

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL DOMINGO, ACCUSED-APPELLANT.

G.R. No. 204895. March 21, 2018

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CAGUIOA, J:

This is an Appeal[1] under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated May 31, 2012 of the Court of Appeals, Ninth Division (CA) in CA-G.R. CR-H.C. No. 04278. The CA Decision affirmed the Joint Judgment[3] dated August 18, 2009 rendered by the Regional Trial Court (RTC) of Laoag City, Branch 14, in Criminal Cases Nos. 11741-14, 11742-14, 11743-14,[4] which found accused-appellant Joel Domingo (accused-appellant) guilty of two counts of the crime of Murder and one count of Attempted Murder.

Facts

Three Informations were filed against accused-appellant and Roel Domingo (Roel). In Criminal Case No. 11741-14, the Information states:

That in the evening of February 26, 2005 at Brgy. Sta. Maria, in the municipality of Piddig, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot VIRGILIO DALERE with the use of an unlicensed firearm causing his instantaneous death.[5]

In Criminal Case No. 11742-14, the Information regarding the death of Glenn Rodriguez[6] states:

That in the evening of February 26, 2005 at Brgy. Sta. Maria, in the municipality of Piddig, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot GLENN RODRIGUEZ with the use of an unlicensed firearm causing his instantaneous death.[7]

In Criminal Case No. 11743-14, the Information, charging accused-appellant and Roel with Attempted Murder of Roque Bareng (Bareng), states:

That in the evening of February 26, 2005 at Brgy. #21, Sta. Maria, in the municipality of Piddig, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously assault, attack and shoot ROQUE BARENG with the use of an unlicensed firearm but was not able to hit him, thereby commencing by overt acts the commission of the crime of Murder but did not perform all the acts of execution which should have produced it by reason of some causes other than the spontaneous desistance of said accused.[8]

The CA summarized the subsequent proceedings as follows:

The three cases were originally raffled to Branch 15 of the Regional Trial Court (RTC) of Laoag City. With the assistance of counsel, the Accused Roel Domingo and Joel Domingo were arraigned before Branch 15 and

pleaded not guilty to each charge. ,

Subsequently, the accused through counsel filed a Motion praying for the re-raffle of these cases to another branch since proceedings had not gone beyond the pre-trial stage although they had been detained for more than a year. The Motion was granted by Branch 15, and the cases were re-raffled to Branch 14 of the same Court.

Pre-trial conference ensued. There, it was agreed that the prosecution would present its evidence in four settings of a joint trial. The prosecution failed to present a single witness in each of those four settings. Thus, the Court in an Order dated February 7, 2007 dismissed the cases and directed the release of the two accused.

On February 14, 2007, the Office of the Provincial Prosecutor filed a Motion for Reconsideration, claiming that notices to the prosecution witnesses had not been served because they constantly transferred to other places due to persistent threats to their lives as a result of these cases.

In an Order dated June 14, 2007, the Court granted the Motion for Reconsideration, reasoning that "the State in the present cases was deprived of its right to due process, for it was not given a fair opportunity to present its witnesses. Accordingly, double jeopardy cannot bar the reconsideration of the assailed Order, and due process mandates that the prosecution be allowed to present its witnesses."

Accused Joel Domingo was rearrested; his co-accused Roel Domingo was not. Parenthetically, the cases against Roel Domingo were dismissed in an Order dated April 28, 2009, after the defense submitted a death certificate showing that he died on April 8, 2009 in Lopez, Quezon due to multiple hack wounds.

Thereafter, the prosecution presented its evidence. Its only witness was private complainant Roque Bareng. It dispensed with the presentation of Dr. Diophantes M. Acob who conducted the post-mortem examination on Deceased Glenn Rodriguez and Virgilio Dalere, upon the agreement of the parties during the pre-trial conference that his reports thereon show the cause and the fact of death of the two deceased.[9] (Emphasis and underscoring supplied)

The CA summarized the version of the prosecution as follows:

The prosecution sought to prove that three men armed with M-14 and M-16 rifles attacked and shot Roque Bareng, Virgilio Dalere, Glenn Rodriguez and Edwin Andres at the Abadilla Farm in Brgy. Sta[.] Maria, Piddig, Ilocos Norte, around 11:30 PM on February 26, 2005. Virgilio Dalere and Glenn Rodriguez died from gunshot wounds. Roque Bareng, who managed to escape unharmed, identified Joel Domingo as one of the assailants.

The prosecution's evidence showed that Roque Bareng was with Edwin Andres, Glenn Rodriguez and Virgilio Dalere at the bunkhouse of the Abadilla Farm at the time of the shooting incident. While Roque Bareng and his companions were having coffee, three men bearing M-14 and M-16 rifles appeared; one of them stayed outside the kitchen door, while the other two entered. Roque Bareng was on the southern edge of the kitchen, facing north; the armed men came from the northern portion of the kitchen.

The assailant with the M-14 rifle asked, "Are you the tough guys here?" The other one with the M-16 rifle ordered them not to move. The assailant with the M-16 rifle pointed his firearm towards Virgilio Dalere, and the one with the M-14 rifle pointed it towards Glenn Rodriguez. Around two seconds after the gunmen entered, each fired a single shot inside the kitchen.

Roque Bareng ran toward the fence. Upon reaching the fence, he looked back and saw the assailant with the M-14 rifle pointing it at him. He then crouched toward the irrigation and proceeded to the house of Edwin Andres where he stayed for the night. He could no longer recall how many gunshots were fired while he was running.

Roque Bareng testified that Edwin Andres ran ahead of him. He further testified that Glenn Rodri[g]uez also ran away. He did not notice Virgilio Dalere, but heard the latter moan, "Apo."

The following morning, Piddig policemen fetched him at the house of Edwin Andres, and they proceeded to the Abadilla Farm. There, they found the lifeless bodies of Glenn Rodriguez and Virgilio Dalere outside the bunkhouse. He further testified that policemen found one empty M-14 shell and one empty M-16 shell at the kitchen of the bunkhouse.

After taking Roque Bareng to a hospital in Piddig for treatment of the wounds he sustained during his flight from the bunkhouse, the policemen brought him to the police station.

