

CRISTITO AUSTRIA Y RODIS, PETITIONER-APPELLANT, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS-APPELLEES.

G.R. No. 83530, December 18, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner, the accused below, challenges the decision of the respondent, the Court of Appeals,[1] in CA-G.R. CR No. 03441 thereof, entitled "PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, versus CRISTITO AUSTRIA, Accused-Appellant," an appeal from the decision of the Regional Trial Court, sitting in Pasig, presided over by Hon. Milagros Caguioa.

The petitioner had been charged with murder, arising from the fatal shooting of Roberto Miranda on June 28, 1980, inside the San Miguel Magnolia Poultry farm compound, in Alfonso, Cavite. The evidence shows that:

It appears from the integrated testimonies of the witnesses for the prosecution, namely, Nemesio Matalog, the security guard, Ronnie Japlo, Farm Supervisor, Desiderio Moraleda, Chief of the Medico-Legal Branch of the PC Crime Laboratory in Camp Crame, Quezon City, Policeman Silvino Aviñante of Alfonso, Cavite, Policeman Angel Lucero of the 212 PC Company in Tagaytay City, Doroteo Magero, Philippine Constabulary Firearms Examiner of the PC, Camp Crame, Quezon City, and Florita Fenol Vda. de Miranda, widow of the victim that at about 7:00 o'clock in the evening of June 28, 1980, the accused Cristito Austria (appellant herein) was at the guardhouse located inside the compound of the Magnolia Poultry and Dairy Farm at Barrio Amayong, Alfonso, Cavite. He was at that time the Officer-in-Charge of the Security Force of Sentinel Watchman and Security Agency assigned at the Poultry and Dairy Farm of San Miguel Corporation performing his duty between the hours of 6:00 p.m. to 6:00 a.m. (pp. 25-26, TSN, January 26, 1982; pp. 7-8, TSN, October 12, 1983).

While the said accused was at the guardhouse, Roberto Miranda, a driver of the Poultry and Dairy Farm of San Miguel Corporation arrived driving a company wagon. Nemesio Matalog, another security guard, opened the gate and allowed Miranda to enter the company's compound (pp. 9-10, TSN, October 12, 1983). Thereafter, accused and Roberto Miranda were seen exchanging fist blows (p. 36, TSN, January 26, 1982). Security Guard Matalog and a farm supervisor of the Poultry Farm by the name of Ronnie Japlo tried to pacify and separate the two protagonists with Japlo holding Miranda while Matalog holding the accused (pp. 38-44, TSN, *ibid*). Matalog then brought accused Austria to the guardhouse (pp. 45-46, TSN, *ibid*) while Japlo brought Miranda down the guardhouse.

While Matalog was getting the trip ticket of Miranda, accused Austria took a shotgun near the guardhouse (pp. 51, TSN, *ibid*). He went down the guardhouse where Miranda was and fired at the latter (pp. 52-53, TSN, *ibid*).

As a result, Miranda was fatally hit and died (p. 60, TSN, *ibid*). Japlo who was very near Miranda ran away towards the grassy portion (p. 62, TSN, *ibid*).

A policeman was called and arrived at the scene of the shooting. Policeman Abayante of Alfonso, Cavite took

the gun from the accused while the victim was brought to his house. (Appellee's Brief, pp. 2-3)

Pat. Silviño Aviñante, of Alfonso, Cavite testified on what transpired between him and the accused when he arrived at the scene of the shooting incident. Following is the narration of what was told him by the accused:

Q: What did you find out?

A: Sinabi sa akin ni TETONG AUSTRIA na nabaril niya si BERTO.

Q: Who is that BERTO you are referring to?

A: Si ROBERTO MIRANDA po yong namatay.

Q: And after you were informed that he shot ROBERTO MIRANDA, what did you do?

