

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO LAZARTE Y MOGALLON, ACCUSED-APPELLANT.

*G.R. No. 89762. August 07, 1991*

Ponente: SARMIENTO, J.

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### SARMIENTO, J.:

At around 11:45 o'clock P.M., on October 8, 1986, Lorenzo Lara was sleeping in his residence at Zone 5 Signal Village, Taguig, Metro Manila. A knock at the door, awakened him. He stood up and opened the door, but he saw nobody. Then, to his surprise, someone entered the house through the window. It was Nonito Jambunganan y Hundana, the owner of the house which Lara was occupying for free, as a caretaker.

Seeing Lara, Nonito embraced him. As Lara held Nonito, he felt blood in the latter's clothes and sensed that he had wounds in his body. When he asked Nonito what happened, the latter replied, "Tol, sinaksak ako sa labas." "Who stabbed you?" Lara asked. "Tony, Suay, Ric and Junior," he answered. Nonito also "shouted" twice, "Help me!" Frantically, Lara called out to his neighbors for help. Neighbors came running. When Nonito was about to be placed on board a jeep, he collapsed. He was declared "DOA", dead on arrival, at the Nichols Airbase Hospital.

Nonito sustained three stab wounds at the back and died of hemorrhage, severe, secondary to stab wounds.

Dr. Prospero A. Cabanayan, a medical specialist, and the medico-legal officer and in-charge of the clinical application of medicine, of the National Bureau of Investigation, opined that of these three wounds, all at the back, only one was fatal which alone could have caused the death of the victim. He also testified that "(O)ne kind of single bladed sharp pointed instrument produced the wounds," albeit he admitted that it is possible that there could have been more than one instrument.

The next morning, on October 9, 1986, at around eight o'clock, Lara reported the incident to the Taguig Police Station. The subsequent investigation, sloppily and hapzardly conducted by the police authorities, resulted in the finding that Nonito was stabbed two meters away from a sari-sari store owned by Priscilla Flores, married to a policeman of Taguig, at Libis St., Zone 5, Signal Village, Taguig, Metro Manila. The store was about ten meters away from Nonito's residence. Drinking hard liquor was prevalent in that store.

Solely on the deductions or conclusions of Lara that the four nicknames or aliases allegedly "whispered" by Nonito to him correspond to Antonio Lazarte for the nickname or alias "Tony," "Rodolfo Munding" for "Su-ay" or "Suway" (in his direct testimony he said "Romulo Cahiwat"), while on cross-examination he mentioned "Romulo Munding," and Ricardo Ignacio for "Ric," and "Eliseo Henares" or "Romulo Cahiwat" for "Junior," an information for murder was filed against the four aforementioned on October 14, 1986.2

Only Antonio Lazarte y Mogallon and Ricardo Ignacio were apprehended, as the other two, "Rodolfo Munding" and "Eliseo Henares," were never arrested, and remain at large.

Ricardo Ignacio was only apprehended during a "saturation drive" conducted by the military and police authorities on August 30, 1987.3 He was acquitted on a demurrer to evidence pursuant to the Resolution of the

trial court dated February 9, 1989.<sup>4</sup>

The defense of Antonio Lazarte, the appellant in the case at bar, consists of denial and alibi, and points to two other persons--Mio Veloso and a certain Miguel--as the assailants.

In his defense before the trial court, Antonio, 31, married with eight children, testified that he was at the time of the incident a barangay tanod of his barangay, and an upholsterer in the Emaden furniture shop in Pasay City. He denied that he knew the deceased and averred that he had never met him. He narrated that he was inside his family residence at Libis St., Purok 15, Zone 5, Signal Village, Taguig, M.M. at 11 o'clock in the evening of October 8, 1986. He had not gone out the whole day as he was taking care of his sick child in the absence of his wife, Amelia, a Food Terminal, Inc. employee who was assigned to the night shift.