In an answer to the query of the policemen, Roque Bareng told them that he could recognize the assailants. He also testified that there was a fluorescent lamp just above the dining table during the shooting, and the moon also illuminated the place.

Three (3) days later, Roque Bareng was brought to the Ilocos Norte Police Provincial Office in Camp Juan, Laoag City, where he gave his statement. On March 2, 2005, he was called back to Camp Juan. An artist asked him to describe the assailants; out of that description, the artist prepared cartographic sketches of two of the assailants. He signed the cartographic sketches afterward.

The policemen continued interviewing Roque Bareng. They showed him a logbook containing several photographs. He identified the two assailants from the photographs in the logbook.

Several days later, Roque Bareng was again invited to the Piddig police station. During his stay, he saw two persons being interviewed. He recognized them to be the assailants with the M-14 and M-16 rifles.

During the trial, he identified herein accused Joel Domingo as the gunman with an M-14 rifle.[10]

On the other hand, the accused-appellant's evidence is summarized as follows:

The defense sought to prove that Accused Joel Domingo was attending a social dance in Brgy. Dupitac, Piddig, Ilocos Norte when the victims were shot at Brgy. Sta[.] Maria of that town. It also sought to establish that the descriptions given by Roque Bareng to the policemen and the cartographic sketches differed from the actual appearance of the Accused Joel Domingo.

It presented Edwin Andres, Pastor Virgilio Notarte, Noel Esteban, Norman Pablo and the Accused Joel Domingo as witnesses.

Edwin Andres testified that the shooting incident transpired while he was having coffee with Roque Bareng, Virgilio Dalere and Glenn Rodriguez at the bunkhouse of the Abadilla Farm in Sta. Maria, Piddig, Ilocos Norte on February 26, 2005. Somebody arrived from the western portion of the bunkhouse. He then heard a voice that he did not recognize; the voice was followed by a gunshot. He immediately ran toward the gate and took a circuitous route to his house. Edwin Andres claimed that he was not able to see the assailants. He could not tell how many he saw as he did not see them.

Upon reaching his house, Edwin Andres found Roque Bareng already there. When he asked Roque Bareng about the incident, the latter replied that he saw the assailants and that they were "small thin persons wearing hats". He could no longer recall how many assailants were seen by Roque Bareng.

The following day, he and Roque Bareng went back to the bunkhouse. They found the dead bodies of Glenn Rodri[g]uez and Virgilio Dalere outside the building. They reported the matter to the chief tanod, who in turn informed Pastor Virgilio Notarte, a kagawad, who then called the police.

The policemen recovered the bodies and questioned Roque Bareng and him. He told them that he did not see anything. He heard Roque Bareng describe the assailants to the police as "small thin persons wearing hat with

a brim."

Pastor Virgilio Notarte testified that he was a barangay kagawad of Brgy. Sta. Maria, Piddig, Ilocos Norte at the time of the x x x shooting incident. After the chief tanod had informed him of the matter, he reported it to the police. He accompanied the policemen when they inspected the Abadilla Farm.

Nobody was at the Abadilla Farm when they arrived. On their way to the barracks located on an elevated part at the center of the farm, they passed by the body of Virgilio Dalere lying face down. When they moved further west, they also found the body of Glenn Rodriguez.

Pastor Notarte picked up around six empty M-14 shells east of, the dirty kitchen and one empty M-16 shell north of that kitchen.

He heard Roque Bareng telling the policemen that he and his companions had come from a drinking spree when he heard a dog barking and saw two men at the dirty kitchen of the barracks. He further heard Roque Bareng describe the assailants as "tall, thin, wearing a hat with a brim and the other man was short and stout."

For his part, Accused Joel Domingo invoked the defense of denial and alibi. He claimed he was at Brgy. Dupitac in Piddig, Ilocos Norte attending a social dance between 10:00 PM of that date until 2:00 AM the next day. Fie, together with Norman Pablo and Rixon Domingo walked from his residence at Brgy. Estancia to Brgy. Dupitac that night.

He testified that Brgy.[.] Dupitac was less than ten (10) kilometers away from Brgy. Sta. Maria where the shooting incident happened. Fie did not know how long it would take to travel from Brgy. Dupitac to Brgy. Sta. Maria by foot, as he had never done it. However, he said that if one would travel from Brgy. Dupitac to Brgy. Sta. Maria on a motorcycle, it would take more than an hour because the route passed through mountains.

He also averred that Brgy. Estancia, where he resided, was around ten (10) kilometers away from Brgy. Sta. Maria where the victims were shot. The travel time between the two barangays was more than one hour.

He stressed that he never had any grudge or misunderstanding with the deceased Glenn Rodriguez or Virgilio Dalere. He also opined that the police pinned him as an author of the crime to enable them to say that they had solved the case; he added that he was facing other charges at that time. He learned about the incident only when the policemen came to arrest him.

The alibi of the accused was corroborated by Norman Pablo. He¹ did not take the witness stand, but the parties stipulated that if he would testify, Norman Pablo would say that he was with the accused from 6:00 PM of February 26, 2005 until 4:00 AM the following day, that within that time frame they went from Brgy. Estancia to Brgy. Dupitac to attend a social dance, and that the travel time between Brgy. Dupitac and Brgy. Sta. Maria was more than one hour on foot or by motorcycle.

Brgy. Chairman Noel Esteban of Dupitac testified that the social dance in his barangay started around 9:00 PM on February 26, 2005 and lasted until 2:15 AM the following day. In his sworn statement adopted as his direct testimony, the witness claimed that he saw the Accused Joel Domingo with two (2) companions from Brgy. Estancia. They did not dance; they merely drank with some other persons. The witness also averred that the Abadilla Farm where the shooting took place was around ten (10) kilometers away from Brgy. Dupitac, and the travel time between the two, on foot or by motorcycle, was more than an hour. He further testified that between 9:30 PM and 2:15 AM that night, he saw the Accused Joel Domingo several times.[11]

In its Joint Judgment,[12] the RTC convicted accused-appellant, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered as follows:

(a) In Crim. Case No. 11741-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of

MURDER and is sentenced to reclusion perpetua without eligibility for parole. Fie is ordered to pay the heirs of deceased Virgilio Dalere P75,000.00 as indemnity for his death, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P25,000.00 as exemplary damages.

