

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO SANTOS Y BAINGAN @ PRAN AND VILLAMOR ASUNCION, ACCUSED, FRANCISCO SANTOS Y BAINGAN @ PRAN, ACCUSED-APPELLANT.

G.R. No. 94545. April 04, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The threshold issue here is whether the antemortem statement of the deceased identifying the accused constitutes a dying declaration sufficient to sustain the conviction of appellant.

This is an appeal from the Decision[1] of the Regional Trial Court of Cabarroguis, Quirino, Branch 31, promulgated on June 28, 1990, in Criminal Case No. 615, finding Appellant Francisco Santos y Baingan guilty beyond reasonable doubt of murder. The dispositive portion[2] thereof reads:

“IN VIEW OF ALL THE FOREGOING, the guilt of the accused having been proven beyond reasonable doubt, the accused is hereby sentenced to reclusion perpetua and to indemnify the heirs of the victim in the amount of Thirty Thousand (P30,000.00) Pesos plus all the accessory penalties provided for by law. The detention of the accused shall be fully credited in his favor.

Cost against the accused.

SO ORDERED.”

Appellant was charged with murder by Provincial Fiscal Anthony A. Foz in an Information[3] dated November 18, 1987 which reads:

“That on or about 7:30 o’clock in the evening of September 18, 1987 in Barangay Ponggo, Municipality of Nagtipunana, Province of Quirino, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring, confederating and mutually helping one another and armed with a long firearm of undetermined caliber, did then and there, with intent to kill and with evident premeditation and treachery, shot one David Ambre which caused his instant death.

That the following aggravating circumstances attended the commission of the crime:

1. That the crime was committed during nighttime to insure impunity of the accused;
2. That the accused used unlicensed firearms in the commission of the crime.

CONTRARY TO LAW.”

Upon arraignment, appellant, assisted by his counsel de parte, Atty. Ernesto S. Salunat, pleaded not guilty. Trial proceeded against appellant only. Accused Villamor Asuncion remained at large. Thereafter, the trial court rendered the assailed Decision. Hence, this appeal.

The Facts

Version of the Prosecution

The prosecution presented witnesses Corazon and Pedro Dayao and Lolita Ambre to testify on the circumstances of the crime; and Dr. Teodomiro Hufana Jr., on the results of the autopsy he conducted.

Corazon Dayao, 25, married, was visiting at the Ambre residence to see her husband Pedro, who was the driver of Mr. & Mrs. David Ambre. That evening of September 18, 1987 at about 7:30 o'clock, she was in the terrace of the victim's house sorting dirty clothing. The night was dark and it was raining, but a Coleman lamp was placed atop the cement railing (pasamano) of the terrace, lighting an area of about seven (7) meters. Only a terrace rail separated her from David, who was around half a meter away from her. She noticed Lolita beside her husband. Just then, she heard five (5) successive gunshots, and she saw David fall prostrate to the ground. Seeing that David wanted to say something, she called Lolita's attention and said, "Manang, adda kayat nga ibaga ni Manong kenka. (Ate, it looks like Kuya has something to tell you.)"[4] She pulled Lolita towards the victim. Lolita asked her husband who had shot him and the latter answered, "It was Pare Pran." [5] She heard David's words because, like Lolita, she had also placed her head near David who was still alive at the time.

Lolita Ambre, the widow, testified that she and her husband had just come out of their canteen. She washed her feet while her husband, facing north, looked at the driver's side of their jeep. Then she heard a gunshot and her husband cried, "Apo!" Startled, Lolita jumped up and down until she was told by Corazon that her husband wanted to tell her something. When she went near him, he said, "Pare Pran." [6] She knew that her husband was referring to Francisco Santos, the godfather of their youngest child. She held her husband, but their driver took her inside the house.

