim the total amount of P22,500.00. No imprisonment in case of insolvency.
>
> SO ORDERED.[10]

On appeal, the CA affirmed the conviction of Medina. While the trial court was not convinced with Medina's justification that he installed the jeep's missing parts to the pick-up also owned by Lim, the CA opined that his excuse is "so lame and flimsy." The CA agreed with the lower court's findings that Medina admitted that the jeep is more valuable than the pick-up; that unlike the pick-up, the needed repairs on the jeep is only minor in nature; that Medina failed to prove that the pick-up was completely repaired and was placed in good running condition; and that he failed to prove that the pick-up is owned by Lim. The CA also held that the positive testimony of Beltran deserves merit in contrast with the self-serving testimony of Medina. Finally, no credence was given to Medina's assertion that the missing auto parts were turned over to Crispin Mendoza, who is alleged to be an employee of Lim. For the CA, the trial court correctly ruled that such claim was unsubstantiated in view of Medina's failure to formally offer in evidence the purported acknowledgment receipt. Assuming that the exception in Mato v. CA[11] is taken into account, the receipt could not still be considered because it was not incorporated in the records of the case.

When his motion for reconsideration was denied, Medina filed this petition which alleges the following errors:

> I.
>
> THE [HONORABLE] COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE CONVICTION OF THE PETITIONER DESPITE THE FACT THAT THE PROSECUTION ONLY PRESENTED CIRCUMSTANTIAL EVIDENCE IN THEIR ATTEMPT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT. WORST, IT SPECIFICALLY ADVANCED ONLY ONE SINGLE CIRCUMSTANCE] THAT IS[,] THE TESTIMONY OF PROSECUTION WITNESS DANILO BELTRAN THAT THE STARTER, [ALTERNATOR], BATTERY[,] AND TWO (2) PIECES [OF] TIRES WITH MUGS (MAG WHEELS) OF THE KORANDO JEEP WERE SIMPLY MISSING, THUS[,] NOT SUFFICIENT TO SUSTAIN CONVICTION IN ACCORDANCE WITH SECTION 4, RULE 133 OF THE RULES OF COURT.
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> II.

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> THE [HONORABLE] COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE FACT THAT THE PROSECUTION RELIED NOT ON THE STRENGTH OF ITS EVIDENCE BUT ON THE WEAKNESS OF THE DEFENSE CONTRARY TO THE RULING OF THE HONORABLE COURT IN PHILIPPINES VS. ALVARIO.
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> III.
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> THE [HONORABLE] COURT OF APPEALS GRAVELY ERRED WHEN IT [AFFIRMED] THE CONVICTION OF THE PETITIONER DESPITE [THE] FACT [THAT] THERE WAS NO FURTIVE TAKING OR UNLAWFUL ASPORTATION, IN THE CRIMINAL SENSE, CONSIDERING THAT THE TAKING, IF AT ALL, WAS WITH THE KNOWLEDGE AND ACQUIESCENCE OF THE. PRIVATE COMPLAINANT PURSUANT TO THE RULING OF THE HONORABLE COURT IN ABUNDO VS. SANDIGANBAYAN, ET AL. AND THE UNREBUTTED EVIDENCE FOR THE DEFENSE.
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> IV.
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> THE HONORABLE COURT GRAVELY ERRED IN NOT CONSIDERING THE RECEIPT MARKED AS EXHIBIT "2" FOR THE DEFENSE, LIKEWISE MARKED AS EXHIBIT "C" FOR THE PROSECUTION (COMMON EVIDENCE) NOT FORMALLY OFFERED IN EVIDENCE DUE TO THE GROSS NEGLIGENCE OF THE FORMER COUNSEL FOR THE PETITIONER IN THE GREATER INTEREST OF JUSTICE, ONE OF THE EXCEPTIONS PROVIDED FOR BY THE HONORABLE COURT IN SARRAGA, SR. VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK.[12]

We deny.

Theft is committed by any person who, with intent to gain, but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.[13] As defined and penalized, the elements of the crime are: (1) there was taking of personal property; (2) the property belongs to another; (3) the taking was done with intent to gain; (4) the taking was without the consent of the owner; and (5) the taking was accomplished without the use of violence against, or intimidation of persons or force, upon things.[14] Intent to gain or animus lucrandi is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation.[15] Although proof as to motive for the crime is essential when the evidence of the theft is circumstantial, the intent to gain is the usual motive to be presumed from all furtive taking of useful property appertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator.[16] As to the concept of "taking" —