(b) In Crim. Case No. 11742-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of MURDER and is sentenced to reclusion perpetua without eligibility for parole. He is ordered to pay the heirs of deceased Glenn Rodriguez P75,000.00 as indemnity for his death, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P25,000.00 as exemplary damages.

(c) In Crim. Case No. 11743-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of ATTEMPTED MURDER and is sentenced to an indeterminate penalty ranging from three years of prision correccional as minimum to eight years and one day of prision mayor as maximum. He is ordered to pay Roque Bareng P20,000.00 as indemnity and P10,000.00 as exemplary damages.

In the three cases, accused Joel Domingo is further ordered to pay interest on the said amounts at the legal rate of six percent (6%) per annum, from the finality of this Joint Judgment until full payment of the obligation.

SO ORDERED.[13]

On appeal with the CA, the CA affirmed the RTC Joint Judgment with modifications, as follows:

WHEREFORE, premises considered, the Joint Judgment dated August 18, 2009 rendered by the Regional Trial Court of Laoag City, Branch 14, in Criminal Cases No[s]. 11741-14, 11742-14 and 11743-14 is AFFIRMED with MODIFICATION, in that:

(a)

In Crim. Case No. 11741-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of MURDER and is sentenced to reclusion perpetua without eligibility for parole. He is ordered to pay the heirs of deceased Virgilio Dalere P75,000.00 as indemnity for his death, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P30,000.00 as exemplary damages.

(b)

In Crim. Case No. 11742-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of MURDER and is sentenced to reclusion perpetua without eligibility for parole. He is ordered to pay the heirs of deceased Glenn Rodriguez P75,000.00 as indemnity for his death, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P30,000.00 as exemplary damages.

(c)

In Crim. Case No. 11743-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of ATTEMPTED MURDER and is sentenced to an indeterminate penalty ranging from three (3) years of prision correccional as minimum to ten (10) years and one (1) day of prision mayor as maximum. He is ordered to pay Roque Bareng P20,000.00 as indemnity and P30,000.00 as exemplary damages.

SO ORDERED.[14]

Accused-appellant notified the CA of his intention to appeal with the Court.[15] Hence, this Appeal.

Issues

The issues that accused-appellant raised are as follows:

THE COURT A QUO COMMITTED A SERIOUS ERROR WHEN IT SET ASIDE THE DISMISSAL OF THE PRESENT CASES TRANSGRESSING THE APPELLANT'S CONSTITUTIONAL RIGHT AGAINST

DOUBLE JEOPARDY

THE COURT A QUO COMMITTED A GRAVE ERROR IN RULING THAT THE SOLE TESTIMONY OF ROQUE BARENG IS SUFFICIENT TO PROVE THE GUILT OF APPELLANT BEYOND REASONABLE DOUBT, CONSEQUENTLY, DISREGARDING THE TESTIMONIES OF DEFENSE WITNESSES[16]

The Court's Ruling

By this Decision, the Court acquits accused-appellant principally on the ground that he was deprived of his right to a speedy trial, and with the consequent dismissal[17] by the RTC of the criminal cases, the reconsideration[18] of the RTC's Order dated February 7, 2007 (February Order) placed accused-appellant in double jeopardy. To be sure, even if accused-appellant were not placed in double jeopardy, the prosecution witness's testimony is weak and unconvincing, while accused-appellant's alibi was satisfactorily proven.

Right to a speedy trial

To determine whether accused-appellant's right to speedy trial was violated, "four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant." [19] These factors were laid down in the US Supreme Court case of *Barker v. Wingo*, [20] (*Barker*) where *Barker's* prosecution was delayed for four years due to the State's inability to prosecute one of *Barker's* co-accused who they intended to turn into a state witness. The US Supreme Court ruled that although there was a delay, *Barker* was not seriously prejudiced because he was only in jail for 10 months as he was granted bail, and that *Barker* himself did not want a speedy trial. In arriving at this conclusion, the US Supreme Court laid down the four factors above, and implored courts to apply the balancing test on an ad hoc basis, thus:

A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant, has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. [21]

Length of and reason for delay

In *Barker*, the US Supreme Court observed that: "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case." [22]

The Court has also ruled in *People v. Tampal* [23] that "[i]n determining the right of an accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of the scheduled hearings of the case. What offends the right of the accused to speedy trial are unjustified postponements which prolong trial for an unreasonable length of time." [24]

Here, accused-appellant was arrested on March 3, 2005. [25] When there was a delay in the setting of the pre-trial conference, it was accused-appellant himself who moved for the re-raffle of the cases on August 10, 2006 because the judge of RTC Branch 15 of Laoag City was assigned to three trial courts in different locations. [26] The judge granted this motion [27] and the case was raffled to RTC Branch 14 of Laoag City.

The pre-trial conference was conducted on December 12, 2006. In the Pre-Trial Order, [28] the prosecution was given four settings to present its evidence: January 17, 2007 at 2:00 P.M., January 26, 2007 at 9:00 A.M., January 31, 2007 at 9:00 A.M., and February 7, 2007 at 9:00 A.M. [29]

The prosecution, however, failed to present any evidence on the foregoing settings. Thus, in the February Order, the RTC dismissed the criminal cases upon motion of accused-appellant's counsel for the prosecution's failure to present evidence on the four settings. The February Order states:

Pre-trial conference ensued before this Branch. During that conference, the parties agreed that the prosecution will present its four witnesses in the following four settings: January 17, 2007; January 26, 2007; January 31, 2007; and February 7, 2007.

On January 17, 2007, the prosecution witnesses failed to appear without any justification. The public prosecutor also manifested that the witnesses had not been responding to his communications to them. Thus, in an Order issued that day, the Court, noting the failure of the prosecution to present evidence, scheduled the cases for hearing again on January 26, 2007, as previously scheduled. It also sent a copy of the said Order to the Ilocos Norte Police Provincial Office, which initiated the filing of the present cases. On January 26, 2007 and again on January 31, 2007, the prosecution witnesses still failed to appear without any justification. In an Order dated January 31, 2007, the Court warned the prosecution that its failure to present evidence at the hearing on February 7, 2007 shall warrant the dismissal of these cases. A copy of the said Order was also served on the Ilocos Norte Police Provincial Office. In today's hearing, the prosecution witnesses again failed to appear without any justification.

