

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. USMAN HASSAN Y AYUN, RESPONDENT.

G.R. No. 68969. January 22, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a pauper's appeal of the decision[1] of the Regional Trial Court of Zamboanga City, Ninth Judicial Region, Branch XIII, dated January 25, 1984, which "finds the accused USMAN HASSAN y AYUN guilty beyond reasonable doubt as principal of the crime of MURDER, and there being neither aggravating nor mitigating circumstance attending the commission of the crime, and pursuant to Paragraph No. 1 of Article 64 of the Revised Penal Code, hereby imposes upon the said accused the penalty of RECLUSION PERPETUA and all its accessory penalties; to indemnify the heirs of the deceased-victim Ramon Pichel, Jr. y Uro the amount of P12,000.00 and to pay the costs." [2]

Usman Hassan was accused of murder for stabbing to death Ramon Pichel, Jr. y Uro, 24, single, and a resident of Zamboanga City.[3] At the time of his death on July 23, 1981, the deceased was employed as manager of the sand and gravel business of his father. On the other hand, Hassan was an illiterate, 15- year-old pushcart cargador.[4]

The quality of justice and the majesty of the law shine ever brightest when they are applied with more jealousy to the poor, the marginalized, and the disadvantaged. Usman Hassan, the herein accused-appellant, belongs to this class. At the time of the alleged commission of the crime, he was poor, marginalized, and disadvantaged. He was a flotsam in a sea of violence, following the odyssey of his widowed mother from one poverty-stricken area to another in order to escape the ravages of internecine war and rebellion in Zamboanga del Sur. In the 15 years of Hassan's existence, he and his family had to evacuate to other places for fear of their lives, six times. His existence in this world has not even been officially recorded; his birth has not been registered in the Registry of Births because the Samal tribe, to which he belongs, does not see the importance of registering births and deaths.

Usman was convicted on the bases of the testimony of a lone eyewitness for the prosecution and the sloppiness of the investigation conducted by the police investigator, Police Corporal Rogelio Carpio of the Homicide and Arson Section of the Zamboanga City Police Station, who also testified for the prosecution.

We rule that Usman Hassan's guilt was not proved beyond reasonable doubt and that Usman Hassan must, therefore, be set free.

The lone eyewitness for the prosecution is Jose Samson, 24 years old when he testified, married, and a resident of Zamboanga City. On the day of the killing, he was employed at the sand and gravel business of the father of the deceased but was jobless at the time of his examination-in-chief on February 3, 1982.

He testified that he was with Ramon Pichel, Jr. at about 7:00 o'clock in the evening of July 23, 1981; that he was a backrider in the motorcycle of Ramon when they went to buy mangoes at Fruit Paradise near the Barter Trade Zone in Zamboanga City; that while he was selecting mangoes, he saw a person stab Ramon who was seated at

his red Honda motorcycle which was parked about two or three meters from the fruit stand where he (Samson) was selecting mangoes; that he saw the assailant stab Ramon "only once" and that after the stabbing, the assailant ran towards the PNB Building. When asked at the cross-examination if he knew the assailant, Samson said, "I know him by face but I do not know his name." [5]

This sole eyewitness recounted the stabbing thus: "While Ramoncito Pichel, Jr. was holding the motorcycle with both of his hands, the assailant came from behind, held his left hand and stabbed him from behind on his chest while the victim was sitting on the motorcycle." He claimed that he was able to see the assailant "because it was very bright there"; that Ramon was facing the light of a petromax lamp, and that all these happened in front of the fruit stand — a distance of about 6 to 7 meters from the side of the road.

Samson described the assailant as wearing a white, short-sleeved t-shirt and maong pants, but "he did not see if the aggressor was wearing shoes," that the assailant stabbed Ramon with a knife but "he did not exactly see what kind of knife it was, and he did not see how long the knife was." He said he brought the wounded Ramon to the Zamboanga City General Hospital in a tricycle.

On cross-examination, Samson testified:

x x x x x x x x

Q -

When you rushed Ramon Pichel, Jr. to the hospital you came to know that he was already dead, is that correct?

A -

Yes, sir, I learned that he was already dead.

Q -

In the hospital, were you investigated by the police?

A -

They just asked the description of that person as to his attire and his appearance.

