

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANACLETO Q. OLVIS, ACQUITTED, ROMULO VILLAROJO, LEONARDO CADEMAS AND DOMINADOR SORELA, ACCUSED-APPELLANTS.

G.R. No. 71092. September 30, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal from the decision of the Regional Trial Court of Zamboanga Del Norte sitting in Dipolog City.[1] The case was certified to this Court on January 19, 1985 following the death sentences imposed on each of the three accused-appellants, Romulo Villarojo, Leonardo Cademas, and Dominador Sorela (the accused first-named, Anacleto Olvis, was acquitted), over which, under the Constitution then in force,[2] we exercised exclusive appellate jurisdiction.[3] With the promulgation of the 1987 Charter, abolishing the death penalty and commuting death penalties already imposed to reclusion perpetua[4], we, on May 14, 1987, issued a death penalty abolition resolution requiring the three accused-appellants to file a statement, personally signed by them with the assistance of counsel, stating whether or not they wished to continue with the case as an appealed case.[5] We have since observed this procedure with respect to all pending capital cases.

In compliance with our resolution, the three accused-appellants, on May 28, 1987, filed a statement informing us that they desire to continue with this case as an appealed case.[6]

This appeal stemmed from an information dated November 11, 1976 charging all four accused with the murder of Deosdedit Bagon. The same reads as follows:

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The undersigned First Assistant Provincial Fiscal accuses ANACLETO Q. OLVIS, as principal by inducement, ROMULO VILLAROJO, LEONARDO CADEMAS and DOMINADOR SORELA, as principals by direct participation, of the crime of murder, committed as follows:

That in the evening on or about the 7th day of September 1975, in the Municipality of Polanco, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another and acting upon the direction and instruction of ANACLETO Q. OLVIS who masterminded the bizarre plot and directly induced ROMULO VILLAROJO, LEONARDO CADEMAS and DOMINADOR SORELA to execute the conspiracy and who, armed with boloes and a hunting knife, with intent to kill by means of treachery and evident premeditation, and for a consideration of a price or reward, did, then and there willfully, unlawfully and feloniously attack, assault, hack and stab one DEOSDEDIT BAGON, thereby inflicting upon him multiple incised (hack) and stab wounds which caused his instantaneous death.

CONTRARY TO LAW, with the qualify-ing circumstances of treachery and evident premeditation and the generic aggravating circumstances of superior strength, nighttime and in consideration of a price or reward.[7]

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The four accused entered identical "not guilty" pleas.

After trial, the court a quo rendered the decision under appeal, the dispositive portion whereof reads as follows:

FOREGOING CONSIDERED, and on the part of accused ANACLETO Q. OLVIS, SR., there being no evidence, direct or indirect, whether testimonial, documentary or physical evidence, that tend to establish his complicity in this case, said accused has to be, as he hereby is, ACQUITTED.

On the part of the three (3) remaining accused ROMULO VILLAROJO, LEONARDO CADEMÁS, and DOMINADOR SORELA, the degree of moral certainty establishing their authorship of the crime is irreversibly positive. The three (3) accused conspired and confederated with one another to successfully achieve their ghastly, evil ends. Their guilt has been proved beyond reasonable doubt.

Treachery and evident premeditation are qualifying circumstances in this case of MURDER. But said offense was attended by the aggravating circumstances of superior strength and nighttime. No mitigating circumstance has been shown to offset the two (2) aggravating circumstances, as a consequence of which, the Court hereby renders judgment sentencing the accused ROMULO VILLAROJO, LEONARDO CADEMÁS, and DOMINADOR SORELA, to suffer the maximum penalty of DEATH.

The said accused are further sentenced to pay, jointly and severally, to the heirs of the Murder victim, DEOSDEDIT BAGON, the sum of P12,000.00 as death indemnity, P60,000.00 as moral damages, P20,000.00 for exemplary damages, and costs.

SO ORDERED.[8]

We come to the facts.

On September 9, 1975, Alfredo and Estrella Bagon, brother and sister, arrived at the local Integrated National Police station of Barrio Polanco, in Zamboanga del Norte, to report their brother, Deosdedit Bagon, missing. The station commander, Captain Ruperto Encabo, received their report.

Bagon had been in fact missing since two days before. He was last seen by his wife in the afternoon of September 7, 1975, on his way home to Sitio Sebaca where they resided. She did not, however, find him there when she arrived in the evening. She then set out to locate him in three probable places, but her efforts were in vain.