> The only requirement for a personal property to be the object of theft under the penal code is that it be capable of appropriation. It need not be capable of "asportation," which is defined as "carrying away." Jurisprudence is settled that to "take" under the theft provision of the penal code does not require asportation or carrying away.
>
> To appropriate means to deprive the lawful owner of the thing. The word "take"' in the Revised Penal Code includes any act intended to transfer possession which x x x may be committed through the use of the offenders' own hands, as well as any mechanical device x x x.[17]

In this case, Medina acknowledged without hesitation the taking of the jeep's alternator, starter, battery, and two tires with magwheels, but he put up the defense that they were installed in the pick-up owned by Lim.[18] With such admission, the burden of evidence is shifted on him to prove that the missing parts were indeed lawfully taken. Upon perusal of the transcript of stenographic notes, the Court finds that Medina unsatisfactorily discharged the burden. Even bearing in mind the testimony of Tumamao, he failed to substantiate, through the presentation of supporting documentary evidence or corroborative testimony, the claims that: (1) Lim was the owner of the pick-up; (2) the missing parts of the jeep were exactly the same items that were placed in the pick-up; (3) Lim consented, expressly or impliedly, to the transfer of auto parts; and (4) Mendoza witnessed the

removal of the spare parts from, the jeep and their placement to the pick-up. Neither did Medina adduce any justifying[19] or exempting[20] circumstance to avoid criminal liability.

On the contrary, Lim firmly testified that when he entrusted to Medina the jeep's repair it was still in running condition and complete with alternator, starter, battery, and tires, which went missing by the time the vehicle was recovered from the auto shop.[21] Likewise, the testimony of Beltran is definite and straightforward. He declared that he was not able to get the jeep in the morning of September 4, 2002 because its alternator, starter, battery, and two tires with rims could not be found, and that when he asked Medina as to their whereabouts the latter told him that he took them, placed the starter in Lim's pick-up while the alternator was in the repair shop.[22] Medina informed him that the jeep's missing parts were actually installed to Lim's other vehicle which was also being repaired at the time.[23] However, Beltran did not know or had not seen other vehicles owned by Lim at Medina's shop.[24] In the afternoon of the same day, he was able to get the jeep but not its missing parts.[25] He concluded that they were lost because he inspected the jeep.[26]

Abundo v. Sandiganbayan,[27] which was relied upon by Medina, does not apply. In said case, the element of lack of owner's consent to the taking of the junk chassis was absent since the records showed that Abundo made a request in writing to be allowed to use one old jeep chassis among the pile of junk motor vehicles. His request was granted. A memorandum receipt was issued and signed. Pursuant thereto, the chassis was taken out. There was no furtive taking or unlawful asportation. The physical and juridical possession of the junk chassis was transferred to Abundo at his request, with the consent or acquiescence of the owner, the Government, represented by the public officials who had legal and physical possession of it. We noted that the crime of theft implies an invasion of possession; therefore, there can be no theft when the owner voluntarily parted with the possession of the thing. The Court agreed with the observation of the Solicitor General that a thief does not ask for permission to steal. Indeed, a taking which is done with the consent or acquiescence of the owner of the property is not felonious.[28]

Medina cannot acquit himself on the basis of a purported acknowledgment receipt[29] that he and Tumamao identified during their presentation as witnesses for the defense. According to his testimony, Mendoza came to his (Medina's) place and saw the subject auto parts while being transferred from the jeep to the pick-up and that, relative thereto, Medina even called barangay officials and let them signed a document to bear witness on the matter.[30] The document, dated July 25, 2002, which was marked as Exhibit "2," was signed by Mendoza, Jovy Bardiaga (said to be Lim's chief mechanic), Mario Pascual (said to be Medina's helper), and Rosalina Bautista and Tumamao (said to be barangay kagawads). Ostensibly, they signed the document while facing each#other in front of Medina's house.[31]

In Mato v. CA,[32] which referred to People v. Napat-a,[33] citing People v. Mate,[34] We relaxed the application of Section 34, Rule 132[35] of the Rules of Court by allowing the admission of evidence not formally offered. To be admissible, however, two essential conditions must concur: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.[36]

As regards this case, the acknowledgment receipt was not considered by the trial court because it was not formally offered in evidence. While it was duly identified by the defense testimony that was duly recorded, the receipt itself was not incorporated in the case records. For its part, the CA opined that nowhere from the case records does Medina's acknowledgment receipt appear. Yet, upon examination, it appears that the July 25, 2002 acknowledgment receipt was attached as Annex "3" of Medina's Appellant's Brief.[37] Accordingly, the CA should have mulled over this piece of document, especially so since the prosecution even prayed, and was granted, during the trial proper that said receipt be marked as Exhibit "C."[38]

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Nevertheless, even if this Court admits in evidence the acknowledgment receipt, the same would still not exonerate Medina. This is due to his admission that Bardiaga, Pascual, and Bautista did not actually see him remove the alternator, starter, battery, and tires with rims from the jeep and put the same to the pick-up.[39] Likewise, while Medina asserted that Mendoza came to his place and was shown that the missing auto parts were transferred from the jeep to the pick-up, the latter was not presented as a hostile witness to confirm such expedient claim.