A: Kinuha ko ho ang baril niya at ibinigay naman niya sa akin." (pp. 107-108, TSN, March 2, 1982)

Desiderio Moraleda, physician, Chief of the Medico-Legal Department, PC Crime Laboratory, Camp Crame, Quezon City, examined the cadaver of the victim. His examination reveals that the victim Roberto Miranda sustained several gunshot wounds on the right side of the neck, and also lacerations on the right side of the lungs and also on the shoulders (pp. 33-34, TSN, December 9, 1981).

The accused denied having shot the deceased. His defense and theory was that the shotgun accidentally fired while he and the victim were grappling for the possession therefor. Following in brief is his version:

As OIC of the Sentinel Security Agency assigned at the Poultry and Dairy Farm of San Miguel Corporation, he was at the guardhouse of the Poultry and Dairy Farm of San Miguel Corporation when the deceased, as driver of the said farm, arrived in a company wagon. His co-guard, Nemesio Matalog, opened the gate for the deceased who entered the company's premises and stopped at the guardhouse where he alighted and went near the accused who was then situated at the guardhouse. Approaching the accused, Roberto Miranda (now deceased) shouted to him saying: "Supladong OIC, bagay sa iyo patayin," after which the deceased suddenly grabbed the service shotgun of the accused, and they grappled for the possession of the firearm for 20 seconds with the deceased holding the muzzle of the gun and the handle, after which the gun went off. When the gun went off, the deceased fell on the ground, more or less ten meters away from the guardhouse.

Upon request of the accused to his supervisor, Mr. Tonja, Police Officers Macario Mojica and Pat. Silvino Aviñante came about ten o'clock in the evening, and he voluntarily surrendered himself and his service firearm to Pat. Silvino Aviñante.

Accused claims that he was not investigated at the Alfonso Police Headquarters but instead was brought to the 212 PC Company at Tagaytay City where he was detained and investigated. He presented in evidence a Guard Report prepared by Nemesio Matalog in his own handwriting stating that he saw the deceased and the accused grappling for the firearm. He saw the deceased trying to grapple for the possession of the gun from the accused and, after a while, the gun fired and he saw the deceased fell (Exhs. 1-B, 1-C).

In addition, the accused presented in evidence a portion of a written statement of Matalog given at about 10:00 o'clock of June 28, 1980 before Investigator Dante Moral wherein he stated, among others, that he was with the accused at the gate of San Miguel Poultry Farm when Roberto Miranda arrived and after opening the gate for him and alighting from the pick-up that he was driving, the accused uttered some words directed to the deceased, after which they wrestled with each other. He told them to stop and tried to pacify them when he heard a gunshot, after which he saw the deceased lying face down.

Finally, the accused likewise presented Tito Cedeño, Operation Officer at Sentinel Watchman and Security Agency who claimed to have received the Guard Report from the security guard Nemesio Matalog and brought it to the Manila Office so that their investigator can investigate it. (Exhibit 1)

The other witness for the accused, Mr. Benbenoto Emelo, testified that sometime on February 1, 1982, Mr. Matalog called him and requested him to pass the message to the accused that the latter should not be angry with him for having testified against him because there were some persons whom he cannot refuse.[2]

He was held guilty, however, of only homicide:

Originally charged with the crime of murder before the Circuit Criminal Court of the Seventh Judicial District for the slaying of Roberto Miranda, the accused Cristito Austria was found guilty beyond reasonable doubt of the crime of Homicide and, applying in his favor the mitigating circumstance of voluntary surrender, he was accordingly sentenced to suffer an indeterminate sentence of ten years of prision mayor, as minimum, to twelve years and one day of reclusion temporal, as maximum; and to indemnify the heirs of the victim in the amount of P12,000.00 and to pay the amount of P10,000.00, by way of moral damages, P8,475.00 as actual damages, and P5,000.00 as attorney's fees.[3]

The case was filed by the Provincial Fiscal of Cavite in the defunct Circuit Criminal Court (CCC)[4] sitting in Pasig, presided over by the late Luis Peña, and docketed as CCC-VII-3207. Following, however, Judge Peña's disability (and later, death), and the reorganization of the courts on August 14, 1981,[5] creating the Regional Trial Court (RTC) and abolishing the Circuit Criminal Courts,[6] the same was referred to Pasig,[7] presided over by Hon. Eutropio Migrño, and subsequently, upon the appointment of Judge Caguioa, to her sala.