Q -

And it was while in the hospital that you told them the description of the one who stabbed Ramon Pichel, Jr.?

A -

Yes, Sir.

Q -

And the body of Ramon Pichel, Jr., was brought to the Funeraria La Merced?

A -

Yes, sir.

Q -

Can you recall what time was that?

A -

I do not know what time was that.

Q -

And it was at La Merced Funeraria that the police brought to you the accused?

A-

...

Q -

For identification?

A -

Yes, sir.

Q -

And he was alone when you identified him?

A -

Yes he was alone.

Q -

Aside from working with the Pichel family in their sand and gravel business, do you have any blood relationship with them?

A-

Yes, sir.[6] (*Italics supplied*)

x x x x x x x x

What comes as a surprise is that Samson's statement[7] which was taken only on July 25, 1981, two days after the stabbing, and sworn to only on July 27, 1981, also two days after it was taken, or four days after the killing, was never presented or mentioned by the prosecution at all. The information was practically forced out of Police Corporal Rogelio P. Carpio, a witness for the People, during his cross-examination.[8] The sworn statement contained the following questions and answers:

x x x x x x x x

Q-14:

What and please narrate it to me briefly in your own words, the incident you are referring?

A-14:

While I was busy selecting some mangoes, I saw unidentified person whom Lean recognize by face if seen again embraced my companion Ramon Pitchel, Jr. while the latter was aboard his motorcycle parked within the area. That this person without much ado, and armed with a knife suddenly stabbed him (Ramon). That by coincidence to this incident, our eye met each other and immediately thereafter, he fled the area toward the Philippine National Bank (PNB). That this unidentified person was sporting a semi-long hair, dressed in White Polo-Shirt (Short sleeve), maong pant, height to more or less 5'5, Dark Complexion. That as this unidentified person fled the area I immediately came to aid my companion, Ramon Pitchel, Jr., and rushed him to Zamboanga General Hospital, on board a Tricycle. That my companion (Ramon) did not whispered (sic) any words to me for he was in serious condition and few minutes later, he expired.

Q-15:

Was this unidentified person was with companion when he attack (sic) Ramon Pitchel, Jr.?

A-15:

He was alone Sir.

Q-16:

Can you really identified (sic) this person who attacked and stabbed your companion, Ramon Pitchel, Jr., that evening in question?

A-16:

Yes, Sir.

Q-17:

Do you still remember that confrontation we made at the Office of La Merced Funeral Homes, wherein you were confronted with one Usman Hassan, whom this Officer brought along?

A-17:

Yes, Sir.

Q-18:

Q-18:

Was he the very person, who attacked and stabbed your companion, Ramon Pitchel, Jr.?

Yes, Sir, he was the very person who attacked and stabbed my companion, Ramon Pitchel, Jr., that evening in question.

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mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;}

Q-19:

Why?

A-19:

Because his face and other physical appearance were fully noted by me and this I cannot forget for the rest of my life.

Q-20:

Before this incident, was there any altercation that had ensued while in the process of buying some mangoes in that area?

A-20:

None Sir.

Q-21:

Were you able to note what kind of knife used by said Usman Hassan in stabbing your companion, Ramon Pitchel Jr.?

A-21:

None Sir.

Q-22:

Well, I have nothing more to ask of you, do you have anything more to say, add or alter in this statement?

A-22:

No more Sir.

Q-23:

Are you willing to give a supplemental statement if needed in the future?

A-23:

Yes, Sir.[9] (Italics supplied).

x x x x x x x x

The version of the sole eyewitness appearing in his statement[10] is substantially the same as that embodied in the "Case Report," Exhibit "C", by Police Corporal Carpio, also admitted as Exhibit "2". This exhibit for the prosecution confirms the sworn statement of witness Samson that an "unidentified person, whom he recognized only by face, appeared and without any provocation, the latter embraced the victim and stabbed the same allegedly with a knife." The rest of the "Case Report" is also significant in that it confirms the confrontation between the accused and Jose Samson in the funeral parlor arranged by the police investigator and prosecution witness, Corporal Carpio.