Consistent therefore with the warning in the January 31, 2007 Order, the Court hereby GRANTS the prayer of the defense counsel for the DISMISSAL of these three cases for failure of the prosecution to present even a single shred of evidence in the four settings agreed upon during the pre-trial conference. Unless there is some other lawful cause for their continued detention, the accused Roel Domingo and Joel Domingo are ordered IMMEDIATELY RELEASED from the custody of peace officers.

Let a copy of this Order be served on the Ilocos Norte Police Provincial Office.

SO ORDERED.[30]

In the public prosecutor's Motion for Reconsideration[31] of the February Order, the prosecution admitted that it failed to present any evidence on the four settings and that no private complainant or witness appeared before the Office of the Provincial Prosecutor prior and during the hearings of these cases.[32] The public prosecutor argued, however, that the failure to present any evidence on the four settings was because the private complainants left their places of residence because of persistent threats to their lives, thus they failed to receive the subpoenas sent to them:

A few days however, after the issuance of the Order, the private complainants namely, JOSIE DALERE and ROQUE BARENG appeared before the Office of the Provincial Prosecutor manifesting their surprise of what they were informed that the accused were roaming freely in their locality and after further verification they learned that the cases filed against the accused were already DISMISSED.

That the said private complainants allege that indeed they have left their former residences after the incident because of the persistent threats on their lives owing to their personal knowledge about the incident.

That because of the said threats, they continuously changed their respective residences and kept their whereabouts unknown.

That as a consequence thereof they never personally received the subpoenas sent to them or any information relative to the development of these cases.

In view thereof the prosecution is constrained to ask the Honorable Court for the reconsideration of its Order dated February 7, 2007 in order that substantive justice may be served thereby, considering that two lives were lost in the said incident.[33]

The private prosecutor also argued that "[a] perusal of the reasons posited by private complainants of their failure to appear on the scheduled hearings will therefore show that the same were not vexatious, capricious, and oppressive as in fact they were justified because of the persistent and imminent dangers o[n] their lives. That parenthetically, the said private complainants are very able, willing and interested in testifying before this Honorable Court and pursue their case until the termination of the proceedings and undertake to [be] present whenever called upon by the Honorable Court." [34]

In an Order [35] dated June 14, 2007 (June Order), the RTC granted the prosecution's Motion for Reconsideration. The RTC ruled that the witnesses did not receive any of the notices from it regarding the hearings, except for Josie Dalere (Dalere) and only for the February Order that dismissed the cases. [36]

However, a thorough review of the records shows that the prosecution unreasonably requested for the postponement of all hearing dates given to it, and to which it had previously agreed during the pre-trial conference. The June Order's blanket statement that the witnesses did not receive any of the notices except for Dalere and only as to the February Order is belied by the records.

During the pre-trial conference, the prosecution was already aware that it had four settings to present its intended witnesses: January 17, 2007, January 26, 2007, January 31, 2007, and February 7, 2007. [37] Its intended witnesses were Bareng, Raymundo Tomas (Tomas), Dalere, and one of the responding officers. [38] Only Dalere was sent a copy of the Pre-Trial Order but this was returned unserved with a notation "moved." [39]

During the January 17, 2007 hearing, the public prosecutor moved for continuance as all his intended witnesses were unavailable. Despite the accused-appellant's opposition, the RTC granted this. [40] The RTC, however, emphasized that the prosecution had only three more settings to present its evidence. [41] A review of the records reveal that the copy of the January 17, 2007 Order was received by the Ilocos Norte Police Provincial Office (Provincial Police) on January 18, 2007 and by Tomas on January 23, 2007. [42] On the other hand, the copies of the Order addressed to Bareng and Dalere were returned unserved with a notation "unknown" for Bareng and "moved" for Dalere. [43]

At the January 26, 2007 hearing, the public prosecutor manifested that he had no available witness because the witnesses were not responding to his notices. [44] The RTC stressed that the prosecution had only two more settings within which to present its witnesses. [45] Subpoenas were also issued to the prosecution witnesses and a copy of the Order dated January 26, 2007 was sent to the Provincial Police which had initiated the filing of the charges against the accused.

The Provincial Police received its copy of the January 26, 2007 Order on the same day through a certain PO1 Quiao. [46] Tomas received a copy of the Order and Subpoena on January 30, 2007, [47] while the copies sent to Bareng and Dalere were returned unserved with a notation "unknown." [48]

The public prosecutor again manifested that he had no witness during the January 31, 2007 hearing. The RTC again reminded the prosecution that its failure to present evidence on the next hearing on February 7, 2007 would warrant the dismissal of the cases. Once more, subpoenas were sent to the prosecution witnesses and the Provincial Police was sent a copy of the January 31, 2007 Order. [49]

The Provincial Police received a copy of the January 31, 2007 Order on January 31, 2007 through a certain PO2 Marlon D. Manuel. [50] The subpoena and Order were received by Tomas on February 7, 2007 and on behalf of Dalere on February 26, 2007. [51] The copy sent to Bareng was returned unserved with a notation "unknown." [52]

As discussed above, during the February 7, 2007 hearing, the prosecution still failed to present evidence, prompting the RTC, upon motion of accused-appellant, to dismiss the criminal cases and to direct the release of

accused-appellant from detention.[53] Tomas received a copy of the February Order on February 13, 2007. Copies sent to Dalere and Bareng were returned unserved with a notation "moved" for Dalere's copy[54] and an illegible notation for Bareng's copy.[55]

From the foregoing, the State's motion for postponement despite notice to two of its witnesses is an unreasonable delay of the prosecution of the case. It was wrong for the RTC to claim that the witnesses failed to receive the notices and subpoenas. The Provincial Police and Tomas received notices of hearings in the cases. From this alone, the State cannot claim that it was deprived of a fair opportunity to present its evidence when the RTC dismissed the cases in the February Order.