As against the positive and categorical testimonies of the prosecution witnesses, Medina's mere denials cannot prevail for being self-serving and uncorroborated. Denial is considered with suspicion and always received with caution because it is inherently weak and unreliable, easily fabricated and concocted.[40]

> Denial, essentially a negation of a fact, does not prevail over an affirmative assertion of the fact. Thus, courts - both trial and appellate have generally viewed the defense of denial in criminal cases with considerable caution, if not with outright rejection. Such judicial attitude comes from the recognition that denial is inherently weak and unreliable by virtue of its being an excuse too easy and too convenient for the guilty to make. To be worthy of consideration at all, denial should be substantiated by clear and convincing evidence. The accused cannot solely rely on her negative and self-serving negations, for denial carries no weight in law and has no greater evidentiary value" than the testimony of credible witnesses who testify on affirmative matters.[41]

Further, Medina did not demonstrate any evidence of ill motive on the part of the prosecution witnesses as to falsely testify against him. In the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court.[42]

There being no compelling reason to disregard the same, the Court yields to the factual findings of the trial court, which were affirmed by the CA. This is in line with the precept that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon Us.[43] It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that We will re-calibrate and evaluate the factual findings of the court below.[44] As held in Co Kiat v. Court of Appeals:[45]

> It is a well-settled doctrine in this jurisdiction, that factual findings of the trial court are entitled to great weight and authority (Macua vs. Intermediate Appellate Court, 155 SCRA 29) and that the jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals, is limited to reviewing and revising the errors of law imputed to it, its findings of facts being conclusive (Chan vs. Court of Appeals, 33 SCRA 737).
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> In a petition for review of decisions of the Court of Appeals, the jurisdiction of this Court is confined to reviewing questions of law, unless the factual findings are totally bereft of support in the records or are so glaringly erroneous as to constitute a serious abuse of discretion (Canete, et al. vs. Court of Appeals, 171 SCRA 13).
>
> Except in criminal cases in which the penalty imposed is reclusion perpetua or higher, appeals to the Supreme Court are not a matter of right but of sound judicial discretion and are allowed only on questions of law and only when there are special and important reasons, which we do not find in this case (Balde vs. Court of Appeals, 150 SCRA 365).[46]

Now on the propriety of the penalty imposed by the trial court:

Under Article 309 of the RPC, an accused found guilty of simple theft when the value of the stolen property exceeds P22,000.00 shall be sentenced to:

> Art. 309. Penalties. - Any person guilty of theft shall be punished by:

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> 1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.[47]

Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty is that which, taking into consideration the attending circumstances, could be properly imposed under the RPC.[48] As the value of the auto parts stolen from Lim is in excess of P22,000.00, the penalty imposable is the maximum period of the penalty prescribed by Article 309, which is the maximum of prision mayor in its minimum and medium periods. Since the penalty prescribed is composed of only two periods, Article 65 of the RPC requires the division into three equal portions the time included in the penalty, forming one period of each of the three portions. Thus, the minimum, medium, and maximum periods of the penalty prescribed are:

> Minimum - 6 years and 1 day to 7 years and 4 months
> Medium - 7 years, 4 months and 1 day to 8 years and 8 months
> Maximum - 8 years, 8 months, and 1 day to 10 years

The minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense, without first considering any modifying circumstance attendant to the commission of the crime.[49] In this case, the penalty next lower in degree to that prescribed for the offense is prisicn correccional in its medium and maximum periods, or anywhere from Two (2) years, Four (4) months and One (1) day to Six (6) years.

Thus, the trial court did not err when it sentenced Medina to suffer the penalty of imprisonment of Three (3) years, Six (6) months and Twenty-One (21) days of prision correccional, as minimum, to Eight (8) years, Eight (8) months and One (1) day of prision mayor, as maximum.[50]

WHEREFORE, premises considered, the Petition is DENIED. The January 7, 2008 Decision and April 21, 2008 Resolution of the Court of Appeals in CA-G.R. CR. No. 29634, which affirmed in toto the March 31, 2005 Decision of the Regional Trial Court, Branch 35, Santiago City, Isabela, in Criminal Case No. 35-4021 convicting Herman Medina for the crime of simple theft, is hereby AFFIRMED.