Lolita, the widow, 34, housekeeper, gave a sworn statement [7] to Pfc. Domingo D. Cuntapay on September 25, 1987 implicating only Asuncion. The following day, during the preliminary investigation, she executed an affidavit before Judge Felipe Castaneta, disclosing that her husband's assailant was Francisco Santos. [8] On October 5, 1987, she executed another sworn statement before Pfc. Cuntapay reiterating her previous statement to Judge Castaneda. [9]

Pedro Dayao Jr., 29, the Ambre spouses' driver, testified that he was inside the Ambres' house that evening, rolling a rope, when he heard five (5) gun bursts. It was followed by the cry of Lolita bellowing, "Jun, they have shot your Manong!" [10] He rushed outside and then escorted Lolita and his wife Corazon back to the house.

Dr. Teodomiro Hufana Jr., 58, married, municipal health officer of Maddela, Quirino, conducted an autopsy on the victim's cadaver. In his report, [11] the following postmortem findings appear:

"Gunshot wound (entrance) roughly oval in shape about 7 mm. in dia. surrounded by contusio-abraded collar located at the postero-lateral aspect of the left side of the body and about 7 cm. below the angle of the axillary fossa, directed inward to the thoracic cavity injuring the left lung and bisecting the lower ventricle of the heart and injuring the right lobe of the lungs making an exit at the right hypochondriac region about 2 cm. in dia. and about 9 cm. below the nipple.

Gunshot wound thru and thru at the latero-medical aspect of the distal third of forearm (entrance) about 6 mm. in dia. medial aspect making an exit at the lateral aspect of the forearm with a distance between the entrance and exit about 1.3 cm.

Cause of Death: Severe internal hemorrhage secondary to gunshot wound."

He further clarified that, although the Certificate of Death he issued indicated that the "Interval Between Onset and Death" was "instant," he was sure the victim still had "a few seconds or minute" before he actually died. [12]

He opined that during those few seconds or minute, it was possible for a victim to utter “about two or three words,” which could be “audible” and “intelligible.” Death due to bullet wounds in the heart or lungs is not as instantaneous as that due to a bullet in the head.

Version of the Defense

Testifying in his own behalf, appellant, 41, married, declared that he and the deceased had treated each other like brothers. Interposing alibi, he swore that when the crime was committed, he was at his house waiting for his sick sister’s arrival from Baguio. He did not leave his house until the following day when he learned of the victim’s death. He and his wife even went to visit the wake of the deceased.[13] He further denied that his alias was “Pran.” It was Frank.[14]

He also testified that a certain Mrs. Zeny Bayaua, a close friend of the widow, approached and admitted to him, “I know that you are not the one who killed, but you tell us those persons who killed.” He told her that he did not know the identity of the victim’s killer.[15]

To buttress this, the defense counsel, Atty. Ernesto Salunat, 44, married, testified that on one occasion, Mrs. Bayaua asked him to, “(p)lease convince your client Mr. Santos to tell who really killed Mr. Ambre.” He retorted that he was concerned only with appellant; to which Lolita and Mrs. Bayaua responded, “Kung sabihin lang ni pare Frank kung sino ang pumatay sa asawa ko hindi namin siya ididiin.”[16]

The defense also presented Mariano Pimentel, 49, married, Governor of Quirino, who testified that his cousin-in-law Zeny Bayaua told him, “Manong adda gayam kenka ni Francisco Santos. Manong awan met ket ti basol na ngem pinabasol mi laeng isuna tapno ipudno na no asinno ti talaga nga pimmatay. (Kuya, Francisco Santos is staying with you; actually, Kuya, he is not the real assailant but we just put the blame on him to pressure him to say who the real culprit is.)”[17] He summoned appellant who used to work as a janitor in the capitol during weekends. He was told by appellant that he (appellant) did not know who killed the victim. Hence, he told appellant to tell his lawyer what he had heard from Mrs. Bayaua.

