

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO BRAGAES, NESTOR NUMERON AND GEMINA FESTIN, DEFENDANTS-APPELLANTS.

G.R. No. 62359, November 14, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Common-law husband and wife Nestor Numeron and Gemina Festin as well as Rodolfo Bragaes all originally appealed from the decision of September 3, 1982 of the then Court of First Instance of Romblon[1] the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds accused Rodolfo Bragaes and Nestor Numeron guilty beyond reasonable doubt, as co-principals, of the offense of murder, and each is sentenced to serve the penalty of Reclusion Perpetua; to severally indemnify the heirs of the late Gabriel Fetalino in the amount of Twelve Thousand Pesos (P12,000.00), Philippine Currency, without subsidiary imprisonment in case of insolvency; and each to pay one-third of the costs.

"Accused Gemina Faner-Festin is also found guilty beyond reasonable doubt, as accomplice, of the same offense, and she is sentenced to suffer imprisonment of Six (6) Years and One (1) Day of Prision Mayor, as minimum, to Twelve (12) Years and One (1) Day of Reclusion Temporal, as maximum; to severally indemnify the heirs of the same deceased in the same amount, without subsidiary imprisonment in case of insolvency; and to pay one-third of the costs.

"IT IS SO ORDERED."[2]

During the pendency of this appeal, however, Nestor Numeron filed an "urgent motion to withdraw appeal." [3] The motion was granted by the Court in the resolution of August 31, 1983.[4] Entry of judgment pursuant to said resolution was thereafter made.[5] Hence, the instant appeal is only with respect to defendants-appellants Rodolfo Bragaes and Gemina Festin.

The information for murder filed with the lower court on January 26, 1981 states that in the poblacion of the municipality of Calatrava, province of Romblon, Bragaes alias Dupong, Numeron alias Mindanao Boy and Gemina Festin all conspired to kill Gabriel Fetalino and at 5:00 o'clock in the afternoon of February 24, 1980, with treachery and evident premeditation, they assaulted him with a knife locally known as a "balisong" thereby inflicting on him a mortal wound which directly and immediately caused his untimely death.[6]

At their arraignment, all three accused pleaded not guilty to the crime charged.[7] It should be noted, however, that during the preliminary investigation before the Municipal Circuit Court of San Andres-Banton-Calatrava, Bragaes pleaded guilty to the crime charged although he contended that there was no evident premeditation, no conspiracy among them nor was he induced by his co-accused to kill the victim.[8]

During the trial,[9] the prosecution established that Bragaes was employed in Numeron's operation of a

"peryahan" gambling called "pula-puti" or "indian target." He lived in the house Numeron shared with his common-law wife Gemina in Calatrava.

According to prosecution eyewitness Cecilia Servañez, a teacher, at around 5:00 o'clock in the afternoon of February 24, 1980, while she was on her way home, she observed a group of people gathered near the gate of the Calatrava High School. She was informed that Gabriel Fetalino had been boxed by Numeron and that the two were pacified by Ludovico Famorcan and Enoc Fajutag. Upon learning that Gemina and Numeron had gone home, she followed them as she used to be the teacher of Gemina. When she was near their house, she heard Gemina shouting, "Yawa sida asi ging parogo-an ro akot anak, yawa!"[10]

When she saw that Numeron was about to go back to Fetalino, Cecilia said, "Tama na, Nestor, nalaman kong nasuntok mo na si Nong Ambi." Numeron replied, "Ah, hindi naman ako natatakot kahit isa lang ako may mga alalay din ako." Since Gemina was still shouting, Cecilia tried to reason with her and asked, "Bakit pinaiinit mo ang asawa mo?" Gemina replied, "Asi gani ging parogo-an ang ako it anak maado pang magkamatay kita tanan." (Why did they cause blood [to flow from] my son? It's better that they all die.)[11]

As Cecilia was trying to pacify Gemina and Numeron, she saw Bragaes went up the stairs. Gemina, Numeron and Bragaes then had a conversation for around ten minutes. Afterwards, Bragaes went down the house, proceeded to the intersection of the street and faced the north so that he could see Numeron who was sitting on the window sill of their house. Just then, Cecilia saw Fetalino walking towards the direction of Bragaes. Upon seeing Fetalino, Numeron jumped from the window, pulled a knife, opened it and walked towards the direction of Fetalino. Numeron held the knife with his right hand and signalled Bragaes by crossing his left hand over his neck. Bragaes acknowledged the signal by nodding his head.[12]