The following day, at around eight o'clock in the morning, Lorenzo Lara and Melly Castillo arrived at Antonio's house, demanding that Antonio reveal the identities of the assailants (allegedly Antonio's townmates) who had stabbed Nonito to death the night before. Antonio professed no knowledge of the incident.

Later that afternoon, at around 3 o'clock, Lorenzo and Melly returned to Antonio's house with Patrolwoman de los Santos and Patrolman Amigo of the Taguig Police Station. The police officers, without any warrant of arrest, took Antonio forcibly to the police precinct where he was investigated. Lara and Melly promised to release him from police custody if he divulged the whereabouts of Mio Veloso and Miguel, and threatened to get back at him, if he would not, but since Antonio knew nothing of the case, he made no disclosures. Three days later, while he was already in the municipal jail, Lara and Melly again went, for the third time to him and for the third time tried to prevail upon him to reveal the whereabouts of the assailants they suspected.

Antonio's account on his whereabouts on the night of the stabbing incident was corroborated by Teodora Damanhog, a faith healer. She said that on October 8, 1986, she was summoned to treat Antonio's child who had a fever. She arrived at Antonio's house in the evening, and gave the child a "pangtapal" and a lukewarm bath. To make sure that the child's fever went down, she remained in Antonio's house until one o'clock after midnight. She testified with certainty that from ten o'clock in the evening of October 8, 1986 to one o'clock in the morning of October 9, 1986, Antonio stayed in his house and never went out. She assured that she was there with him.

Another witness for the defense, Fortunata Abe, 61, testified that on October 8, 1986, at about 11:45 in the evening, she and her daughter, Evelyn, and their neighbors, Caridad and Evelyn Irong, were returning to their respective houses after attending a prayer meeting for a deceased person. Along Libis Street, they passed in front of the store of Priscilla Flores, where they witnessed a person being stabbed several times by Miguel, a person known to her, and another person whom Fortunata did not recognize. The victim fell down and was unable to move. Frightened, the four women rushed to their homes.

The testimony of Reynaldo de Paz, buyer of rejected meat from the slaughter house in Taguig, dovetailed with the recount of Fortunata Abe. Reynaldo recalled that on October 8, 1986, between 11 o'clock and 12 o'clock midnight, while passing by the sari-sari store of Aling Floriza (referring to Priscilla Flores), he saw, from a distance of about ten meters, a person being stabbed three times at the back by a certain Miguel, while Mio Veloso stood looking on. At this juncture, Aling Fortunata (referring to Fortunata Abe) and three other companions were passing by.

Another witness, Norberto Lazarte, 32, brother of the appellant, swore that on October 8, 1986, between 11 and 12 o'clock at night, while he was inside the house of his sister, Anastacia, at Libis St., Zone 5, Signal Village, Taguig, M.M., Miguel knocked at the door and sought permission to sleep in the house that night because, he said, "Nakadisgrasya siya." Norberto assented. Miguel warned him not to breathe a word about his sleeping in

Norberto's sister's house to anyone. Early the next morning, Miguel left without saying where he was going.

The next witness, Amelia Lazarte, 33, wife of the appellant, recalled that she was at work on the night of October 8, 1986, leaving her sick child in the care of her husband. The next morning, Lara and Melly went to her house to ask her husband, Antonio, for Miguel's and Mio Veloso's addresses. When her husband could not tell them the desired information, Lara remarked, "Sige, ikaw rin pag hindi mo itinuro."

The testimonies of the witnesses for the defense did not convince the trial court of the innocence of the accused-appellant, and, in a decision dated June 28, 1989 rendered a verdict of conviction, sentencing Antonio Lazarte to suffer the penalty of reclusion perpetua with all its accessory penalties, to indemnify the heirs of victim Nonito Jambunganan y Hundana in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs.<sup>5</sup>

Hence, this appeal.

The accused-appellant Antonio Lazarte y Magallon submits the following assignment of errors.