The prosecution's failure to present a single piece of evidence in all the four settings given to it was an unreasonable prolongation of the length of the trial. Further, the reasons the prosecution offered for the failure to present its witnesses are not even supported by any evidence other than the mere say-so of the public prosecutor. The witnesses did not even present any affidavit or any proof of the threats to their lives which prompted them to change their places of residence.

As stated above, prior to this, the cases were pending with RTC Branch 15 for more than a year and no pre-trial conference was being conducted, thus impelling accused-appellant, who was incarcerated, to himself file a motion for the cases to be re-raffled. The unreasonable delay of the prosecution needlessly prolonged the incarceration of accused-appellant.

It is incumbent upon the State and the private complainants, where applicable, to exert reasonable efforts to prosecute the case, especially in cases where the accused is incarcerated. The Court understands that, there are instances of delay in the ordinary course of the trial, but the delay here shows that the prosecution and the private complainants failed to exert the reasonable efforts to even present any evidence. The reason for their failure is likewise unsubstantiated. If, after the February Order, the private complainants were able to talk to the public prosecutor, they could have easily talked to him any time after the pre-trial and before the February Order.

Assertion of right to speedy trial

In *Barker*, the US Supreme Court further explained the nature of the accused's right to assert his right to speedy trial as closely related to the other factors; and the more serious the deprivation, the more likely the accused will complain, thus:

We have already discussed the third factor, the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.[56]

Here, on February 7, 2007, when the prosecution failed to present any evidence during the four trial dates given to it, accused-appellant moved for the dismissal of the cases, which was granted by the RTC. Accused1 appellant also raised this as an issue on appeal with the CA. In fact, as early as August 2006, accused-appellant had already raised his right to a speedy trial when he moved for the cases to be re-raffled because of the delay in the conduct of the pre-trial conference.

Given the foregoing, the Court is of the considered belief that accused- appellant had indeed asserted his right to a speedy trial.

Prejudice to accused-appellant

Prejudice to the accused is determined through its effect on three interests of the accused that the right to a speedy trial is designed to protect, which are: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." [57]

Accused-appellant was arrested on March 3, 2005. [58] Thus, at the time of the first setting for the prosecution's presentation of evidence, he had already been incarcerated for almost two years. As earlier stated, accused-appellant had in fact moved for the re-raffle of the case on August 10, 2006 because of the delay in the setting of the pre-trial conference [59] which was finally granted by the judge. [60]

Accused-appellant was therefore prejudiced when the prosecution failed to present its evidence during all the settings that were given to it. Every day spent in jail is oppressive, more so when the reason for the prolongation of incarceration is the prosecution's unreasonable motions for postponement.

Weighed against the prejudice to the accused is the right of the State to be given a fair opportunity to present its evidence or to prosecute the case. Otherwise stated, the prejudice to the accused arising from incarceration or anxiety from criminal prosecution should be weighed against the due process right of the State — which is its right to prosecute the case and prove the criminal liability of the accused for the crime charged. [61] For the State to sustain its right to prosecute despite the existence of a delay, the following must be present: "(a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice." [62]

Effectively, and as the Court ruled in *Dimatulac v. Villon*, [63] the Court must balance the interest of society and the State with that of the accused, for justice to prevail, thus:

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and, the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other. [64]

This right of the State for fair opportunity to present its evidence is, in fact, what led the RTC to reconsider its February Order. The RTC ruled that although the prosecution was given an opportunity to present evidence, it was denied a fair opportunity to do so given the failure to serve notices to the witnesses because they had changed addresses. [65] For the RTC, the lack of effective notice to the witnesses made the opportunity given to the prosecution to present the witnesses more illusory than real. [66]

The CA agreed with the RTC and ruled that double jeopardy did not attach because "the State was deprived of a fair opportunity to prosecute and prove its case prior to the order of dismissal. The trial court did not commit a serious error when it ordered the re-arrest of the accused-appellant and proceeded with trial." [67]

The RTC held that since the State was deprived of its right to due process, double jeopardy cannot bar the reconsideration of the February Order [68] and that "due process mandates that the prosecution be allowed to present its witnesses." [69] In support of its conclusions, the RTC cited *Portugal v. Reantaso*, [70] *People v. Pablo*, [71] *Merciales v. Court of Appeals*, [72] *Valencia v. Sandiganbayan*, [73] *People v. Castañeda, Jr.*, [74] and *People v. Leviste*. [75]

The cases cited by the RTC are inapplicable. The ratio of these cases is that for there to be a finding of grave abuse of discretion in a trial court's dismissal of a criminal case, there should be a finding that the State was denied a fair opportunity to present its evidence. But in this case before the Court, the State was given a fair

opportunity to present its evidence.

The RTC's dismissal of the cases in its February Order was justified. Again, the public prosecutor had at least a month from the date of the pre-trial to the date of the initial presentation of evidence to contact and prepare any of his witnesses. Further, the prosecution witnesses knew of at least three of the hearing dates as they received copies of the notices and subpoenas. The Provincial Police were likewise notified of the proceedings. The excuse of the witnesses about the fear for their lives is also unsubstantiated and it was incumbent upon them to inform the RTC and the public prosecutor of their new addresses. In fact, after the dismissal of the cases, they went to the public prosecutor voluntarily. They could have done so anytime from the pre-trial until the last day given to the prosecution to present evidence. All this time, accused-appellant was incarcerated and deprived of his freedom.

The RTC had also repeatedly reminded the prosecution that it should present its evidence on the dates it was given and to which it had agreed during pre-trial. The RTC aided the prosecution by issuing subpoenas to the witnesses, which some of them received. Again, the Provincial Police was even notified. The totality of the foregoing circumstances show that the State was given more than a fair opportunity to present its case.

In instances where the State has been given every opportunity to present its evidence, yet it failed to do so, it cannot claim to have been deprived of a fair opportunity to present its evidence. Such failure and the resulting dismissal of the case is deemed an acquittal of the accused even if it is the accused who moved for the dismissal of the case. This is the Court's ruling in a series of cases outlined in *Salcedo v. Mendoza*,^[76] (*Salcedo*) where the Court held as follows:

In the present case, the respondent Judge dismissed the criminal case, upon the motion of the petitioner invoking his constitutional right to speedy trial because the prosecution failed to appear on the day of the trial on March 28, 1978 after it had previously been postponed twice, the first on January 25, 1978 and the second on February 22, 1978.