Upon seeing the signal, Cecilia shouted, "Rayagan Tang Ambe, rayagan!" (Run, Tang Ambe, run!) Fetalino looked towards Numeron and when he saw that Numeron had a knife, Fetalino turned clock-wise making himself abreast with Bragaes. Fetalino proceeded towards the gate of the Calatrava High School and there, Bragaes thrust his right hand towards the back of Fetalino. Then, "with a normal face," Bragaes returned to the house of Gemina. Gemina was then at the foot of the stairs of the house. As Bragaes went up the stairs, he handed "something long" to Gemina while saying, "Ito na ang ibinigay mo sa akin kanina, itago mo." To Numeron, who was the last to go upstairs, Bragaes said, "Bay, tana, sinaksak ko dahil sa sinyas mo, patay 'yon wag ka nang bumaba." Upon hearing this, Cecilia ran to where Fetalino was. She found him unconscious and bleeding from the stab wound.[13]

Fidel Falqueza, who was then in the house of his daughter, corroborated Cecilia's testimony. Falqueza saw that Gemina and Fetalino had an argument because the latter slapped Gemina's son after he allegedly did something which Fetalino asked him not to do. Numeron was then sitting by the gate of the school and when he saw that Gemina and Fetalino were arguing, he approached them and hit Fetalino twice with his fist. The protagonists were separated by Ludovico Famorcan and Enoc Fajutag.[14]

After Gemina and Numeron had gone home, Falqueza saw Cecilia Servañez went to the house of the couple. Cecilia pacified Numeron telling him that he had done enough as he had punched Fetalino. Gemina then asked why blood was let out of her son. At that moment, Falqueza saw Bragaes passing by on his way to Gemina's house where Bragaes stayed with Gemina and Numeron for about five minutes.[15]

Later, Bragaes went to the middle of the road which was about twelve meters from Gemina's house. As Fetalino was walking to the church, Numeron, while holding a knife, jumped out of the window. Cecilia shouted at Fetalino, exhorting him to run. Numeron then made a sign by passing his pointed finger across his throat. Bragaes saw the sign and nodded.[16]

Fetalino ran to the gate of the high school but Bragaes overtook him, pushed Fetalino with his left hand and, with his right hand, stabbed him when they were a mere half meter from each other. Taken aback, Fetalino turned to Bragaes and said, "Why did you stab me when you are not involved in this quarrel?" Falqueza saw that Bragaes used a yellowish knife which he later inserted in his waist pocket. Then Bragaes walked towards the house of Gemina.[17]

Bragaes and Numeron were apprehended immediately after the commission of the crime by the mayor and the police. Gemina, who was then pregnant with Numeron's child, was not detained although she accompanied the two to the municipal hall. Numeron and Bragaes did not confess to the commission of the murder[18] but they executed a joint waiver of their right to be released after the maximum period of detention for their "own safety." [19] When asked as to the whereabouts of the death weapon, Numeron allegedly said that it was in the possession of Gemina. The knife was retrieved from the top of the aparador in Gemina's house.[20]

Fetalino, 59 years old, postmaster and community leader, was brought to the Romblon Provincial Hospital where he expired at around 12:30 in the early hour of February 25, 1980. His death certificate shows that he died of massive hemorrhage resulting from a stab wound at the right side of his back.[21]

Sometime in June, 1980, Patrolman Allan Famini intercepted an envelope containing two letters addressed to Violeta Montesa. Both letters were signed by Bragaes. The letter for Violeta, allegedly his girlfriend, stated that he was prepared to reveal everything at the trial as he was not afraid to die while telling the truth and even falsehoods about Numeron ("x x x at lahat lahat ng kanyang gawain ipagtatapat ko rin at malalaman mo rin pagdating ng aming bista hindi ako natatakot mamatay na magsabi ng katutuhanan kahit pa kasinungalingan nakahanda ako sa lahat ng oras sa kanya x x x.") [22] In his letter to Gemina, Bragaes warned her not to declare in court that Numeron did not jump from the window otherwise Bragaes would implicate her ("x x x huwag kang magsabi na si Nestor ay hindi tumalon sa bintana kapag sinabi mong hindi tumalon ay tiyak na kasama ka x x x.") [23]