### **ASSIGNMENT OF ERRORS**

#### **I**

The trial court erred in admitting the dying declaration of the victim.

#### **II**

The trial court erred in convicting the accused-appellant of the crime of murder based solely on the dying declaration of the victim without any eyewitness presented in court.

#### **III**

The trial court erred in finding that in the case at bar, conspiracy was sufficiently established by evidence.

#### **IV**

The trial court erred in not giving weight and credence to the accused Antonio Lazarte's claim or defense of alibi and in disregarding the testimonies of defense witnesses Teodora Dumanhug and Amelia Lazarte.

#### **V**

The trial court erred in concluding that the prosecution has proven the guilt of the accused Antonio Lazarte beyond reasonable doubt.

From the records of the case, it is clear that the conviction of the appellant had been based largely on the alleged dying declaration of the victim. It behooves us therefore to determine not only the admissibility, but also appreciate the weight of the oral dying declaration of the deceased Nonito Jambunganan testified on by the principal witness for the prosecution, Lorenzo Lara.

As a rule a dying declaration is hearsay, and inadmissible in evidence pursuant to the mandate of the Rules of Court, Rule 130, Section 30, which states:

SEC. 30. Testimony generally confined to personal knowledge; hearsay excluded. – A witness can testify only to those facts which he knows of his own knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

The above-quoted section of the Revised Rules of Court expresses the hearsay rule in evidence. However, there are several exceptions to this rule on inadmissibility of hearsay evidence, the first one being a dying declaration given under the circumstances specified in Section 31, likewise of Rule 130, Revised Rules of Court, to wit:

SEC. 31. Dying declaration. - The declaration of a dying person, made under a consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

Thus, in order that a dying declaration may be admissible as evidence, four requisites must concur:

- 1) That the declaration must concern the cause and surrounding circumstances of the declarant's death;
- 2) That at the time the declaration was made, the declarant was under a consciousness of an impending death;
- 3) That the declarant is competent as a witness; and
- 4) That the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim.<sup>6</sup>

Lara recalled that on the fateful night of October 8, 1986, Nonito, who had multiple (5 according to him, 3 according to the NBI medico-legal officer who also testified for the People), stab wounds, entered the house through the window. Upon seeing Lara, Nonito embraced him and uttered the nicknames or aliases of the persons who inflicted the injuries, thus:

xxx xxx xxx

(Prosecution witness Lara under direct examination by Alberto S. Lim)

Q What happened when he entered thru the window?

A At the time when he entered thru the window he suddenly embraced me and when I embraced him he said, "Sinaksak ako sa labas."

Q After that, what happened?

A I asked him who stabbed him.

Q What was his answer?

A When I asked him the question he answered, "Tony, Su-ay, Ric and Junior".<sup>7</sup>

The quoted portion of the testimony of Lara may be accepted as sufficient compliance with the first requisite above specified. And it may be apt to state that although a dying declaration may be made orally, that does not militate against its admissibility.

Dying declarations are not necessarily either written or spoken. Any method of communication between mind and mind may be adopted that will develop the thought, as the pressure of the hand, a nod of the head or a glance of the eye.<sup>8</sup>

However, a close scrutiny of Lara's testimony can not support, to our mind, the finding of the trial court that the "victim was conscious of his imminent death when he relayed the statement to Lorenzo Lara."<sup>9</sup> This finding is gratuitous and has no clear basis in the records. Although the words of the transcript are already cold, they are nonetheless eloquent. Let us examine them in full, even if we repeat portions already hereinabove reproduced:

xxx xxx xxx

FISCAL:

Q Mr. Witness, do you know a person by the name of Nonito Hambunganan?

A Yes, sir.

Q Where is he now?

A He is already dead, sir.

A Why do you know that?

A On the night of the incident, I was the one who brought him to the hospital.

Q When was that?

A October 8, 1986.

Q Why did you bring Nonito Hambunganan to the hospital?