It was Captain Encabo himself who led a search party to mount an inquiry. As a matter of police procedure, the team headed off to Sitio Sebaca to question possible witnesses. There, Captain Encabo's men chanced upon an unnamed volunteer, who informed them that Deosdedit Bagon was last seen together with Dominador Sorela, one of the accused herein. Encabo then instructed one of his patrolmen to pick up Sorela.

Sorela bore several scratches on his face, neck, and arms when the police found him. According to him, he sustained those wounds while clearing his ricefield. Apparently unconvinced, Captain Encabo had Sorela take them to the ricefield where he sustained his injuries. But half way there, Sorela allegedly broke down, and, in what would apparently crack the case for the police, admitted having participated in the killing of the missing Bagon. By then, the police of Polanco knew that they had a murder case in their hands.

Sorela allegedly confessed having been with Deosdedit Bagon, a friend of his, in the evening of September 7, 1975 in Sitio Sebaca after some marketing. They were met by Romulo Villarojo and Leonardo Cademas, Sorela's co-accused herein and likewise friends of the deceased, who led them to a secluded place in the ricefields. It does not appear from the records how the three were able to have the deceased join them.

It was then that Villarojo allegedly attacked Bagon with a bolo, hacking him at several parts of the body until he,

Bagon, was dead. Moments later, Sorela fled, running into thick cogon grasses where he suffered facial and bodily scratches.

The police soon picked up Villarojo and Cademas. Together with Sorela, they were turned over to the custody of Captain Encabo.

The police thereafter made the three re-enact the crime. Patrolman Dionisio Capito directed Sorela to lead them to the grounds where Deosdedit Bagon was supposed to have been buried. But it was Villarojo who escorted them to a watery spot somewhere in the ricefields, where the sack-covered, decomposing cadaver of Bagon lay in a shallow grave.

The actual exhumation of the body of the victim was witnessed by Polanco policemen and Civilian Home Defense Forces volunteers, numbering about thirty. The body was transported to the Polanco municipal hall the following day, September 10, 1975. It was displayed, morbidly, in front of the building where Mrs. Catalina Bagon, widow of the deceased, and her four children viewed it. The exhumation, as well as the transfer of Bagon's cadaver, were captured by the lens of a photographer. (Exhibits "I", "J", "K", "L", "M", and "N").

The "ceremonies" continued in the parish church of the Polanco, where the body of the victim was transferred. It was laid on the altar, in full public view. Again, the proceedings were recorded by the camera of a photographer. (Exhibits "Q", "R", "S".)

But it was only later on that the body itself was uncovered from the sack that had concealed it. (Exhibits "T", "U", "V".) Thereupon, it was readied for autopsy.

The necropsy report prepared by the provincial health officer disclosed that the deceased suffered twelve stab and hack wounds, six of which were determined to be fatal.

In the re-enactment, the suspects, the three accused herein, demonstrated how the victim was boloed to death. Exhibit "Y", a photograph, shows the appellant Villarojo in the posture of raising a bolo as if to strike another, while Solera and Cademas look on. Exhibit "X", another photograph, portrays Villarojo in the act of concealing the murder weapon behind a banana tree, apparently after having done the victim in.

The investigation yielded several effects of the offense: a twenty-inch long bolo, the shovel used to inter the victim's remains, a nylon rope with which the dead body was tied, and the sack itself.

Initial findings of investigators disclosed that the threesome of Solera, Villarojo, and Cademas executed Deosdedit Bagon on orders of Anacleto Olvis, then Polanco municipal mayor, for a reward of P3,000.00 each.

While in custody, the three executed five separate written confessions each. The first confessions were taken on September 9, 1975 in the local Philippine Constabulary headquarters. The second were made before the Polanco police. On September 18, 1975, the three accused reiterated the same confessions before the National Bureau of Investigation Dipolog City sub-office. On September 21, 1975 and September 25, 1975, they executed two confessions more, again before the Philippine Constabulary and the police of Polanco.

In their confessions of September 9, 1975, September 14, 1975, September 21, 1975, and September 25, 1975, the said accused again pointed to the then accused Anacleto Olvis as principal by inducement, who allegedly promised them a reward of P3,000.00 each.

In their confessions of September 18, 1975, sworn before agents of the National Bureau of Investigation, however, they categorically denied Olvis' involvement in the killing. We note that the three were transported to the Dipolog City NBI sub-office following a request on September 10, 1975 by Mrs. Diolinda O. Adaro, daughter of Olvis, and upon complaint by her of harassment against her father by his supposed political enemies.

Based on these subsequent statements, the court a quo rendered separate verdicts on the three accused on the one hand, and Anacleto Olvis on the other. As earlier stated, Olvis was acquitted, while the three were all sentenced to die for the crime of murder.