X X X X X X X X

From this end, a follow-up was made within the premises of the Old Barter Trade, wherein the person of USMAN HASSAN Y AYUN, of Paso Bolong, this City, was arrested in connection with the above stated incident. That this Officer and companions arrested this person (Usman) due to his physical appearance, which was fully described by victim's companion, Jose Samson. During his arrest, a knife, measuring to more or less seven (7) inches in blade was confiscated in his possession. The person of Usman Hassan was brought along at the La Merced Funeral Homes for a confrontation with victim's companion, Jose Samson and in this confrontation, Jose Samson positively identified said Usman Hassan as the very person who stabbed the victim.

Usman Hassan, on the other hand, denied the charges levelled against him and admitted ownership of said knife; claiming among other things that he used said knife for slicing mangoes.[11]

X X X X X X X X

We hold that the evidence for the prosecution in its entirety does not satisfy the quantum of proof— beyond reasonable doubt — required by the Constitution, the law, and applicable jurisprudence to convict an accused person. The said evidence denies us the moral certainty which would allow us to pronounce, without uneasiness of conscience. Usman Hassan y Ayun guilty of the killing of the deceased Ramon Pichel, Jr. y Uro, and condemn him to life imprisonment and in effect turning him into a flotsam again in a sea of convicted felons in which he would be a very young stranger.

In evaluating the worth of the testimony of the lone eyewitness for the prosecution against the denial and alibi of the accused, value judgment must not be separated from the constitutionally guaranteed presumption of innocence.

When the evidence for the prosecution and the evidence for the accused are weighed, the scales must be tipped in favor of the latter. This is because of the constitutional presumption of innocence the accused enjoys as a counterfoil to the awesome authority of the State that is prosecuting him.

The element of doubt, if reasonable in this case, must operate against the inference of guilt the prosecution would draw from its evidence. That evidence, as it happens, consists only of the uncorroborated statement of the two policemen which, as previously observed, is flawed and therefore suspect.[12]

The testimony of Jose Samson, the lone eyewitness, is weak and unconvincing. And so with the evidence sought to be introduced by Police Corporal Carpio. We discover, for example, that the expert testimony of the medico-legal officer of the National Bureau of Investigation, Dr. Valentin Bernalez, presented by the prosecution, contradicted, on material points, the testimony of the lone eyewitness, Jose Samson. While Samson averred on the witness stand that he saw the assailant stab the deceased "from behind on his chest"[13] only once, the NBI medico-legal officer identified two stab wounds, "one at the front portion of the chest at the level and third rib, (sic) and another stab wound located at the left arm posterior aspect." [14] The same medical expert also concluded from the nature and location of the chest wound, which was the cause of death, that the same was "inflicted on the victim while the alleged accused was in front of him." [15]

The investigation of this case by the Homicide/Arson Section of the Zamboanga Southern Police Sector,[16] at Zamboanga City, particularly by Police Corporal Rogelio P. Carpio, leaves much to be desired. For one, we are not satisfied with the procedure adopted by the police investigators in the identification of the accused as the assailant. We have no doubt that Usman Hassan was "presented" alone[17] to Jose Samson by the police investigator and prosecution witness, Police Corporal Carpio, and his police companions, at the office of the La Merced Funeral Homes in Zamboanga City. As correctly termed by the very evidence[18] of the prosecution, the

procedure adopted by the police investigators was a "confrontation" between Jose Samson, Jr. and Usman. Earlier, on direct examination, Corporal Carpio testified that Usman was alone when he was brought to Samson for confrontation in the funeral parlor. However, on cross-examination, Carpio made a turnabout by saying that the accused was identified by Samson in a "police line-up"; this tergiversation, we daresay, was an afterthought, more the result of an over or careless cross-examination, augmented by the leading questions[19] of the trial judge rather than a fastidiousness, if not sincerity, on the part of the police investigator, to honestly correct erroneous statements in his examination-in-chief. The fact remains that both Samson and the accused testified clearly and unequivocally that Usman was alone when presented to Samson by Carpio. There was no such police line-up as the police investigator claimed on second thought.

The manner by which Jose Samson, Jr. was made to confront and identify the accused alone at the funeral parlor, without being placed in a police line-up, was "pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted his reliability as eyewitness. This unusual, coarse, and highly singular method of identification, which revolts against the accepted principles of scientific crime detection, alienates the esteem of every just man, and commands neither our respect nor acceptance." [20]

Moreover, the confrontation arranged by the police investigator between the self-proclaimed eyewitness and the accused did violence to the right of the latter to counsel in all stages of the investigation into the commission of a crime especially at its most crucial stage — the identification of the accused.