The petitioner now assails the jurisdiction of the Caguioa court to try the case and to render judgment thereon. He insists that upon the abolition of the Circuit Criminal Courts, jurisdiction should have been assumed by the Regional Trial Court, sitting in Cavite (Trece Martires City, Tagaytay City, or Cavite City), admittedly, the venue where the crime was committed.

On March 15, 1989, the Court gave due course to the petition.

The Court assumes that Judge Peña, as Judge of the Criminal Circuit Court, of the seventh judicial district, in Rizal, took cognizance of CCC-VII-3207 upon the authority granted by this Court, per its Resolution of May 16, 1972, empowering that court to try "cases that may be filed [therein] from the province of Cavite and its three cities, at Pasig, Rizal." [8] The question, however, is whether or not it should have been referred to the Cavite RTC upon the phasing out of CCCs, and whether or not the Pasig RTC had jurisdiction to try and entertain the same.

The transfer of cases from the abolished courts to the proper tribunals is governed by the following provision:

SEC. 44. Transitory provisions. --The provisions of this Act shall be immediately carried out in accordance with an Executive Order to be issued by the President/Prime Minister. The Court of Appeals, the Court of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the Courts of Agrarian Relations, the City Courts, the Municipal Courts and the Municipal Circuit Courts shall continue to function as presently constituted and organized, until the completion of the reorganization provided in this Act as declared by the President/Prime Minister. Upon such declaration, the said courts shall be deemed automatically abolished and the incumbents thereof shall cease to hold office. The cases pending in the old Courts shall be transferred to the appropriate Courts constituted pursuant to this Act, together with the pertinent functions, records, equipment, property and the necessary personnel.

The applicable appropriations shall likewise be transferred to the appropriate courts constituted pursuant to this Act, to be augmented as may be necessary from the funds for organizational changes as provided in Batas Pambansa Blg. 80. Said funding shall thereafter be included in the annual General Appropriations Act.[9]

The Court agrees that after the CCCs ceased to function, the case should have been coursed to the Cavite RTC, the (alleged) crime having been committed in Alfonso, Cavite.[10] The Court finds, however, circumstances that argue against the setting aside of the Pasig RTC proceedings for lack of jurisdiction. In *People v. Lakandula*, [11]

this Court sustained the jurisdiction of the Circuit Criminal Court of Pasig, although the offense involved took place in Kalookan City, over which the Pasig CCC exercised no jurisdiction. The Court, speaking through Justice Hermogenes Concepcion, Jr., held:

x x x But, since this case had been transferred, We can only assume, as the Solicitor General stated, that, in the absence of any other showing in the records, the transfer of the case to the Circuit Criminal Court was effected in accordance with the long standing practice followed by judges of moving cases from one branch to another branch of the same court, if they are agreed that such a step would best promote the ends of justice, as in this case, which had been pending for a long time in the Court of First Instance without being heard although the accused was detained.[12]

There can be no debate that this case has been pending for the last nine years. The Court can not indeed imagine the unsettling consequences, should the same be tried anew, in terms of the expeditious administration, especially, of criminal justice. The Court finds that the ends of speedy trial will be subserved better if the proceedings before Judge Caguioa were left alone.

Moreover, the records show that the petitioner had pursued vigorously the case before the lower court, on the supposition that it had jurisdiction, and had asked it to render a judgment of acquittal, as he in fact requests this Court to set aside its decision (as well as the decision of the respondent Court of Appeals). It is a behavior that forces him to accept the jurisdiction of the Pasig court, because if the latter lacked jurisdiction, it can not act, much less render a decision, whether of a conviction or acquittal. Surely, he can not rightfully maintain an attack on the trial court's competence after having accepted--and invoked--it.[13] Estoppel is an impediment against any attack.