In acquitting Olvis, the trial court rejected the three accused's earlier confessions pointing to him as the mastermind, and denied the admissibility thereof insofar as far as he was concerned. It rejected claims of witnesses that the three accused-appellants would carry out Olvis' alleged order to kill Bagon upon an offer of a reward when in fact no money changed hands. It likewise noted that Olvis had, two days after the murder, been in Cebu City, and who, upon arriving in Dipolog City, was in fact informed by the Philippine Constabulary that he was a "wanted" man, "to which said accused (Olvis) meekly complied"[9] (that is, he assented, ambiguously, to the remark). According to the court, this was inconsistent with a guilty mind.

The court repudiated claims that Olvis had motives to do away with the deceased arising from alleged attempts on his (Olvis') part to eject the deceased from his landholding (the deceased having been a tenant of his), the case in fact having reached the then Ministry of Agrarian Reform. It dismissed insinuations that his children had a score to settle with the victim, who had earlier brought a physical injuries suit against the former, that case having been dismissed. It observed, furthermore, that he was not questioned by the police after the killing, notwithstanding efforts by the three herein accused-appellants to implicate him. It relied, finally, on the retraction of the accused themselves, absolving Olvis of any liability. It was satisfied, overall, that he had a "clean bill of health"[10] in connection with the murder case.

With the acquittal of Olvis, we are left with the murder cases against the three accused-appellants. The accused-appellants subsequently repudiated their alleged confessions in open court alleging threats by the Polanco investigators of physical harm if they refused to "cooperate" in the solution of the case. They likewise alleged that they were instructed by the Polanco police investigators to implicate Anacleto Olvis in the case. They insisted on their innocence. The accused Romulo Villarojo averred, specifically, that it was the deceased who had sought to kill him, for which he acted in self-defense.

The murder of Deosdedit Bagon was witnessed by no other person. The police of Polanco had but the three accused-appellants' statements to support its claims. The fundamental issue then is whether or not these statements, as any extrajudicial confession confronting us, can stand up in court.

We hold that, based on the recorded evidence, the three accused-appellants' extrajudicial confessions are inadmissible in evidence.

It was on May 7, 1987 that we promulgated *People v. Decierdo*.^[11] In that decision, we laid down the rule with respect to extrajudicial confessions:

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"x x x Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant, may waive effectuation of those rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consent to be questioned."

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In *People v. Duero*, we added:

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"At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent.

"For those unaware of the privilege, the warning is needed simply to make them aware of it - the threshold requirement for an intelligent decision as to its exercise.

"More important, such a warning is an absolute pre-requisite in overcoming the inherent pressures of the interrogation atmosphere ...

"Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it ...

"The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it ...

"An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. The accused who does not know his rights and therefore does not make a request may be the person who most needs counsel ...

"If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney ...

"In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him ...

"Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease ... If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent ...

"If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel ..."[12]

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Like the *Decierdo* confessions, the confessions in the case at bar suffer from a Constitutional infirmity. In their supposed statements dated September 9, 14, and 21, 1975, the accused-appellants were not assisted by counsel when they "waived" their rights to counsel. As we said in *Decierdo*, the lack of counsel "makes [those] statement[s], in contemplation of law, 'involuntary,' even if it were otherwise voluntary, technically." [13]

With respect to the confessions of September 18, 1975, while it is stated therein that "[t]his Office had just

requested the services of Atty. NARVARO VELAR NAVARRO of the Citizens Legal Assistance Office, Department of Justice, Dipolog District Office, are you willing to accept the legal assistance of Atty. NAVARRO to handle your case,"[14] the same nonetheless call for a similar rejection. There is nothing there that would show that Atty. Navarro was the accused-appellants' counsel of choice (specifically, the appellant Romulo Villarojo who admitted therein having been the bolo-wielder). On the contrary, it is clear therefrom that Atty. Navarro was summoned by the NBI. He cannot therefore be said to have been acting on behalf of the accused-appellants when he lent his presence at the confession proceedings. What we said in *People v. Galit*, [15] applies with like force here:

No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf.[16]

We cast aside, for the same reason, the confessions of September 25, 1975.

But the accused-appellants were denied their right to counsel not once, but twice. We refer to the forced re-enactment of the crime the three accused were made to perform shortly after their apprehension.