The effect of such dismissal is at once clear. Following the established jurisprudence, a dismissal predicated on the right of the accused to speedy trial upon his own motion or express consent, amounts to an acquittal which will bar another prosecution of the accused for the same offense. This is an exception to the rule that a dismissal, upon the motion or with the express consent of the accused, will not be a bar to the subsequent prosecution of the accused for the same offense as provided for in Section 9, Rule 117 of the Rules of Court. The moment the dismissal of a criminal case is predicated on the right of the accused to speedy trial, even if it is upon his own motion or express consent, such dismissal is equivalent to acquittal. And any attempt to prosecute the accused for the same offense will violate the constitutional prohibition that "no person shall be twice put in jeopardy of punishment for the same offense" (New Constitution, Article IV, Sec. 22).^[77] (Emphasis supplied)

The Court reiterates and applies *Salcedo*. The dismissal of the cases in the February Order, predicated on the violation of the right of accused-appellant to a speedy trial, amounted to an acquittal which bars another prosecution of accused-appellant for the same offense. Thus, when the RTC reconsidered its February Order in its June Order, the RTC placed accused-appellant twice in jeopardy for the same offense and acted with grave abuse of discretion.

To the mind of the Court, an accused cannot be made to needlessly and baselessly suffer incarceration or any anxiety arising from criminal prosecution, no matter the duration. Any day in jail or in fear of criminal prosecution has a grave impact on the accused. When the prosecution is needlessly and baselessly prolonged, causing him prejudice, the Court is constrained, as in this case, to arrive at a finding that accused-appellant's right to a speedy trial was violated.

Guilt of accused-appellant was not proven beyond reasonable doubt

In view of the foregoing, the resolution of the issue of whether the prosecution was able to prove the guilt of accused-appellant beyond reasonable doubt becomes unnecessary. Nonetheless, a review of the evidence shows that the prosecution failed to prove the guilt of accused-appellant beyond reasonable doubt.

The Court has held that "[s]elf-contradictions and inconsistencies on a very material and substantial matter seriously erodes the credibility of a witness." [78] As the Court further held in *People v. Amon* [79]:

For evidence to be believed "must not only proceed from the mouth of a credible witness, but must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances. There is no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance." [80]

Here, the testimony of Bareng, the prosecution's only witness, is inconsistent in material points making it weak and incredible.

Bareng testified in open court on December 11, 2007 that the two assailants pointed their guns towards the two other victims, Virgilio Dalere and Glenn Rodriguez, thus:

Q

When you said they fired their gun towards you did you actually see where the gun was pointed?

Atty. Obra:

Misleading, Your Honor.

Court:

Overruled.

A

Yes, sir.

Q

Where?

A

The person bearing M16 Dalere while the person bearing M14 pointed his gun towards Glen Rodriguez, sir.

Q

Can [y]ou recall Mr. Witness how many gun shots did they fire at you?

A

When they were inside there were 2 gun shots, sir.

Q

What do you mean by that, Mr. Witness, can you explain to this Court?

A

The person bearing M14 rifle fired his gun first then followed by the person bearing M16 rifle, sir.

Court:

Q

How many gun shots were fired inside the house?

A

Just 2, sir.

Q

[W]hat is meant by that?

A

One ammo was fired by the person bearing M16 rifle and one was fired by the person bearing M14 rifle, sir.

Q

Single shot, Mr. Witness?

A

Yes, sir. Single shot.

Fiscal Calupig:

Q

After the 2 gun shots, what happened next?

A

I heard Virgilio Dalere moaned Apo, sir.

Q

Then what did you do next after hearing Virgilio Dalere moaned Apo?

A

I ran going down towards the fence, sir.

Q

What did you do?

A

I crouched, sir.[81]

But during cross-examination, he changed his tune and testified that immediately after the utterance of the two assailants, the assailant holding the M-14 rifle immediately shot at him, thus:

Atty. Obra:

Q

Will you tell this Court from the time the assailants bearing M14 and M16 rifle entered the kitchen and began shooting at you?

A

About seconds, sir.

Q

You mean one second?

A

About 2 seconds, sir.

Q

Of course the person holding the M14 rifle immediately shot at you?

A

Yes, sir after the utterance.

Q

So you immediately jumped falling down backwards?

A

Yes, sir.[82]

In fact, his statement during his cross-examination is the same as his statements in his affidavit that he executed before the investigating police officers on March 2, 2005.[83] He stated in his affidavit that the assailant with the M-14 rifle shot at him, and in fact he was shot at three times — once after the utterance of the two assailants and twice while he was trying to escape:

05.

Q.

And when these three men entered as you said, what did they do if there was any?

A.

There was sir, the one bearing M-14 armalite rifle uttered the following "Nobody moves" and the one bearing M-14 rifle told us the following "Are you the tough guys" while their guns were pointed towards us. The third man was standing in front of the kitchen door.

06.

Q.

After that, what happened next if there is any?

A.

After said utterance, they immediately fired upon the four of us reason for which Glen Rodriguez and Virgilio Dalere died, sir.

07.

Q.

You said that they fired at you, what if any did you do?

A.

I jumped from my sit (sic) and fell on my back. I rolled down the hill and crouched, after which, I ran away when I notice (sic) their attention was no longer focused on me. But when I looked up I saw the person holding an M14 rifle pointed his gun and again fired at me so I immediately went down with my belly on the ground and rolled down towards the irrigation and upon reaching the same I was again fired upon once.[84] (Emphasis and underscoring supplied)

This version that he was shot at twice while he was trying to escape is totally absent when he testified in open court. He just testified that when he tried to escape, the assailant with the M-14 rifle aimed at him twice yet did not shoot him, thus:

Q

Mr. Witness, when you were already there, what happened when you went to the fence north of the bunkhouse?

A

When I was here on the fence I looked back and again I saw. the person bearing M14 rifle, sir.

Q

What happened next Mr. Witness?

A

He again pointed his gun towards me reason for which I tried to go out from the fence, sir.