The petitioner's next assigned errors pertain to facts, thus:

III

THE HON. COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN THE APPRECIATION OF EVIDENCE USING ITS OWN DEDUCTION AND INFERENCES WHEN IT DECLARED THAT THE TESTIMONY OF THE MEDICO-LEGAL OFFICER SUPPORTS THE TESTIMONY OF THE PROSECUTION WITNESSES THAT THE VICTIM WHEN FIRED ON WAS ABOUT TEN METERS AWAY FROM THE ACCUSED WHO WAS AT THE GUARD HOUSE, THE SAME BEING CONTRARY TO THE PHYSICAL EVIDENCE ON RECORD AND TESTIMONY OF THE MEDICO-LEGAL OFFICER (Pages 5, 11, 12, Decision of Hon. Court or Appeals).

IV

THE HON. COURT OF APPEALS GRAVELY ERRED IN ITS INTERPRETATIONS THAT THE WOUND WOULD BE LEVELLED AS CONTACT FIRE AND NOT AS A NEAR CONTACT FIRE IF THE APPELLANT WAS INDEED GRAPLING WITH THE VICTIM FOR THE POSSESSION OF THE SHOTGUN. (Pages 5, 11, Decision of Hon. Court of Appeals)

V.

THE HON. COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ACCUSED WAS SEATED AT THE GUARD HOUSE WITH A COCKED RIFLE (Page 13 Decision Ibid) IN TOTAL DISREGARD OF PHYSICAL EVIDENCE ON RECORD THAT THE FIREARM IS IN A STATE OF SAFETY THOUGH LOADED AND UNLOCKED AND WENT OFF IN THE COURSE OF THE GRAPPLING FOR THE POSSESSION BETWEEN THE ACCUSED AND VICTIM.

VI

THE HON. COURT OF APPEALS GRAVELY ERRED IN ITS DEDUCTION THAT ACCUSED AS A MAN OF AUTHORITY, A FORMER ARMY CORPORAL, PROVINCIAL WARDEN, FORMER BARANGAY CAPTAIN AND OIC OF SENTINEL SECURITY AGENCY, USED TO HAVING HIS ORDERS OBEYED, THE BEHAVIOR OF THE DECEASED IN DENYING HIS REQUEST TO SLOW DOWN IN DRIVING, MUST HAVE CUT DEEP TO HIS EGO, THUS DELIBERATELY WAITED FOR THE DECEASED TO HAVE CONFRONTATION IN VIEW OF THE EARLIER INCIDENT. IN TOTAL DISREGARD OF TESTIMONIAL EVIDENCE ON RECORD THAT THE VICTIM GOT MAD TO (sic) ACCUSED BECAUSE HE (VICTIM) FAILED TO ATTEND TO HIS MEETING IN MANILA AND WAS REEKING IN LIQUOR AT THE TIME HE SHOUTED "SUPLADONG OIC, DAPAT SA IYO PATAYIN" AND AFTER WHICH THE VICTIM SUDDENLY GRABBED THE SHOT GUN OF THE ACCUSED.

VII

THE HON. COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE VOID DECISION OF THE REGIONAL TRIAL COURT, BRANCH 165, AND EVEN INCREASED THE INDEMNITY IN TOTAL DISREGARD OF THE TESTIMONY OF THE ACCUSED-APPELLANT WHICH DOVE-TAILED WITH THE NECROPSY REPORT OF MEDICO-LEGAL OFFICER AND WHO WAS ABLE TO PROVE BEYOND REASONABLE DOUBT THAT THE DEATH OF THE VICTIM WAS PURELY ACCIDENTAL AND BROUGHT ABOUT BY THE VICTIM HIMSELF.[14]