For the defense, Gemina admitted that she had an altercation with Fetalino because when she asked him why he slapped her son Michael, Fetalino replied that he could afford to pay for Michael's treatment. Having seen them quarrelling, Numeron boxed Fetalino but they were pacified by several persons. Gemina denied having seen Cecilia Servañez in the vicinity or that Cecilia followed her and Numeron to their house.[24]

Upon reaching home, Numeron sat on the bench by the window while Gemina went to the kitchen to prepare supper. Then she heard Mayor Fortu and some policemen calling for Dupong (Bragaes). She went to the sala and inquired from the mayor why they were looking for Dupong. The mayor replied that they were arresting Dupong for killing Tang Ambi. The police arrested not only Dupong but also Numeron. Gemina followed them when they were taken to the municipal jail.[25]

During the investigation, the police looked for the knife. Gemina told the investigating officer that the knife ("balisong") was on top of the aparador in her house. Patrolman Sixon then got the knife and brought it back to the municipal building. Gemina, however, denied having given the knife to Bragaes nor that the latter had handed it to him. She had never seen it much more taken possession of it.[26]

According to Gemina, Bragaes was not really a partner of Numeron in operating the "pula-puti" game because Bragaes was working for a certain Aling Rita. However, the two were "good to one another" and treated each other as brothers.[27] Gemina admitted that Numeron jumped out of the window "before Mayor Fortu appeared" [28] but later in her testimony, she also admitted that her testimony that Numeron jumped out of the window was the tenor of her conversation with Bragaes in jail which conversation was reflected in Bragaes' letter to her.[29]

Gemina swore that it was actually Bragaes who told the police that the knife was on top of the aparador.[30] She was not the one who placed the knife where it was found for it was not even the place for keeping utensils.[31] She asserted that she did not know who killed Fetalino because during the incident, she was inside her house. She denied having ordered Numeron to kill Fetalino. In fact, she even asked Bragaes why he stabbed Fetalino when what happened between her and Fetalino was "a very small thing." Bragaes allegedly could not answer her.[32]

Numeron admitted having boxed Fetalino because the latter, after saying that he could afford to pay Numeron, struck him with a broom. He corroborated Gemina's testimony that her son Michael was slapped by Fetalino but added that Fetalino suspected that the boy had spilled the palay of Fetalino.[33]

Like Gemina, Numeron denied having seen prosecution witness Cecilia Servañez in the area. According to him, upon reaching home, he requested Gemina to prepare food. When Gemina went to the kitchen, he sat on the bench near the window. Then he heard someone call him and as he stood and placed his hand on the window shutter, he was stoned by Federico Mirabete. His upper arm was hit. So, carrying a knife, he jumped out of the window to demand an explanation from Mirabete.[34] Upon reaching the ground, he picked up a stone but Mirabete stoned him once again and ran to his own home. Numeron then went up the house and closed the windows. He did not leave the house until the mayor and the police arrived.[35]

Before Numeron closed the door of the house, Bragaes, who came from the cockpit, entered. Bragaes went to the room and sat on the bed. Then Numeron heard the mayor asking Gemina where Dupong was. Gemina replied that Dupong was in Tan-agan. The mayor then asked for Numeron.[36]

According to Numeron, after he and Fetalino had exchanged blows, he ran to the concrete wall to prevent being attacked from the back. When Gemina approached him, he held her by her shoulders and used her as a shield as several persons were attacking him.[37] After he had gone up the house, he heard people shouting that Tata Ambi was wounded ("Tang Ambi nabuno") from the vicinity of the high school. He heard the commotion after Bragaes had arrived in their house.[38]

Numeron asserted that Bragaes pleaded guilty during the preliminary investigation because policeman Falogme had threatened him with a gun and even civilians were able to maltreat him. He, however, did not advise Bragaes to execute an affidavit on his alleged maltreatment. Asked whether the reason why Bragaes owned the killing was his promise to him that should Bragaes plead guilty thereby exculpating him and Gemina, Bragaes would get P5,000, Numeron swore that he never made that promise.[39]