Q

After you were able to go out from the fence, where did you proceed?

A

I crouched going down, sir.

Q

Going down to where?

A

To the irrigation, sir.

Q

After reaching the irrigation, what happened next?

A

I then again looked back and I saw them pointing their gun towards me, sir. So I crossed the irrigation.[85]

Bareng's identification of accused-appellant is also questionable given his inconsistent statements and when weighed against the testimony of the defense witnesses. In open court, when asked to describe the assailants, Bareng merely stated that they were wearing brim buri hats.[86] In his affidavit dated March 2, 2005, he, however, provided a more detailed description of both assailants as follows:

13.

Q.

What are the descriptions that would make you recognize your assailants?

A

The men (sic) bearing M14 rifle has a long big nose and has a mannerism of moving his head sideways. His eyes are big and sharp. He has a big body built and tall, while the man bearing M16 rifle has a round face and he is a look alike of the man holding M14 rifle, tall and big in body built, sir.[87]

Edwin Andres (Andres), one of the defense witnesses and who was also present during the attack by the assailants, however, testified that immediately after the incident and while Bareng was in Andres's house, Bareng told Andres that all he saw were small thin persons wearing hats and that he could not recognize the assailants, thus:

Q

Now, Mr. witness after you run (sic) from the bunkhouse towards the gate, what happen (sic) next?

A

I ran towards our house, sir.

Q

After you ran to your house, what happened next?

A

When I reached our house Roque Bareng was already there, sir.

Q

When you saw Roque Bareng at your house, what did you do?

A

I asked him what was it.

Q

And what was the reply of Roque Bareng?

A

I asked him if he saw and he said yes.

Q

When Roque Bareng answered you in affirmative that he saw the assailant, what did you do?

Court

There was no mention of what Roque Bareng saw?

Atty. Obra

May I withdraw my question, your Honor.

Q

What did Roque Bareng or who did Roque Bareng see?

A

Small thin persons and wearing hats, sir.

Q

And who were these small persons whom Roque Bareng saw?

A

He could not recognized (sic) them, sir he said they are small persons.[88]

Pastor Virgilio Notarte also testified that Bareng described the two assailants as tall and thin and short and stout the day after the incident when asked by the police officers when they visited the crime scene, thus:

Q

And when the certain Roque arrived at the Abadilla farm, what happened next?

A

When Roque arrived at the Abadilla farm he was met by PO3 Pascual and asked him what happened, Roque told them that they just came from a drinking spree and when they went back to the barracks he heard a dog barking and saw two (2) men at the dirty kitchen of the barracks, sir.

Q

After that certain Roque told to PO3 Pascual that they went to have a drink and when they went back at the farm they saw two (2) men at the dirty kitchen, what happened next?

A

Roque described the appearance of the two (2) men whom he saw at the dirty kitchen, one of them was tall, thin wearing hat with a brim and the other man was short and stout, sir.[89]

Against the inconsistent statements of the lone eyewitness,; accused-appellant's evidence establishing his alibi gains significance and is, indeed, more credible. Accused-appellant testified that he was in the barangay hall of Brgy. Dupitac, Piddig, Ilocos Norte from 10:00 P.M. of February 26, 2005 until 2:00 A.M. of the following day and that the crimes were committed in Brgy. Sta. Maria, Piddig, Ilocos Norte.[90] He also testified that it would take an hour to travel from Brgy. Dupitac to Brgy. Sta. Maria using a motorcycle.[91] He testified as follows:

Q

Now, Mr. Witness, you mentioned that you were at the barangay hall of Brgy. Dupitac, Piddig, Ilocos Norte from 10:00 P.M. of February 26, 2005 until 2:00 of the following day and you also mentioned that the crimes were committed in Sta. Maria, Piddig, Ilocos Norte, kindly tell us the distance between Brgy. Dupitac to Brgy. Sta. Maria?

A

Less than ten (10) kilometers, sir.

Q

And if you travel from Brgy. Dupitac to Sta. Maria by foot, how long will it take you?

A

I don't know I haven't yet experience (sic) walking going to Btgy. Dupitac from St[a]. Maria, sir.

Q

How about if you ride on a motorcycle, how long it will take you to travel from Brgy. Dupitac to St[a]. Maria?

A

It takes you more than one (1) hour because you pass through mountains and you also have to pass around, sir.[92]

The fact that accused-appellant was in another barangay attending social dance from around 9:00 P.M. of February 26, 2005 until the early morning of the next day was corroborated by the testimony of Norman Pablo,[93] who was with accused-appellant in attending the social dance.[94]

That is not all. The defense also presented the testimony of Noel Esteban, the barangay chairman of Brgy. Sta. Maria, who also testified that he saw accused-appellant in the social dance many times between 9:30 P.M. to 2:15 A.M., thus:

Q

Between 9:30 to 2:15 in the morning, how many times did you see Joel Domingo?

A

I have seen them many times because I could directly [see] the place where they were seated in the camarin, your Honor[.][95]

The foregoing testimonies convince the Court that accused-appellant could not have committed the crime. Bareng's testimony, given its material inconsistencies, cannot be given full faith and credit. Accused-appellant, on the other hand, was able to prove his alibi. "[W]here, as in the cases at bar, the evidence for the prosecution is inherently weak and betrays lack of concreteness on the question of whether or not appellants are the authors of the crimes charged, alibi as a defense becomes significant." [96] As (he Court held in *People v. Pampaluna* [97]:

As a consequence of Our finding that Besa's testimony does not deserve full faith and credit, appellants' defense of alibi assumes importance since there is a total absence of positive and clear proof that the appellants were the ones responsible for the crimes charged in the information which gave rise to the instant appeal. Of course, We have time and time again stressed that alibi is the weakest of all defenses. It is easy to concoct, difficult to disprove (*People vs. Cunanan*, L-17599, April 24, 1967, 19 SCRA 769, 783, citing *U.S. vs. Olais*, 36 Phil. 828, 829; *People vs. Pili*, 51 Phil. 965, 966; *People vs. Dizon*, 76 Phil. 265, 272; *People vs. Bautista*, L-17772, Oct. 31, 1962, 6 SCRA 522, 529; *People vs. Dayday*, L-20806 & L-20807, Aug. 14, 1965, 14 SCRA 935, 942). Nonetheless, where, as in the cases at bar, the evidence for the prosecution is inherently weak and betrays lack of concreteness on the question of whether or not appellants are the authors of the crimes charged, alibi as a defense becomes significant. It is noteworthy to reiterate here what former Justice J.B.L. Reyes, speaking for this Court in the case of *People vs. Fraga, et al.* (L-12005, Aug. 31, 1960, 109 Phil. 241, 250), said: "The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong." (Cited also in *People vs. Bulawin*, 29 SCRA 710, 722).[98]