Well-established is the rule that the jurisdiction of the Supreme Court is confined to legal errors, and as a rule, the factual findings of the Court of Appeals are binding on the Court.[15] The rule is, however, subject to firmly settled exceptions, among them: (a) when the same are grounded entirely on speculation, surmise, and conjecture; (b) the inference made is manifestly mistaken; (c) the Court of Appeals committed a grave abuse of discretion; (d) its judgment is based on a misapprehension of facts; (e) it went beyond the issues of the case and its findings contravene admissions of the parties; (f) its findings are contrary to those of the trial court; (g) the same are conclusions without citation of specific evidence; (h) the facts set forth in the appellant's brief are not disputed by the appellee; and (i) when the findings of the Court of Appeals are not supported by the evidence or are in fact contradicted by the evidence on record.[16]

In finding against the petitioner, the respondent Court of Appeals observed:

The defense is correct in pointing out that the finding of the lower court that the accused shot the victim ten meters away is not supported by the evidence. This is a mere conclusion drawn from the fact that the deceased fell and was found ten meters away from the guardhouse.

What appeared as improbable to the Court is the version of the accused that he and the deceased were grappling for the possession of the firearm at the guardhouse when the gun accidentally fired. If this were so, why then did the victim fall ten meters away from the guardhouse?

As observed by the court, there is no iota of evidence adduced by the defense to show that within the twenty seconds of the alleged grappling for the possession of the firearm, a distance was traversed by the protagonists. This does not, however, mean that the deceased was shot by the accused ten meters away from the guardhouse. It simply lends credence to the evidence of the prosecution that after pacifying the deceased and the accused who was brought to the guardhouse, the accused got hold of the shotgun and went towards the victim and shot him.

This was the declaration of the prosecution witness Ronnie Japlo, the Farm Superintendent, who testified that after pacifying the protagonists, he took the victim somewhere at the gate while accused was brought to the guardhouse. He then saw the accused holding the shotgun going towards him and the victim Roberto Miranda.

So he shouted to Miranda, "run," while he ran to a grassy place leaving Miranda behind when he heard the shot from the direction where he left the victim Roberto Miranda. Nemesio Matalog likewise confirmed the testimony of Japlo. He testified that appellant took the shotgun and went to Miranda who was down the guardhouse and fired the shot there (pp. 52-53, Jan. 26, 1982).[17]

In short, the petitioner was supposed to have returned to the guardhouse (after engaging the deceased in a fist fight), waited there for the deceased with a shotgun, and upon sighting him, gunned him down. This contradicts the version of the accused, that while he admitted having armed himself with a shotgun, the deceased died as a result of an accidental firing when the latter attempted to wrest the firearm away from him.

In discarding the petitioner's story, the respondent Court relied foremost, on the testimonies of the prosecution witnesses, Nemesio Matalog, a co-security guard of the petitioner at the compound, and Ronnie Japlo, the farm superintendent, who both testified that the petitioner did have a shotgun with which he shot the deceased. The Appellate Court was also perplexed why the latter was found lying ten meters away from the guardhouse, where the petitioner claimed they grappled for possession of the shotgun, if truly he (the petitioner) shot him while they fought for it. The fact, finally, that the deceased's wound was classified by Dr. Desiderio Moraleda, a medico-legal officer, as one brought about by "near contact fire", rather than "contact fire", convinced the Court of Appeals that the petitioner shot him while a considerable distance separated them, which would not have been possible if the two were indeed grappling for the rifle.

This Court is not convinced that on the strength of these pieces of evidence, the petitioner is indeed, guilty, whether of murder, as charged, or of homicide, as found. This Court finds shreds of evidence in the records that the respondent Court did overlook, as the petitioner so insists, that would have indeed exculpated him on account of reasonable doubt.