For his part, Bragaes admitted that he stayed with Numeron and Gemina for half a month. During the time that he stayed with them he was employed by Numeron on commission basis in the latter's gambling operation. In the afternoon of February 24, 1980, he was in the cockpit. On his way to the house of Gemina, he saw several people on the street. Suddenly, the people scampered away. He felt somebody bump him from behind. He made a side-step and came face to face with Numeron. He asked Numeron what happened but instead of answering him, Numeron dragged him towards Gemina's house and told him to go up.[40]

Gemina was in the house wiping blood from the chin of her child. Numeron then locked the windows of the house while he went inside the room and sat on the bed. In a little while, the house was stoned. He remained seated on the bed until he heard the mayor calling him. Numeron told him to go down and as soon as he did, a man with an armalite ordered him to put his hands up. Then he and Numeron were bodily searched but they found nothing from them.[41]

He and Numeron were taken to the municipal hall where someone took off his trousers and put him in jail. While in jail, Numeron threw a cigarette butt at him while he was lying in bed and when he looked at Numeron, the

latter made a sign with his index finger across his neck while saying, "yari na." When he asked Numeron what he meant, Numeron answered that the man he (Numeron) had chased was dead.[42]

Bragaes said that he pleaded guilty in the municipal circuit court because policeman Allan Famini, a nephew of Fetalino, threatened to kill him.[43] While admitting that Violeta Montesa was his girlfriend, Bragaes at first denied having written the two letters which the prosecution had presented in evidence.[44] Later, however, he admitted that the letters were his.[45]

On cross-examination, Bragaes insisted that he did not know who killed Fetalino. He denied having discussed with Numeron and Gemina that Fetalino should be killed.[46] He described Numeron as a robber and a killer but he admitted that he acquiesced to plead guilty to the crime because he believed that Numeron was capable of securing twenty thousand pesos within a week from his release from detention.[47]

After trial, the court rendered the aforementioned decision convicting the three accused for the crime of murder. Citing *People vs. Lanza*,[48] it ruled out the aggravating circumstance of evident premeditation in view of the incident preceding the stabbing and the absence of persistence of criminal intent. However, the trial court found that treachery was proven beyond reasonable doubt because Fetalino, who was unarmed, was suddenly and unexpectedly attacked from behind with a deadly weapon.

Although the trial court ruled that there was conspiracy among the three accused, on the strength of the ruling in *People vs. Nierra*,[49] it considered Gemina as only an accomplice ruling that her role in the perpetration of the crime was "of a minor character."

In his appeal, Bragaes assails the credibility of the prosecution witnesses and asserts that the lower court erred in finding conspiracy and treachery in the commission of the crime. Gemina, on the other hand, hinges her appeal on the sole issue of whether or not she conspired with Numeron and Bragaes in the killing of Fetalino.

Bragaes asserts that the testimonies of the three prosecution witnesses so differ that "it cannot be determined with moral certainty" if indeed he stabbed Fetalino citing specifically the testimony of Cecilia Servañez that it was Numeron whom Fetalino faced first. Bragaes insists that said testimony collides with the respective testimonies of Falquez and rebuttal prosecution witness Fontevillar Arriola that Fetalino was being chased by Bragaes when he was hit and that Fetalino was stabbed "as he was just passing by." [50]

Whatever inconsistencies are apparent from said testimonies, they are minor ones that do not consequently discredit the witnesses.[51] It should be noted that the witnesses were not so situated in the same spot that they would have a single point of view. On the contrary, their testimonies prove that indeed they were present during the incident and, in spite of the confusion, excitement and horror of what they were witnessing, they were able to reveal in court what they saw albeit from different angles.[52]

It is immaterial that witnesses Cecilia Servañez and Allan Famini are related to Fetalino because their testimonies, independent of the relationship, are not inherently improbable in themselves. Neither is there proof that they were charged with improper motives to incriminate the appellants.[53] Moreover, with respect to eyewitness Cecilia Servañez, her testimony was corroborated not only by Falquez but also by rebuttal witness Arriola.