As it turned out, the method of identification became just a confrontation. At that critical and decisive moment, the scales of justice tipped unevenly against the young, poor, and disadvantaged accused. The police procedure adopted in this case in which only the accused was presented to witness Samson, in the funeral parlor, and in the presence of the grieving relatives of the victim, is as tainted as an uncounselled confession and thus falls within the same ambit of the constitutionally entrenched protection. For this infringement alone, the accused-appellant should be acquitted.

Moreover, aside from this slipshod identification procedure, the rest of the investigation of the crime and the preparation of the evidence for prosecution were done haphazardly, perfunctorily, and superficially. Samson was not investigated thoroughly and immediately after the incident. As previously mentioned, his statement was taken by the investigator only two days after the murder of Ramon Pichel, Jr. and sworn only two days after it had been taken. Similarly, there is nothing in the record to show that the fruit vendor — from whom Samson and the deceased were buying mangoes that fateful evening and who certainly must have witnessed the fatal stabbing — was investigated, or why he was not investigated. Nor is any explanation given as to why the companion[21] of the accused at the time Corporal Carpio arrested him (accused) "sitting on a pushcart" [22] at about 8:00 P.M. (around 7:00 P.M., according to Usman) of that same evening near the scene of the crime, was not also investigated when he could have been a material witness of the killing or of the innocence of the accused. In addition, the knife and its scabbard, [23] confiscated by Carpio from Usman ("tucked on the right side of his waist") at the time of his arrest, were not even subjected to any testing at all to determine the presence of human blood which could be typed and compared with the blood type of the deceased. A crime laboratory test — had Carpio or the prosecuting fiscal, or even the trial judge, insisted on it — would have revealed whether or not the knife in question (confiscated from the accused by Carpio one hour after the alleged commission of the crime) had indeed been the weapon used to kill Ramon. The police investigator instead nonchalantly dismissed this sin of omission by saying that the knife could have been "cleaned" or the bloodstain could have been taken away. [24] This presumption of the deadly weapon's having been "cleaned" of bloodstains is tantamount to pronouncing the accused of being guilty.

Our doubt about the guilt of the accused is further deepened by a resolution, [25] in a separate case, [26] of

Assistant City Fiscal of Zamboanga City and deputized Tanodbayan Prosecutor Pablo Murillo, which clearly reveals that on July 24, 1981, a day after the killing of Ramon Pichel, Jr., a similar stabbing took place at Plaza Pershing, near the place of the earlier incident, with the suspect in that frustrated homicide case being a certain Benhar Isa, "a notorious and a deadly police character" in Zamboanga City, with a long record of arrests. In that resolution, Fiscal Murillo said the same Benhar Isa was tagged as "also a suspect in the stabbing of Ramon Pichel, Jr. to death and the stabbing of Pastor Henry Villagrancia at the Fruit Paradise, this City." The said resolution further states that "with regards to this incident no witnesses ever testified for fear of possible reprisals." [27]

The trial of Usman Hassan began on October 27, 1981. Benhar Isa himself was killed by a policeman on August 28, 1981, while he (Isa) "was apparently under the influence of liquor armed with a knife (was) molesting and extorting money from innocent civilians" and "making trouble." [28] The records of the case at bar do not show any attempt on the part of Corporal Carpio, or any other police officer, to investigate or question Benhar Isa in connection with the killing of Pichel, Jr. Was it fear of the notorious police character that made the police officers disregard the possible connection between the slaying of Ramon and that of the person (Harun Acan y Arang of the Ministry of National Defense) [29] who was allegedly stabbed by Benhar Isa a day after the killing of Ramon Jr.? And yet questioning Isa might have provided that vital link to the resolution of Usman's guilt or innocence. But why should the police officers investigate Isa when Usman Hassan was already in custody and could be an available fall guy? Usman Hassan, instead, became a victim of a grave injustice. Indeed, Usman Hassan is too poor to wage a legal fight to prove his innocence. And he is so marginalized as to claim and deserve an honest-to-goodness, thorough, and fair police investigation with all angles and leads pursued to their logical, if not scientific, conclusions. Sadly circumstanced as he is, the authority of the State was too awesome for him to counteract.