A Because on the night of October 8, 1986 while I was sleeping he knocked at my door.

Q At about what time was that?

A About 11:45 p.m.

Q And what did you do?

A When I opened the door, I was surprised when he entered thru the window.

Q Nonito Hambunganan entered thru the window?

A. Yes, sir.

Q What happened when he entered thru the window?

A At the time when he entered thru the window he suddenly embraced me and when I embraced him he said, "Sinaksak ako sa labas".

Q After that, what happened?

A I asked him who stabbed him.

Q What was his answer?

A When I asked him the question he answered, "Tony, Su-ay, Ric and Junior".

Q Do you know the persons he was referring to?

A Yes, sir.

Q Who was that Tony? Is he present in Court?

A Yes, sir.

Q Please identify him.

A (Witness going down the witness stand and tapping the shoulder of a person who identified himself as Antonio Lazarte, one of the accused in this case)

Q According to you, Nonito Hambunganan told you that he had been stabbed. Did you see any blood?

A Yes, sir.

Q Did you see any wound on him?

A Yes, sir.

Q Where?

A At his back. There were plenty.

Q You mean to say there were more than one wound?

A There were five (5) wounds.

Q All at the back?

A Yes, sir.

Q And at that time did you have occasion to talk also to Nonito Hambunganan after he mentioned to you the persons who allegedly stabbed him?

A Yes, sir, when we brought him to the hospital.

Q Did you ask him how he felt?

A Yes, sir. I felt that he was grasping [sic] for breath and I asked my neighbors to help me take him to the hospital.

Q Did you find out from him whether he felt that he would die or not?

A He shouted, "Help me!"

COURT:

How many times did he shout that?

A Two (2) times.

COURT:

What else did he say?

Q When he were (sic) about to board the vehicle he suddenly collapsed when we arrived at Nicols he was already dead.

FISCAL:

Q How did you know that?

A I felt for his chest and pulse and he was covered with blood.<sup>10</sup>

xxx xxx xxx

(Lorenzo Lara on direct examination by Fiscal Alberto S. Lim)

Q: And at that time did you have occasion to talk also to Nonito Jambunganan after he mentioned to you the persons who allegedly stabbed him?

A: Yes, sir, when we brought him to the hospital.

Q: Did you ask him how he felt?

A: Yes, sir. I felt that he was grasping [sic] for breath and I asked my neighbors to help me take him to the

hospital.

Q: Did you find out from him whether he felt that he would die or not?

A: He shouted, "Help me!"

Q: How many times did he shout that?

A: Two (2) times.

Q: What else did he say?

A: When he was about to board the vehicle he suddenly collapsed and when we arrived at Nichols he was already dead.<sup>11</sup>

No ceremonial words are required to be uttered or written, no special action or movement is needed, no incantation is necessary to invest such words, action, or movement with the sanctity of a dying declaration as to exempt it from the exclusionary effect of the hearsay rule. Even if death supervenes after such a declaration is made is not primordial, all that is to be proven is that the declarant was made under a "consciousness of impending death," which means simply that the declarant is fully aware that he is dying or going to die from his wounds or injuries soon or imminently, or shall have a complete conviction that death is at hand,<sup>12</sup> or there must be "a settled hopeless expectation."<sup>13</sup>

In this case, the fact that (1) Nonito sustained several wounds, (2) grasping for his breath, (3) shouted "Help me" twice, and (4) thereafter died do not make his ante mortem statements a dying declaration. For he did not realize that he is going to die or he had a complete conviction that death is at hand when he uttered the aliases of his assailants, or at any time after or before that.

Nonetheless the ante mortem statements of Nonito may be considered as part of the *res gestae*.<sup>14</sup>

In any event, whatever they are, even if they constitute part of the *res gestae* or they constitute indeed a dying declaration as foisted by Lara and accepted by the trial court and therefore an exception to the hearsay rule, this admissibility notwithstanding does not suffice to satisfy the requirement of proof beyond reasonable doubt against any of the four accused, much less against the accused-appellant.