Forced re-enactments, like uncounselled and coerced confessions come within the ban against self-incrimination. The 1973 Constitution, the Charter prevailing at the time of the proceedings below, says:

No person shall be compelled to be a witness against himself.[17]

This constitutional privilege has been defined as a protection against testimonial compulsion,[18] but this has since been extended to any evidence "communicative in nature"[19] acquired under circumstances of duress. Essentially, the right is meant to "avoid and prohibit positively the repetition and recurrence of the certainly inhuman procedure of compelling a person, in a criminal or any other case, to furnish the missing evidence necessary for his conviction." [20] This was the lesson learned from the ancient days of the inquisition in which accusation was equivalent to guilt.[21] Thus, an act, whether testimonial or passive, that would amount to disclosure of incriminatory facts is covered by the inhibition of the Constitution.

This should be distinguished, parenthetically, from mechanical acts the accused is made to execute not meant to unearth undisclosed facts but to ascertain physical attributes determinable by simple observation. This includes requiring the accused to submit to a test to extract virus from his body,[22] or compelling him to expectorate morphine from his mouth,[23] or making her submit to a pregnancy test[24] or a footprinting test,[25] or requiring him to take part in a police lineup in certain cases.[26] In each case, the accused does not speak his guilt. It is not a prerequisite therefore that he be provided with the guiding hand of counsel.

But a forced re-enactment is quite another thing. Here, the accused is not merely required to exhibit some physical characteristics; by and large, he is made to admit criminal responsibility against his will. It is a police procedure just as condemnable as an uncounselled confession.

Accordingly, we hold that all evidence based on such a re-enactment to be in violation of the Constitution and hence, incompetent evidence.

It should be furthermore observed that the three accused-appellants were in police custody when they took part in the re-enactment in question. It is under such circumstances that the Constitution holds a strict application. As for the accused Dominador Sorela, we cannot accept the trial judge's finding that he acted "with unexpected spontaneity"[27] when he allegedly "spilled the beans"[28] before the law enforcers on September 9, 1975. What is to be borne in mind is that Sorela was himself under custody. Any statement he might have made thereafter is

therefore subject to the Constitutional guaranty.

By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[29]

We indeed doubt whether Sorela's admissions, under the circumstances, were truly his voluntary statements. Chavez v. Court of Appeals[30] tells us:

Compulsion as it is understood here does not necessarily connote the use of violence; it may be the product of unintentional statements. Pressure which operates to overbear his will, disable him from making a free and rational choice, or impair his capacity for rational judgment would in our opinion be sufficient. So is moral coercion "tending to force testimony from the unwilling lips of the defendant." [31]

In such a case, he should have been provided with counsel.

Indeed, the three accused-appellants had languished in jail for one year and two months before the information was filed, and only after they had gone to court on an application for habeas corpus. For if the authorities truly had a case in their hands, we are puzzled why they, the accused, had to be made to suffer preventive imprisonment for quite an enormous length of time.

What is more, there are striking aspects in the case that we find distressing. For one, there was no trace of grief upon the faces of the deceased's bereaved relatives, more so his widow and children, upon witnessing his cadaver -- wrapped in a sack and all -- although it was supposedly the first time that they saw his remains after two days of frantic search.[32] Exhibits "K", "L", "M", "N", and "R", for another, depict the deceased's relatives in fixed poses, while the deceased's corpse lay in the foreground.[33]

Moreover, the victim was transferred to the municipal hall building and then subsequently, to the parish church, again, for a photographing session -- an unusual procedure -- when the perfunctory police procedure should have been to bring the corpse to the health officer for autopsy.

It was in fact only on September 10, 1975 that Deosdedit Bagon's remains were unwrapped, at the parish church at that, as if pursuant to a script or as part of some eerie ceremony.

To the mind of this Court, the disposition of the case was characterized by unusual grandstanding, for reasons as yet unclear to us. It leaves us with an uncomfortable impression that each scene was an act in some contrived tragedy.

We likewise find the authorities' haste in securing the accused Anacleto Olvis' acquittal, at the expense of the present three accused, quite disconcerting. It should be noted that the three appellants had initially implicated Olvis as the mastermind. Yet, Olvis was never invited for the usual questioning.

To us, there is more to Exhibit "20", the request to transfer Olvis' case to the jurisdiction of the National Bureau of Investigation for reinvestigation, than meets the eye. As it happened, happily for Olvis, the three accused-appellants, while under NBI custody, retracted their earlier statements indicting him as a co-conspirator. Why the NBI should intervene in the case when the Polanco police had apparently "solved" it, is, in the first place, suspicious enough, but why the three appellants should, in an instant, make a turn-about there leaves us even more disturbed.

While we do not challenge the verdict of acquittal rendered in favor of Olvis, for it is not within our power to overturn acquittals,[34] what is our concern is the apparent design to use three ill-lettered peasants,[35] the three herein accused, as fall guys in an evident network of political intrigue.