Dr. David Longid, 42, a physician-surgeon and a former municipal health officer in Tabuk, was called as an expert witness to establish that the death of the victim was instantaneous. However, Dr. Longid admitted that the “interval between onset and death” of a person who had sustained wounds in the heart and lungs depended on the caliber of the gun used and on his physical makeup. If he was of strong build, his heart would still pump blood for a while and it would take more than ten seconds before he would die. He declined to state whether it was impossible for the victim to speak during those few seconds preceding death.[18]

The Trial Court’s Ruling

The trial court considered the words of the victim as a dying declaration and a positive identification of appellant against which the latter’s defense of alibi, the weakest defense in criminal cases, cannot prevail.

Issues

In his brief,[19] appellant assigns the following alleged errors of the trial court:

“I

The lower court erred in believing that the victim David Ambre made an alleged dying declaration, despite evidence that death was instantaneous and that he could not have uttered imputing words after he was shot.

II

Assuming that the deceased could have made a dying declaration, the trial court nonetheless erred in finding appellant to be the culprit although what was supposedly uttered by the deceased were merely the words “Pare Pran.”

III

The court a quo erred in totally believing prosecution witnesses Lolita Vda. De Ambre and Corazon Dayao as regards their having allegedly heard the deceased impute the crime to appellant, although the circumstances then obtaining negate such testimonies.

IV

The lower court erred in convicting appellant of the crime charged, instead of acquitting him therefor.”

The threshold issue is whether the last words of the deceased qualify as a dying declaration sufficient to sustain appellant’s conviction.

Appellant contends that the victim had no chance to make a dying declaration, let alone make any utterance, in view of his instantaneous death; that assuming arguendo that he was able to do so, the uttered words failed to impute the crime to him; and that, under the circumstances, it was incredible for the prosecution witnesses to have heard the deceased say anything. These contentions are not persuasive. We shall discuss the issues in seriatim.

First Issue: The Instantaneous Death

The evidence on record does not at all support appellant’s contention that the victim died instantaneously as to render a dying declaration physically impossible. Despite the statement in the victim’s Certificate of Death that the “interval between onset and death” was “instant,” the undisputed fact as positively and categorically testified to by Corazon and Lolita is that the victim remained alive for a few seconds during which he was able to say “Pare Pran.” This view is bolstered by the expert witnesses, Dr. Hufana and Dr. Longid himself who was presented by the defense, who both testified that a bullet that had hit the heart and lungs did not necessarily result in instantaneous death.

The testimony of the two doctors is bolstered by experts on the matter. Thus Pedro Solis, in his treatise on legal medicine, states:

“The heart may fail and cause death due to an existing disease independent of trauma. Coronary insufficiency, myorcardial fibrosis, valvular lesion or tamponade due to the rupture of the ventricle are common lesions.

Wounds of the heart are produced by sharp instruments, bullets or the sharp ends of the fractured ribs. Contusion of the heart is easily produced on slight trauma on account of its vascularity. Wounds of the ventricle if small and oblique are less dangerous than those of the auricle because of the thickness of its wall. The right ventricle is the most common site of the wounds due to external violence, because it is the most exposed part of the heart.

Foreign bodies like bullets, shrapnels, fragments of a shell may be embedded in the myocardium without any cardiac embarrassment. The person may live for a long time and may die of some other causes.”[20]
(Underscoring supplied.)

Solis opines further that a victim who has sustained injury to the heart may still be capable of a volitional act like speaking, thus:

“Sometimes it is necessary to determine whether a victim of a fatal wound is still capable of speaking, walking or performing any other volitional acts. A dying declaration may be presented by the prosecutor mentioning the accused as the assailant; the offender may allege that the physical injuries inflicted by him while the victim was inside his house and that he walked for some distance where he fell, or that the victim after the fatal injury made an attempt to inflict injuries to the accused which justified the latter to give another fatal blow. The determination of the victim’s capacity to perform volitional acts rests upon the medical witness.

x x x Wounds of the big blood vessels, like the carotid, jugular or even the aorta, do not prevent a person from exercising voluntary acts or even from running a certain distance. Penetrating wound of the heart is often considered to be instantaneously fatal but experience shows that the victim may still be capable of locomotion. Rupture of the organs is not always followed by death. The victim has for sometime still retains (sic) the capacity to move and speak.”[21] (Underscoring supplied.)