Bragaes' contention that he was merely in the scene of the crime as the people were scampering away is a drawback rather than a buttress to his defense. To succeed as a defense, alibi, which is the weakest of defenses and the easiest to fabricate, must be propped up not only by proof that the accused was at some other place at the crucial time but that it was physically impossible for him to have been at the crime scene.[54] Add to this is the fact that Bragaes was positively identified as the one who stabbed Fetalino. As a matter of law, positive identification prevails over an alibi.[55]

Treachery was correctly considered by the trial court as a circumstance which attended the killing. Fetalino, who knew that Numeron had an ax to grind against him, clearly acted on the belief that he was running away from knife-wielding Numeron. He did not anticipate that death would come not from the hands of Numeron, but those of Bragaes. This is reflected in Fetalino's reaction when he realized he had been wounded: he asked Bragaes why he stabbed him when they had no quarrel. As Fetalino was totally unprepared for the unexpected attack from his back and having no weapon to resist it, the stabbing cannot but be considered as treacherous.[56] The presence of treachery qualified the killing of Fetalino to murder under Article 248 of the Revised Penal Code.

There was conspiracy between Numeron and Bragaes. Even without direct evidence of their criminal agreement, conspiracy may be inferred from their joint acts toward a common purpose.[57] Although Bragaes tried to exculpate himself by passing the buck to Numeron, his own testimony clearly reveals the veracity of the prosecution version of the commission of the crime. Thus, on cross-examination, the following facts were elicited from him:

"Q. To summarize then, Nestorio (sic) Numeron made a sign of cutting his throat with his forefinger and then Gabriel Fetalino bumped you at the back and immediately followed by Nestorio Numeron passing in front of you whereupon you pushed Nestorio Numeron and when Gabriel Fetalino passed by you he was already wounded and dropped near the school gate of Calatrava High School, is that not the sequence of your answer?

x x x x x x x x.

"A. Yes, sir." (TSN, May 12, 1982, pp. 58-59).

That Bragaes would put in execution Numeron's signal to him is explained by the fact that, although he denied it in court, he was beholden to Numeron who had not only employed him but had taken him in his own abode. As Bragaes himself expressed in his letter to Violeta,[58] she was right in telling him that he harbored the wrong belief that he should give his life to someone in the name of friendship ("x x x tama ang sabi mo na mali ang aking katuwiran na ang buong buhay ko ay ibibigay ko lamang sa isang kaibigan alang alang sa pakikisama x x x"). Bragaes' distorted expression of gratitude however, seemed not to have entirely satisfied Numeron who still offered him P5,000 while they were detained just so Numeron and his paramour would be cleared of the murder charge. It is not surprising then that during their detention their friendship turned into animosity that Bragaes was prepared to tell lies in order to pin responsibility for the murder of Fetalino on Numeron.

We cannot, however, agree with the trial court that Gemina was part of the conspiracy. The evidence at hand from which her being a conspirator may be inferred, consists of Cecilia Servañez's testimony that after the fistfight between Numeron and Fetalino, Gemina conferred for ten minutes with Numeron and Bragaes. Admitting that the conversation was inaudible from her position outside of Gemina's house, Cecilia failed to divulge what the three were talking about.

Mere knowledge, acquiescence to or approval of the act without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy absent the intentional participation in the act with a view to the furtherance of the common design and purpose.[59] It should be observed that during the incident which started from the time Numeron jumped out of the window until Bragaes stabbed Fetalino, there was no evidence on what Gemina did to pursue whatever the accused allegedly discussed inside her house. Gemina only entered the scene when, after the stabbing of Fetalino, she was seen by Cecilia standing by the stairs of her own house.

The alleged handing of the death weapon of Bragaes to Gemina, being uncorroborated, may not be given the evidentiary weight that may prejudice Gemina. This case should be distinguished from *People vs. Madali*[60] wherein the Court considered the wife of the accused policeman as an accomplice. In said case, Annie Madali performed positive acts of participation in the shooting incident by beaming her flashlight at the victims so that

her husband could take a good aim and warning her husband of the presence of other persons in the vicinity. In the instant case, however, there is no proof that Gemina handed Bragaes the death weapon before the commission of the crime. The uncorroborated testimony of Cecilia Servañez that as Bragaes gave Gemina the knife, he said "Ito na ang ibinigay mo sa akin kanina, itago mo" may not be considered as proof beyond reasonable doubt that Gemina in fact gave Bragaes the knife to be used in stabbing Fetalino.