Significantly, the ante mortem statements of Nonito consists of no other than that "Tony, Suay, Ric, and Junior" were his assailants.<sup>15</sup> Specifically, the trial court anchored the conviction of Antonio Lazarte on the premise that the name "Tony" referred to him and to no other, which was deduced, concluded, or translated by Lara in this wise:

(Lorenzo Lara under cross-examination by Atty. Francisco Bayona)

Q: Are we made to understand that of the persons that Nonito Jambunganan uttered, particularly the word Tony, you already believed that Nonito was referring to Antonio Lazarte?

A: Yes, sir.

Q: Why?

A: Because before his death, we already knew about these (sic) person. He was his drinking partner.

Q: Drinking partner when?

A: I do not know but at times he stays (sic) for about six (6) minutes or more because he is a friendly person.

Q: Because of that reasoning of yours and the fact that the deceased uttered the word Tony and nothing more,

you already concluded that Nonito must be referring to Antonio Lazarte?

A: Because he said Tony our friend outside.<sup>16</sup> (Emphasis ours)

xxx xxx xxx

Q: Your conclusion that the person responsible for the death of Nonito is the accused in this case Antonio Lazarte is because Nonito uttered to you the word Tony before his death and for the fact also that you know Tony, the drinking partner of the accused before his death. That is the reason only (sic) why you say that Antonio Lazarte was the one responsible for the death of Nonito Jambunganan?

A: Because Nonito has a fish business and sometimes Tony also sells fish from [sic] Nonito.<sup>17</sup> (Emphasis ours)

xxx xxx xxx

(Lorenzo Lara under direct examination by Fiscal Alberto S. Lim)

Q: When did you first come to know accused Antonio Lazarte?

A: At Signal Village.

Q: When, in relation to the incident?

A: For quite a time because he is also a resident of Signal Village.

Q: About how many years?

A: Almost two (2) years.

Q: Do you know his family?

A: I do not know his family but I know him.

Q: By what name did you know him?

A: Tony.

Q: In that area, do you know any other Tony?

A: None.<sup>18</sup> (sic)

On the other hand, the accused-appellant rebutted these statements and conclusions of Lara. He categorically and unequivocally denied knowing at all either the deceased or the witness Lara. The accused-appellant denied he had been a drinking partner or even in any drinking spree with either the deceased or the witness Lara.<sup>19</sup>

Q Also the same prosecution witness, Lorenzo Lara testified that previous to that killing of the deceased, Nonito Jambunganan, there was occasion you had a drinking spree with Nonito Jambunganan. What can you say about that?

A There is no truth of it. I do not know that person.

Q He also testified before this Court that previous to the killing of Nonito Jambunganan, you had a drinking spree with him, with Lorenzo Lara. Again, what can you say about that statement?

A I do not know those persons, sir.

Q My question is, did you have any occasion to have a drinking spree with Lorenzo Lara before that date when Nonito Jambunganan was killed?

A None, sir.

The appellant claimed to be an upholsterer at a furniture store and a barangay tanod and not a fish vendor.

In criminal law, the identity of the offender, like the crime itself, must be proved beyond reasonable doubt.<sup>20</sup> And to warrant conviction in criminal cases based upon circumstantial evidence,\* the circumstantial evidence must constitute an unbroken chain of events so as to lead to a conviction that the accused is guilty beyond reasonable doubt.<sup>21</sup>

In the present case, the presentation that 1) the appellant had been a drinking partner of the victim, that 2) the appellant and the victim were fish vendors and that 3) the principal prosecution witness (Lorenzo Lara) did not know of another "Tony" in the locality except the appellant, even if all true, can not lead to the logical conclusion that the appellant, Antonio Lazarte, was the "Tony" referred to by the dying victim. Truly, there may be hundreds of persons with the nickname "Tony" in the protagonists' locality and environs. In other words, the circumstances brought up in this case do not prove an unbroken link of events that would give rise to a reasonable and fair conclusion that appellant is the "Tony" mentioned in the dying declaration. Besides, an inference based on another inference cannot sustain the conviction of the appellant.<sup>22</sup>