SO ORDERED.

Del Castillo,[**] Bersamin,[***] Reyes, and Jardeleza, JJ., concur.

July 6, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on June 17, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 6, 2015 at 1:55 p.m.

Very truly yours,
(SGD.)

WILFREDO V. LAPITAN
Division Clerk of Court

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[*] Per Special Order No. 2059 dated June 17, 2015.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2060 dated June 17, 2015.

[***] Designated Acting Member in lieu of Associate Justice Martin S. Villarama, Jr., per Raffle dated June 8, 2015.

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Martin S. Villarama, Jr., (now a member of this Court) and Noel G. Tijam, concurring; rollo, pp. 264-272.

[2] CA rollo, p. 129.

[3] Rollo, pp. 209-215.

[4] Id. at 56-57.

[5] Rollo, p. 60.

[6] Id. at 58-59.

[7] Records, pp. 98-99.

[8] Id. at 115.

[9] Id. at 160-162.

[10] Rollo, p. 215.

[11] 320 Phil. 344 (1995); Vda. de Oñate v. Court of Appeals, G.R. No. 116149 November 23, 1995 250 SCRA 283.

[12] Rollo pp. 25-27.

[13] REVISED PENAL CODE, Art. 308, Par. 1.

[14] See People v. Tanchanco, G.R. No. 177761, April 18, 2012, 670 SCRA 130, 140-141; Beltran, Jr. et al. v. The Hon. Court of Appeals et al., 662 Phil. 296, 310-311 (2011); and Laurel v. Judge Abrogar, et al., 596 Phil. 45, 56 (2009).

[15] Ringor v. People, G.R. No. 198904, December 11, 2013, 712 SCRA 622, 631-632 and Philippine National Bank v. Tria, G.R. No. 193250, April 25, 2012, 671 SCRA 440, 453.

[16] Beltran, Jr. et al. v. The Hon. Court of Appeals, et al., supra note 14, at 313-314.

[17] Laurel v. Judge Abrogar, et al., supra note 14, at 57-58.

[18] TSN, July 26, 2004, pp. 15, 22-23 36-37.

[19] REVISED PENAL CODE, Art. 11.

[20] Id., Art. 12.

[21] TSN, April 12, 2004, pp. 9-13.

[22] TSN, January 19, 2004, pp. 7-9.

[23] TSN, January 26, 2004, p. 8.

[24] Id. at 8-9.

[25] TSN, January 19, 2004, pp. 9-11.

[26] TSN, January 26, 2004, p. 16.

[27] G.R. No. 97880, January 15, 1992, 205 SCRA 193.

[28] Abundo v. Sandiganbayan, supra, at 198, citing p. 192, Revised Penal Code, 1988 Ed., Aquino, citing the cases of United States v. De Vera,43 Phil. 1000, 1007 (1922); Isaac 51 O.G. 2410.

[29] Rollo, p. 252.

[30] TSN, July 26, 2004, pp. 22-23.

[31] Id. at 23-27.

[32] Supra note 11, at 350; Vda. de Oñate v. Court of Appeals, supra note 11, at 287.

[33] 258-A Phil. 994 (1989).

[34] 191 Phil. 72(1981).

[35] SEC. 34. Offer of evidence. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[36] See also Barut v. People, G.R. No. 1674,54, September 24, 2014; Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014; Heirs of Romana Saves, et al. v. Heirs of Escolastico Saves, et al., 646 Phil. 536, 544 (2010); and Ramos v. Spouses Dizon, 529 Phil. 674, 688-689 (2006).

[37] CA rollo, p. 65.

[38] TSN, September 1, 2004, p. 20.

[39] TSN, July 26, 2004, pp. 37-39.

[40] People v. Daud, G.R. No. 197539, June 2, 2014, citing People v. Ocden, G.R. No. 173198, June 1, 2011, 650 SCRA 124, 145.

[41] People of the Philippines v. Ma. Harleta Velasco et al., G.R. No. 195668, June 25, 2014.

[42] People v. Ochoa, G.R. No. 173792, August 31, 2011, 656 SCRA 382, 409.

[43] See Cruz v. People, 586 Phil. 89, 102 (2008).

[44] Ringor v. People, supra note 15, at 633.

[45] G.R. No. L-48700, July 2, 1990, 187 SCRA 5.

[46] Co Kiat v. Court of Appeals, supra, at 11.

[47] Emphasis ours.

[48] Beltran, Jr. et al. v. The Hon. Court of Appeals et al., supra note 14, at 320.

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[49] Id.

[50] See People v. Gungon, 351 Phil. 116, 142 (1998).

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