The appealed decision made much ado of the admission by Usman "that he was arrested at the former barter trade, which is a place just across the place of the stabbing at the Fruit Paradise." [30] The trial judge found it "therefore strange that on the very evening of the stabbing incident he was still at the barter trade area by 8:00 o'clock in the evening" when "he usually comes to the city proper at about 6:00 o'clock in the morning and goes home at past 5:00 o'clock and sometimes 6:00 o'clock in the afternoon." [31] Usman's explanation — that, at around 7:00 o'clock P.M., he was waiting for transportation to take him home — was found by the trial court as "flimsy and weak since he did not explain why he had to go home late that evening." [32] But the whole trouble is nobody asked him. The trial judge did not propound any single question to the accused, and only three to his mother on innocuous matters, by way of clarification, if only to put on record what the mother and son could articulate with clarity. Taking into account their poverty and illiteracy, the mother and son needed as much, if not more, help, than the trial judge extended to the prosecution witnesses during their examination by asking them clarificatory and mostly leading questions. In that sense and to that extent, the accused was disadvantaged.

A fact that looms large, though mutely to testify on the innocence of the accused but the importance of which was brushed away by the trial judge was the presence of the accused near the scene (about 100 to 150 meters away) soon after the stabbing (he testified at around 7:00 P.M. although Police Corporal Carpio stated it was 8:00 P.M.) where he was found sitting on his pushcart with a companion. If he were the assailant, he would have fled. But the trial court instead indulged in conjecture, foisting the probability that the accused "was lulled by a false sense of security in returning to the place (of the stabbing), when no police officers immediately responded and appeared at the scene of the crime," adding "there are numerous cases in the past where criminals return to the scene of their crimes, for reasons only psychologist can explain." [33] It must have escaped the trial court's attention that Usman has no criminal record, and, therefore, he could not be generally classed with criminals. In the second place, the trial court's rationalization ignores the biblical truism recognized by human nature and endorsed with approval by this Court that "(T)he wicked flee when no man pursueth but the righteous are as bold as a lion." [34]

And now as a penultimate observation, we could not help but note the total absence of motive ascribed to Usman for stabbing Ramon, a complete stranger to him. While, as a general rule, motive is not essential in order to arrive at a conviction, because, after all, motive is a state of mind,[35] procedurally, however, for purposes of complying with the requirement that a judgment of guilty must stem from proof beyond reasonable doubt, the lack of motive on the part of the accused plays a pivotal role towards his acquittal. This is especially true where there is doubt as to the identity of the culprit[36] as when "the identification is extremely tenuous,"[37] as in this case.

We can not end this travail without adverting to the cavalier manner in which the trial court disregarded the claimed young age of Usman Hassan.

The defense claims that the accused Usman Hassan is a minor, basing such claim on the testimony of Lahunay Hassan, the mother of said accused, who declared that her son Usman Hassan, who is one of her four (4) children, was born in the year 1967. She testified that she was just told by a person coming from their place about the year of the birth of her son Usman. However on cross-examination, Lahunay Hassan cannot even remember the date or year of birth of her other children. The failure of Lahunay Hassan to remember the date or year of birth of her children is of course understandable, considering that she is unschooled and she belongs to a tribe that does not register births, deaths or marriages, however, it is strange that she only took pains to find out the year of birth of her son Usman. For this reason, the Court granted a motion of the defense on September 13, 1982, to have the herein accused examined by a competent dentist to determine his age. However, the findings of the dentist of Zamboanga General Hospital which is marked as Exhibit "5" shows the following: "age cannot be determined accurately under present mouth conditions. Approximately, he can be from 14 to 21 years of age." This simply means that the herein accused could either be 14 years of age or 21 years of age, or any age in between those aforesaid years. From the observation of this court, the accused Usman Hassan was about 18 years of age at the time he committed this crime and this observation is based on his personal appearance, his size and facial features and other personal characteristics, hence he can not be classified as a youthful offender under Article 189 of Presidential Decree No. 603, as amended by Presidential Decree No. 1179. In the case of *U.S. vs. Mallari*, 29 Phil. 13 and *People vs. Reyes and Panganiban*, CA 48 O.G. 1022, cited in the Revised Penal Code by Justice Ramon Aquino, Volume 1, Book 1, 1976 Edition, Page 680, it was ruled by the Supreme Court that "In cases where the age of the culprit is at issue as a basis for claiming an exempting or mitigating circumstance, it is incumbent upon the accused to establish that circumstance as any other element of defense." [38]