In *People vs. Obngayan*,[22] the Court resolved a similar issue of whether the victim could have been conscious, notwithstanding the serious nature of his injuries, when his antemortem statement was taken. The Court observed:

“x x x(‘)The question as to whether a certain act could have been done after receiving a given wound,(‘) according to Wharton and Stilles (Vol. III, Medical Jurisprudence, p. 212), ‘is always one that must be decided upon the merits of a particular case.’ They cited a case from Vibert’s *Precis de Med. Leg.*, 4th ed., p. 286, where a man after being shot in the chest threw a lamp at his adversary. The lamp started a fire; and to extinguish the fire, the wounded man fetched a pail of water from the court yard. When the fire was extinguished, the man lay down on bed and died. Vibert performed the autopsy, and found that the left ventricle of the heart had been perforated by the revolver’s bullet. It is evident from the foregoing that Dr. Acosta’s assertion that the victim of a gunshot wound immediately loses consciousness, after infliction of the wound, may not be true in all cases. x x x”

In the case at bar, it is therefore not amazing that the victim, despite his wounds, did not immediately lose consciousness and was still able to recognize his assailant and relay the latter’s identity to his wife.

Furthermore, the interval between the shooting and the utterance of appellant’s name did not preclude the possibility of a dying declaration. Corazon testified that all these took place for a “short time only.”[23] Lolita described the same period in this wise:[24]

Q - And what did you do immediately after having heard the gun report?

A - I was jumping and jumping, sir.

Q - For how long more or less?

A - A short time when the wife of the driver called me to attend (sic) my husband, sir.

Q - Now, this is very important which I would like you to state, at that short period of time in your estimation, how many minutes?

A - I could not estimate, sir.

Q - Not even calculate for how long?

A - It was shorter than when I was seated here, sir.

Q - Now?

A - Yes, sir.

Q - You mean coming from the place where you were or at the place where you were there and take at your seat? (sic)

A - The moment I seated here, sir.”

Second Issue: Dying Declaration

We affirm the ruling of the trial court's decision to consider the victim's revelation to Lolita and Corazon as a dying declaration and as a part of *res gestae*.

That the last words were uttered by the deceased is established by the testimony of Corazon,[25] thus:

Q -What did you do when you saw David Ambre laid flat from (sic) the ground?

A - I called for his wife because he wanted to tell something, sir.

Q -Who wanted to tell something?

A -David Ambre, sir.

Q -Do you mean to tell that David Ambre still alive when you saw him? (sic)

A -Yes, sir.

Q -And what did you do when you saw David Ambre wanting to say something?

A -I pulled his wife and we put our ear(s) near the mouth of David Ambre, sir.

Q -And what happened next when you went near the body of David Ambre?

A -The wife asked from David Ambre who shot him, sir.

Q -And what did David Ambre tell his wife?

A -He told 'it was Pare Pran', sir.

Q -Do you know this Pare Pran being referred to by David Ambre?

A -Yes, sir.

Q - If he is in Court today, can you point at him?

A -Yes, sir.

Q -Will you point at the Pare Pran you mentioned who is now in Court today?

A – There, sir.

(Witness stood up and pointed a man in a blue t-shirt and identified himself to be Francisco Santos.)"

The victim's wife, Lolita,[26] corroborated Corazon's testimony as follows:

"COURT –

What was the cause of the death of your husband?

ANSWER - They shot him, sir.

COURT - When you say 'they shot him', whom are you referring?

ANSWER - Francisco Santos, sir (Witness pointing to Francisco Santos, the accused in this case).

FISCAL ANTHONY FOZ

Why do you say that it was Francisco Santos who shot him?