WHEREFORE, premises considered, the Appeal is hereby GRANTED. The Decision of the Court of Appeals

dated May 31, 2012 in CA-G.R. CR-H.C. No. 04278 is hereby SET ASIDE. The dismissal of Criminal Cases Nos. 11741-14, 11742-14 and 11743-14 by the Regional Trial Court of Laoag City, Branch 14 in its Order dated February 7, 2007' is hereby declared final and accused-appellant Joel Domingo is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to the Court, within five (5) days from receipt of this Decision, the action he has taken. Let a copy of this Decision be sent also to the Secretary of Justice for his information.

SO ORDERED.

Carpio,[*] Acting C. J., (Chairperson), Peralta, Perlas-Bernabe, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] CA rollo, pp. 209-210.

[2] Rollo, pp. 2-31. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor concurring.

[3] Records (Crim. Case No. 11741-14), pp. 246-275. Penned by Presiding Judge Francisco R.D. Quilala.

[4] Criminal Cases Nos. 11741-15, 11742-15, and 11743-15 when they were pending before Branch 15 of the RTC of Laoag City; see records (Crim. Case No. 11741 -14), p. 54.

[5] Records (Crim. Case No. 11741-14), p. 1.

[6] Also referred to as Glen Rodriguez and Glen Rodrigues in some parts of the records.

[7] Records (Crim. Case No. 11742-14), p. 1.

[8] Records (Crim. Case No. 11743-14), p. 1.

[9] Rollo, pp. 5-6.

[10] Id. at 6-8.

[11] Id. at 8-11.

[12] Records (Crim. Case No. 11741-14), pp. 246-275.

[13] Id. at 274-275.

[14] Rollo, pp. 27-28.

[15] CA rollo, pp. 209-210.

[16] Id. at 70.

[17] See Order dated February 7, 2007; records (Crim. Case No. 11741-14), pp. 118-119.

[18] See Order dated June 14, 2007; id. at 139-145.

[19] *People v. Hernandez*, 531 Phil. 289, 309 (2006); emphasis omitted.

[20] *Barker v. Wingo*, 407 US 514, 530 (1972).

[21] *Id.* at 530.

[22] *Id.* at 530-531.

[23] 314 Phil. 35 (1995).

[24] *Id.* at 43.

[25] Records (Crim. Case No. 11741-14), back of p. 35.

[26] *Id.* at 96-97.

[27] *Id.* at 98.

[28] *Id.* at 102-105.

[29] *Id.* at 104.

[30] *Id.* at 118-119.

[31] *Id.* at 122-124.

[32] *Id.* at 122.

[33] *Id.* at 122-123.

[34] *Id.* at 123.

[35] *Id.* at 139-145.

[36] *Id.* at 141.

[37] *Id.* at 104.

[38] *Id.*

[39] *Id.* at 105 to 105-A.

[40] *Id.* at 107.

[41] *Id.*

[42] *Id.*; see Return Card, back of p. 107.

[43] *Id.* at 108 to 110-A.

[44] *Id.* at 112.

[45] *Id.*

[46] *Id.*

[47] See Return Card, back of p. 112.

[48] See back of p. 113.

[49] *Id.* at 115-116.

[50] *Id.* at 115.

- [51] See Return Cards, back of p. 116.
- [52] Id.
- [53] Id. at 118-119.
- [54] Id. at 120.
- [55] Id. at 121.
- [56] *Barker v. Wingo*, supra note 20, at 531-532.
- [57] Id. at 532.
- [58] Records (Crim. Case No. 11741-14), back of p. 35.
- [59] Id. at 96-97.
- [60] Id. at 98.
- [61] See *People v. Tac-an*, 446 Phil. 496, 505 (2003).
- [62] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 918 (2004).
- [63] 358 Phil. 328 (1998).
- [64] Id. at 365.
- [65] Records (Crim. Case No. 11741-14), p. 141.
- [66] Id.
- [67] Rollo, p. 15.
- [68] Records (Crim. Case No. 11741-14), pp. 143-144.
- [69] Id. at 144.
- [70] 249 Phil. 671 (1988).
- [71] 187 Phil. 190 (1980).
- [72] 429 Phil. 70 (2002).
- [73] 510 Phil. 70 (2005).
- [74] 247-A Phil. 420 (1988).
- [75] 325 Phil. 525 (1996).
- [76] 177 Phil. 749 (1979).
- [77] Id. at 756-757.
- [78] *People v. Amon*, 218 Phil. 355, 361 (1984).
- [79] Id.
- [80] Id. at 361.
- [81] TSN, December 11, 2007, pp. 10-11.

- [82] Id. at 27-28.
- [83] Exhibits "A" to "A-7," records (Grim. Case No. 11741-14), pp. 3-6, 179-183.
- [84] Id. at 180.
- [85] TSN, December 11, 2007, pp. 12-13.
- [86] Id. at 11-12.
- [87] Records (Crim. Case No. 11741-14), p. 181.
- [88] TSN, June 11, 2008, pp. 9-10.
- [89] TSN, July 23, 2008, pp. 7-8.
- [90] TSN, April 28, 2009, p. 7.
- [91] Id. at 8.
- [92] Id. at 7-8.
- [93] TSN, August 6, 2008, pp. 5, 7.
- [94] Id.; TSN, April 28, 2009, p. 8.
- [95] TSN, March 24 , 2009, p. 14.
- [96] *People v. Pampaluna*, 185 Phil. 567, 592-593 (1980).
- [97] Id.
- [98] Id. at 592-593.

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