Considering that the age of the accused could exempt him from punishment or cause the suspension of his sentence under Articles 12 and 80, respectively, of the Revised Penal Code, if found guilty, more meticulousness and care should have been demanded of medical or scientific sources, and less reliance on the observation of the judge as had happened in this case. The preliminary findings of the dentist that the accused could be anywhere between fourteen to twenty-one years, despite the difficulty of arriving at an accurate determination due to Hassan's mouth condition, would have placed the trial judge on notice that there is the probability that the accused might be exempted from criminal liability due to his young age. All the foregoing indicates that the accused had not been granted the concern and compassion with which the poor, marginalized, and disadvantaged so critically deserve. It is when judicial and police processes and procedures are thoughtlessly and haphazardly observed that cries of the law and justice being denied the poor are heard. In any event, all this would not be of any moment now, considering the acquittal of the accused herein ordered.

WHEREFORE, the decision is hereby REVERSED, and the accused Usman Hassan y Ayun is ACQUITTED of the crime charged. His release from confinement is hereby Ordered, unless he is held for another legal cause. With costs de oficio.

SO ORDERED.

Yap (Chairman), Paras, and Padilla, JJ., concur.

Melencio-Herrera, J., concurs in that the testimony of the lone eyewitness is weak and unconvincing.

[1] Rendered by the Honorable Carlito A. Eisma, Regional Trial Judge.

[2] Decision, 12; Rollo, 35.

[3] Exhibit "A", Death Certificate.

[4] T.s.n., 2, July 28, 1982.

[5] T.s.n., 5 February 3, 1982.

[6] Tsn.. U February 10, 1982.

[7] Exhibit "1", Original Records, 4-5.

[8] T.S.n., 8 April 28. 1982.

[9] Exhibit "I" Id

[10] Id.

[11] Exhibit "C"(also Exhibit "2").

[12] (Sec. 19, Art. IV, 1973 Constitution, identical with Sec. 14(2). Art. III, 1987 Constitution; People vs. Pecardal, No. 71381, November 24, 1986. 145 SCRA 652-653: People v. Opida. No. L-46272, June 13. 1986, 142 SCRA 295; Liwanag Aguirre v. People, G.R. No. 56013, October 30. 1987.

[13] T.s.n., 5-6, February 3. 1982.

[14] T.s.n., 7 October 27, 1981, Exhibit "B".

[15] Id., 10.

[16] Exhibits "'C"1 and "D".

[17] T.s.n., 11, February 10, 1982; T.s.n., 4 April 28. 1982, Exh. "1", Original Records, id.

[18] Exh. "C"; T.s.n.. April 28, 1982, Id.

[19] T.s.n., 10-11, Id.

[20] People v. Cruz, No. L-24424, March 30, 1970, 32 SCRA 181, 186 People vs. Olvis, et al., No. L-71092. September 30, 1987; Chavez v. Court of Appeals, No. L-29169. 24 SCRA 663, 679.

[21] T.s.n., 4. April 28, 1982.

[22] Id.

[23] Exhibits "E" and "E-T1, respectively. 24 T.s.n., 9, April 28, 1982,

[25] Exhibit "4"

[26] "People of the Philippines, Complainant, versus Pat, Hamid Akbar, Respondent, Slip No. 734-81 for HOMICIDE."

[27] Id

[28] Id

[29] Id

[30] Decision. 10, Original Records. 113.

[31] Id

[32] Id

[33] Decision, 8, Original Records 111.

[34] People of the Philippines vs, Roily Anquailano alias Dagol, G.R. No. 72318,4.

[35] People vs. Jacinto, L-51908, November 29. 1984, 133 SCRA 498.

[36] People vs. Verzo, L-22517, December 26, 1967, 21 SCRA 172; People vs. Pajenddo, L-26458, January 30, 1976, 69 SCRA 172; People vs. Dueno, L-31102, May 5, 1979, 90 SCRA 23; People vs. Manalo, L-45088, February 28, 1985, 135 SCRA 84.

[37] People vs. Pervelo, L-50631. June 29, 1981. 105 SCRA 226, 238.

[38] Decision. 9. Original Records, 112.

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