In order to convict Antonio Lazarte, the trial court brought up the charge of conspiracy, to wit:

That there was conspiracy in this case was sufficiently established by the evidence. While there was no proof of prior agreement by all the accused, they nonetheless cooperated with one another in stabbing the victim and they were animated by one and the same purpose, that is, to liquidate the victim.<sup>23</sup>

In what manner the four accused (Antonio Lazarte, Ricardo Ignacio, Rodolfo Munding, and Eliseo Henares) conspired with one another in stabbing the victim is not discussed at all in the decision of the trial court. And to think that conspiracy must be also proved beyond reasonable doubt.

A detailed scrutiny of the record bears out the following:

No eyewitness to the crime was presented by the prosecution. Nobody testified that he or she saw Antonio within the vicinity of the crime before, during, and after the commission of the crime. Nor did anyone attest to seeing Antonio in possession of a deadly weapon or of his being the hatchetman. Except the supposed dying declaration there is no evidence whatsoever in the records of the case on the stabbing of the deceased Nonito, much less is there any testimony that the four accused ganged up on the deceased victim. Specifically, no evidence has been adduced by the prosecution to establishing the participation of Antonio in the alleged conspiracy. Nor is there evidence on the involvement of Rodolfo Munding and Eliseo Henares. As a matter of fact, the appellant's co-accused, Ricardo Ignacio, the one identified as the "Ric" in the ante mortem statements of Nonito, was discharged and acquitted by a mere demurrer to evidence. This grant in favor of the appellant's co-accused, Ricardo, exposes the weakness of the evidentiary weight of the ante mortem statements of Nonito.

In resume, the prosecution failed to prove that Antonio killed the victim or acted in conspiracy with the one(s) who killed him.<sup>24</sup>

It is true that motive is not essential for the conviction of an accused where there is no doubt of his identity as the culprit, but where the identification proceeds from an unreliable source and the testimony is inconclusive and not free from doubt, then evidence of motive becomes necessary.<sup>25</sup> In the case at bar, there is nothing in the records any fact or circumstance from which we can deduce or infer the existence of any possible motive on the part of the appellant to commit the crime. Even the prosecution witness, Melly Castillo, and a relative of the deceased ("more than a cousin")<sup>26</sup> believed that the appellant was innocent of the crime charged.

Q Madam witness, you stated that if ever accused Antonio Lazarte was implicated because there was a mention of the name Tony. Is that correct?

A Yes, sir.

Q Madam witness, you will admit that in Tagig [sic], Rizal, there is not only one person having that name Tony. Is that correct?

A There are several persons in Tagig who has the name Tony but as far as I'm concerned I know only one with the name Tony, sir. And he is my neighbor. He was selling fish for me, sir.

Q And then?

A That's all, sir. When Lara mentioned to me the name Tony, we have the same guess. The one who was pin pointed as Tony, I never thought that he would do that, that is why I was wondering why his name was mentioned as the person who killed. But as far as I know, he has done nothing anything wrong to us. I never believed that he is a killer.<sup>27</sup>

The trial court simply based its conviction on the ante mortem statements of the victim and assumed and concluded that it was the appellant Antonio Lazarte who killed the victim in conspiracy with his three companions. No person can be convicted on mere assumptions and conclusions.