We are not blind to the fact that it was Gemina's boisterous quarrel with Fetalino which triggered the chain of events leading to Fetalino's murder. However, the evidence at hand are simply not adequate to overcome the presumption that Gemina was innocent of the crime charged.

WHEREFORE, insofar as Rodolfo Bragaes is concerned the decision of the lower court imposing the penalty of reclusion perpetua is hereby **AFFIRMED** subject to the modification that he shall indemnify the heirs of Gabriel Fetalino in the amount of P50,000 instead of P12,000. For lack of proof beyond reasonable doubt that she conspired with Rodolfo Bragaes and Nestor Numeron in the murder of Gabriel Fetalino, Gemina Faner-Festin is hereby **ACQUITTED**. No costs.

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Presided by Judge Job B. Madayag.

[2] Criminal Case No. 1034.

[3] Rollo, p. 84.

[4] Ibid., p. 142.

[5] Ibid., p. 166.

[6] Record, p. 49.

[7] Ibid., p. 59.

[8] Ibid., pp. 30-31.

[9] After the presentation of the first prosecution witness, the Romblon capitol building was razed to the ground on September 6, 1980. The records of the case were thereafter reconstituted pursuant to Act No. 3110.

[10] TSN, June 20, 1980, p. 5.

[11] Ibid., p. 6.

[12] Ibid., pp. 6-9.

[13] Ibid., pp. 9-12.

[14] TSN, March 17, 1981, pp. 3-4.

[15] Ibid., pp. 5-6.

[16] Ibid., p. 7.

[17] Ibid., pp. 8-12.

- [18] TSN, March 20, 1981, p. 22.
- [19] Exh. H.
- [20] TSN, March 20, 1981, p. 11.
- [21] Exh. A.
- [22] Exh. E or 2.
- [23] Exh. F or 3.
- [24] TSN, July 16, 1981, pp. 4-8.
- [25] Ibid., pp. 8-11.
- [26] Ibid., pp. 11-13.
- [27] TSN, July 17, 1981, pp. 9-10.
- [28] Ibid., p. 12.
- [29] Ibid., p. 14.
- [30] Ibid., p. 26.
- [31] Ibid., p. 50.
- [32] Ibid., pp. 28-29.
- [33] TSN, July 28, 1981, pp. 2-3.
- [34] Ibid., p. 47.
- [35] Ibid., pp. 4-6.
- [36] Ibid., pp. 33-36.
- [37] Ibid., pp. 38-39.
- [38] Ibid., pp. 42-44.
- [39] Ibid., pp. 44-46.
- [40] TSN, May 12, 1982, pp. 4-9.
- [41] Ibid., pp. 9-12.
- [42] Ibid., pp. 12-15.
- [43] Ibid., p. 16.
- [44] Ibid., pp. 18-21.
- [45] TSN, May 13, 1982, p. 27.
- [46] Ibid., pp. 2-5.
- [47] Ibid., pp. 8-9.
- [48] L-31782, December 14, 1979, 94 SCRA 613, 629.

- [49] L-32624, February 12, 1980, 96 SCRA 1, 15.
- [50] Brief, p. 5.
- [51] *People v. Juanga*, G.R. No. 83903, August 30, 1990, 189 SCRA 226.
- [52] See: *People v. Eswan*, G.R. No. 84713, June 4, 1990, 186 SCRA 174.
- [53] *People v. Reception*, G.R. No. 94127, July 1, 1991.
- [54] *People v. Gupo*, G.R. No. 75814, September 24, 1990, 190 SCRA 7.
- [55] *People v. Reception*, *supra*.
- [56] *People v. Espinosa*, G.R. No. 72883, December 20, 1989, 180 SCRA 393.
- [57] *People v. Espinosa*, *supra*; *People v. Sazon*, G.R. No. 89684, 189 SCRA 700.
- [58] Exh. E.
- [59] *Taer v. Court of Appeals*, G.R. No. 85204, June 18, 1990, 186 SCRA 598.
- [60] G.R. Nos. 67803-04, July 30, 1990, 188 SCRA 69.

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