This Court notes that Nemesio Matalog had previously entered in the guard book report, following the incident in question, the following inscription:

x x x humigit kumulang ika-pito ng gabi dumating si BERTO MIRANDA ng isinasara ko ang gate, nakita ko na lang na inaagawan ng baril si OIC Cristeto Austria at maya-maya pumutok ang baril at nakita ko bumagsak si Berto" (Underscoring supplied).[18]

The above statement was entered by Matalog himself in compliance with company procedure requiring guards to put down unusual incidents occurring while on duty. Apparently, Matalog inscribed that as a result of what he noted on the night in question.

The above written evidence substantiates the petitioner's claim that he and the deceased were fighting for possession of the shotgun, and while this does not per se prove that the shooting was accidental, it casts a shadow of doubt on the prosecution's version that he had deliberately shot the deceased after waiting for him at the guardhouse, and that he had killed him in cold blood. Hence, the fact that the evidence for the defense is itself weak (because the petitioner had not shown that the shooting was accidental) that can not militate against the petitioner for the simple reason that the prosecution itself has no evidence, to justify a conviction. Verily ???e prosecution can not rely on the infirmity of the accused's evidence, but must depend on the strength of its own.[19]

The existence of Matalog's guard book report was never denied by the prosecution. Although the latter sought to repudiate it upon Matalog's own recantation--a recantation the Court of Appeals accepted--this Court finds that it is too late for any retraction without necessarily making a liar out of Matalog. This Court does not buy, so to speak purely and simply, Matalog's excuse why he testified otherwise in court (other than what he claimed in the guard book report), as follows:

Narrating the circumstances surrounding its execution, witness, Matalog testified that the guard report was prepared by him at the instance and upon the order of the accused-appellant (p. 48, tsn, September 7, 1984). The said witness was emphatic in saying that accused was the one who dictated the entry in the report which were all lies (pp. 44-45, tsn, March 2, 1982) and because the latter told him that he (accused-appellant) already killed eight (8) persons (pp. 49-5-, tsn, March 2, 1982) he became afraid and was left with no choice except to follow him (p. 56, tsn, March 2, 1982). However, he did not submit the said guard report but instead kept it in a cabinet because its contents were not true (pp. 57-58, tsn, September 7, 1984)[20]

We can not, as we said, accept this explanation. First, it rests on Matalog's barren say--so. Second, we have difficulty believing that the petitioner had to resort to subtle threats ("I have killed eight persons already") to make him record the statement in question because the petitioner could have simply trained his shotgun on him, and succeed with better facility. To say that he, anyway, "become afraid" is to say that the petitioner's threats, idle as they were, were truly so overpowering to make him, Matalog, put in his book report a false entry, one involving the death indeed of a fellow company employee. The Court is plainly incredulous.

A recanter's testimony should be accepted with caution and weighed carefully against the presumption of innocence the accused enjoys under the Constitution.²²

As we stated, Matalog's on-the-spot report puts a cloud on the case for the prosecution. As a consequence, we can not accept the farm superintendent's, Ronnie Japlo's, testimony that the petitioner did shoot the deceased deliberately. Arrayed against his testimony is the very report, sustaining the petitioner's story. Between his mere assertions and a forthright written statement, the latter must be made to prevail.

The fact that the deceased's cadaver was found lying ten meters away from the guardhouse can not point to the petitioner's guilt. Ordinarily, it would have spoken against the defense's claim that the accused and the deceased were *tete-a-tete* in a tug-of-war over a rifle in the vicinity of the guardhouse. The evidence, however, reveals that the deceased's remains were ten meters away from the guardhouse because the spot was sloping and in all probability, the deceased had rolled over after the shotgun had gone off. The fact that the deceased died on sloping terrain is not disputed by the parties, the prosecution, the trial court, the Court of Appeals, or the Solicitor General. It is also substantiated by Exhibit "M" a photograph submitted to the trial court. The Court of Appeals need not therefor have been puzzled why the deceased lay ten meters from the guardhouse.