Accusation is not, according to the fundamental law, synonymous with guilt. The prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. To meet this standard, there is need for the most careful scrutiny of the testimony (evidence) of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.<sup>28</sup>

As it stands now, the weakness of the appellant's alibi can not be held against him in view of the absence of his clear and positive identification as one of the culprits. And while the alibi may not have been proven so satisfactorily as to leave no room for doubt, such an infirmity can not strengthen the weakness of the prosecution's evidence, the reason being that in a criminal prosecution the State must rely on the strength of its own evidence, not on the weakness of the defense.<sup>29</sup> Alibi need not be inquired into if the prosecution's evidence fails to satisfy the test of moral certainty.<sup>30</sup>

WHEREFORE, the appealed judgment is REVERSED and appellant Antonio Lazarte y Mogallon is hereby ACQUITTED.

### **SO ORDERED.**

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

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<sup>2</sup> See Original Record, 1.

<sup>3</sup> TSN, January 13, 1988, 16; rollo, 35.

<sup>4</sup> Original records, 423.

<sup>5</sup> Decision, 14, penned by Judge Martin Villarama, National Capital Region, Regional Trial Court, Branch 156, Pasig; Rollo, 28.

6 5 Moran, Comments on the Rules of Court, 1980 ed., 294; People v. Elizaga, No. 78794, November 21, 1988, 167 SCRA 516.

7 TSN, September 18, 1987, 3.

8 Mockabee vs. Commonwealth, 78 Ky., 380, 382 cited in 5 Moran, supra, 302.

9 Decision, 10.

10 TSN, September 18, 1987, 2-3.

11 TSN, September 18, 1987, 3.

12 U.S. vs. Virrey, 37 Phil. 618, 625; People vs. Ortiz, 55 Phil. 993.

13 5 Moran, Comments on the Rules of Court, 296, citing Shepard vs. U.S., 66, 78 L ed., p. 197. Decision, 10; rollo, 24.

14 Sec. 36, Rule 130, Rules of Court; People v. Patian, L-33049, November 29, 1976.

15 TSN, September 18, 1987, 3.

16 Ibid., 7-8.

17 Ibid., 8.

18 Ibid., 4.

19 TSN, February 9, 1989, 3-4.

20 People v. Beltran, L-31860, November 29, 1974, 61 SCRA 246, 250.

\* Sec. 5. Circumstantial evidence, when sufficient.

Circumstantial evidence is sufficient for conviction if:

a) There is more than one circumstance;

b) The facts from which the inferences are derived are proven; and

c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. (Rule 133, The Revised Rules of Court in the Philippines)

21 People vs. Austria, et al., G.R. No. 55109, April 8, 1991; People vs. Tanchoco, 76 Phil. 463; U.S. vs. Indica, 17 Phil. 325; U.S. vs. Santos, 1 Phil. 222;.

22 Manning vs. John Hancock, 100 U.S. 693, 698, cited in 6 Moran Comments on the Rules of Court, 1980 ed. 164; People vs. Austria, et al., supra; U.S. v. Ross, 92 U.S. 281, 284.

23 Decision, 12; Rollo, 26.

24 People v. Elizaga, supra, 521.

25 People v. Beltran, 61 SCRA 246, 255; People v. Herila, 51 SCRA 31; People vs. Cunanan, 19 SCRA 769, 781; People v. Murray, 105 Phil. 591; U.S. v. Sespene, et al., 102 Phil. 209, 210; People v. Caggavan, 94 Phil. 118; People v. Tagasa, 68 Phil. 153; U.S. v. McMann, 4 Phil. 561;

26 TSN, September 14, 1988, 6-7; rollo, 85-86.

27 Id., 6-7; rollo, 86-87.

28 People v. Dramayo, L-21325, October 29, 1971, 42 SCRA 59, 64.

29 People vs. Somontano, L-45366-88, March 27, 1984, 128 SCRA 415, 426; People vs. Basuel, L-28215, October 13, 1972, 47 SCRA 207, 222.

30 People v. Rodolfo Salguero y Llaneras, et al., G.R. No. 89117, June 19, 1991; People v. Mendoza, G.R. No. 67858, June 29, 1989, 174 SCRA 432, 452.

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