Still, we are not prepared to hand down a judgment of acquittal upon all the three accused-appellants.

In his counter-affidavit,[36] marked as Exhibit "44-A" for the defense, the accused Romulo Villarojo admitted hacking the victim to death with a bolo. He stressed, however, that he did so in self-defense. ("[H]e pulled out a hunting knife in order to stab me and in order also to defend my body, I hack[ed] him.")[37] He completely absolved his co-accused Dominador Sorela and Leonardo Cademas from any liability.

Villarojo's admission inflicting the fatal wounds upon the deceased is binding on him.[38] But it is still our business to see whether his defense can stand scrutiny.

The records will disclose that the deceased suffered twelve assorted wounds caused by a sharp instrument. The assault severed his right hand and left his head almost separated from his body. This indicates a serious intent to kill, rather than self-defense.[39]

In finding that Villarojo did take the life of the victim, we cannot, however, appreciate superior strength or nocturnity. These qualifying circumstances were considered by the court a quo on the basis of the extrajudicial statements executed by the accused, statements we reject for the reasons earlier discussed. In the absence of any other proof, the severity and number of wounds sustained by the deceased are not, by themselves, sufficient proof to warrant the appreciation of the generic aggravating circumstance of abuse of superior strength. Hence, Villarojo should be liable for plain homicide.

WHEREFORE, judgment is hereby rendered modifying the Decision dated November 30, 1984. The accused-appellants Leonardo Cademas and Dominador Sorela are ACQUITTED on the ground of reasonable doubt. The accused-appellant Romulo Villarojo is found guilty of homicide, and is sentenced to suffer an indeterminate penalty of eight years and one day of prision mayor as minimum, to fourteen years, eight months, and one day of reclusion temporal, as maximum. He is furthermore ordered to indemnify the heirs of Deosdedit Bagon in the sum of P30,000.00.

No special pronouncement as to costs.

Yap, (Chairman), Paras, and Padilla, JJ., concur.
Melencio-Herrera, (concurring with reservations.)

[1] Branch VI; the Honorable Simplicio Apalisok, presiding Judge.

[2] CONST. (1973), art. X, sec. 5(2) (d).

[3] *People v. Daniel*, No. L-40330, November 20, 1978, 86 SCRA 511 (1978).

[4] CONST. (1987), art. III, sec. 19(1).

[5] Rollo, 132.

[6] *Id.*, 135.

[7] Record, 26-27.

[8] Rollo, *id.*, 54-55.

[9] *Id.*, 49.

[10] *Id.*, 50.

[11] G.R. No. 46956, May 7, 1987.

- [12] At 10-13.
- [13] Supra, at 18.
- [14] Record, id., 21.
- [15] No. L-51770, March 20, 1985, 135 SCRA 465 (1985).
- [16] At 554.
- [17] CONST. (1973), art. IV, sec. 20.
- [18] Villaflor v. Summers, 41 Phil. 62 (1920).
- [19] Schmerber v. California, 384 US 757, 16 L ed 2d 908, 86 S Ct 1826.
- [20] Bermudez v. Castillo, 64 Phil. 483 (1937).
- [21] See supra, Laurel, J., Concurring.
- [22] U.S. v. Tan Teng, 23 Phil. 145 (1912).
- [23] U.S. v. Ong Siu Hong, 36 Phil. 735 (1917).
- [24] Villaflor v. Summers, supra.
- [25] U.S. v. Salas, 25 Phil. 337 (1913); U.S. v. Zara, 42 Phil. 308 (1921).
- [26] United States v. Wade, 388 US 218, 18 L ed 2d 1146, 87 S Ct 1926.
- [27] Rollo, id., 36.
- [28] Id.
- [29] Miranda v. Arizona, 384 US 436, 16 L ed 2d 694, 86 S Ct 1602.
- [30] No. L-29169, August 19, 1968, 24 SCRA 663 (1968).
- [31] At 679.
- [32] See Exhibits "K", "L", "M", and "N", record, id., 11-12.
- [33] Id., 11-13.
- [34] CONST. (1973), art. IV, sec. 22; RULES OF COURT, Rule 122, sec. 2.
- [35] See record, id., 36-c, 54-A, 71-A.
- [36] Id., 85-86.
- [37] Id., 85.
- [38] RULES OF COURT, Rule 130, sec. 22.
- [39] People v. Rosario, No. L-46161, February 25, 1985, 134 SCRA 496 (1985); People v. Gamut, No. L-34517, November 2, 1982, 118 SCRA 35 (1982); People v. Anies, No. L-30882, October 29, 1982, 117 SCRA 974 (1982).

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