The Court of Appeals, as we likewise indicated, was of the opinion that because the deceased's gunshot wounds were brought about by a "near contact fire", which implies, in the testimony of the medico-legal officer, a distance of not more than three inches²³ between the wound and the muzzle of the firearm, rather than by "contact fire", which implies, in his opinion, that the muzzle of the firearm had been touching²⁴ a part of the victim's body, it means that there was no struggle for the possession of the rifle. The Court is not persuaded that just because the deceased's injury was not by "contact fire" no such a struggle could have possibly occurred as claimed. For, what the deceased's wound suggests (caused by "near contact fire") that the deceased and the accused were at any rate close to each other (by not more than three inches), and this does not, in the court's view, foreclose the possibility of a struggle in fact going on between the two protagonists. The fact is that the deceased was shot at close range (though not necessarily by contact fire), a fact that can not by itself dissipate all claims that a grappling for the rifle had preceded the shooting.

Needless to say, the Court of Appeals' recital leaves a reasonable doubt on this Court's mind that the petitioner had shot the deceased deliberately, and other than by accident as the latter suggests. It is true that the petitioner's story is as already noted by itself self-serving, that alone can not overcome the presumption of innocence with which no less than the fundamental law of the land consecrates accused persons. What is significant is that the prosecution has shown no sufficient evidence essential for conviction.

The Court finds no necessity in delving further on the fifth, sixth, and seventh errors the petitioner assigns. We are quite convinced that the respondent Court or Appeals' above error is sufficient to justify this reversal.

WHEREFORE, the petition is GRANTED. The petitioner is ACQUITTED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Twelfth Division, Herrera, Oscar, J., ponente; Ejercito, Bievenido and Torres, Jr., Justo, JJ., concurring.

[2] Rollo, 72-75.

[3] Id., 72.

[4] Id., 94

[5] Per Batas Blg. 129. The statute came into effect on January 17, 1983. See *People v. Court of First Instance*, L-64050, September 12, 1984, 132 SCRA 58; see, however, *Enriquez v. Fortuna Maricullum Corporation*, No. L-77869, March 16, 1988, 158 SCRA 151.

[6] *Supra*, sec. 47.

[7] Branch 165. Upon the abolition of the Circuit Criminal Court, Judge Peña was assigned to Branch 166. Branch 165 is Branch 166's pairing sala. See Rollo, id., 15.

[8] In re: Petition for authority to hear cases in Pasig, Rizal, Onofre Q. Villaluz, Judge of the Circuit Criminal Court of Rizal, Seventh Judicial District, petitioner, M-19-23 May 16, 1972. See *Tolentino v. Villaluz*, Nos. L-36906-07, July 27, 1987, 152 SCRA 299. (Judge Peña succeeded Judge Villaluz.) See also *People v. Maranan*, Nos. L-47228-32, L-46587, December 15, 1986, 146 SCRA 243, in which the Court held that "the Judge of the Circuit Criminal Court of the then 7th Judicial District (with station at Pasig, Rizal) has jurisdiction to decide cases involving offenses that took place in Cavite." (At 249).

[9] Batas Blg. 129, sec. 44.

[10] RULES OF COURT, Rollo 110, sec. 15, par. (a).

[11] No. L-31103, July 20, 1983, 123 SCRA 415.

[12] *Supra*, 422.

[13] See *Lee v. Municipal Trial Court*, No. L-68789, November 10, 1986, 145 SCRA 408.

[14] Rollo, id., 13-14.

[15] *Guico v. Mayuga*, 63 Phil. 328 (1936).

[16] *Teodoro v. Court of Appeals*, No. L-31471, November 12, 1987, 155 SCRA 547.

[17] Rollo, id., 78.

[18] Id., 20, exhibit "1"; emphasis supplied.

[19] *People v. Saavedra*, No. L-48738, May 18, 1987, 149 SCRA 610.

[20] Rollo, id., 79.

22 See *Moniza, Jr. v. People*, No. L-72719, September 18, 1986, 144 SCRA 182.

23 *Rollo*, Id.,. 58.

24 Id.

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