ANSWER - My husband told me.

QUESTION

How did he tell you that it was Francisco Santos who shot him?

ANSWER When my husband was shot, he told me that it was Francisco Santos who shot him.

Q -Will you describe to the court how he told you that it was Francisco Santos who shot him?

A -When he was shot, he shouted Apo!

Q -And after that, what happened next?

A -And Corazon Dayao called for me.

Q -And why did Corazon Dayao call(ed) for you?

A -Because my husband as if he wanted to say something from his look.

Q -Now, when you were called by Corazon Dayao that your husband David Ambre wanted to say something to you, what did you do?

ANSWER I went near my husband, sir.

COURT Put on record that witness is crying.

FISCAL ANTHONY FOZ -

And what did your husband tell you?

ANSWER He uttered 'Pare Pran'.

QUESTION

And do you know this 'Pare Pran' that your husband is telling?

ANSWER I know him, sir." (Emphasis supplied.)

A dying declaration is entitled to the highest credence because no person who knows of his impending death would make a careless and false accusation.[27] As an exception to the hearsay rule, the requisites for its admissibility are as follows: (1) the declaration is made by the deceased under the consciousness of his impending death; (2) the deceased was at the time competent as a witness; (3) the declaration concerns the cause and surrounding circumstances of the declarant's death; and (4) the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry.[28]

It must be shown that a dying declaration was made under a realization by the decedent that his demise or at least, its imminence -- not so much the rapid eventuation of death -- is at hand.[29] This may be proven by the statement of the deceased himself or it may be inferred from the nature and extent of the decedent's wounds, or other relevant circumstances.[30]

In the case at bar, the victim's declaration consisted of the words "Pare Pran." Under the circumstances, however, he could not have been expected to articulate his awareness of something so obvious -- the inevitability of his demise -- or to have the energy to do so. The nature and extent of said injuries underscored the seriousness of his condition and they later proved by themselves that the utterances of the deceased were made under a consciousness of an impending death.[31] That his demise thereafter came swiftly, although not instantaneously, further emphasized the victim's realization of the hopelessness of his recovery.[32]

We stress that when a person is at the point of death, every motive for falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. It was the height of jocularly for appellant to have suggested that it was highly possible that the deceased mentioned his name to Lolita so that she would tell him to come to decedent's succor, or for another reason. Such conjecture finds no basis on record. On the other hand, this speculation is belied by the clear, straightforward testimonies of Lolita and Corazon. Despite several attempts, counsel for the defense failed to make Lolita admit that the victim mentioned appellant's name for a vague and undefined purpose, other than to identify his assailant.[33] Lolita adamantly stuck to her testimony that her

husband told her that he was shot by “Pare Pran.”[34] The un rebutted testimony of Corazon further clarified that the victim said those words in answer to his wife’s question as to who shot him.[35]

The deceased’s condemnatory antemortem statement naming appellant as his assailant deserves full faith and credit and is admissible in evidence as a dying declaration.

Furthermore, the same declaration was also properly admitted in evidence by the trial court as part of *res gestae*, and rightly so. A declaration made spontaneously after a startling occurrence is deemed as such when (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances.[36] The utterance of the victim satisfies these three requisites. Clearly, it is admissible as part of the *res gestae*.

The propriety and the signifacance of admitting the dying declaration of the victim under the rule on *res gestae* is explained by Mr. Justice Florenz D. Regalado, thus:

“The requisites for the admissibility of the victim’s ante-mortem statement as part of the *res gestae* and also as a dying declaration are present in this case, hence the same should be admitted under both exceptions to the hearsay rule. (Citing *People vs. Gueron, et al.*, L-29365, March 25, 1983, 121 SCRA 115; *People vs. Baltao*, L-47686, June 24, 1983, 122 SCRA 859) While the admissibility thereof would naturally not be affected whether viewed under either or both consideration the advantage of resting the issue on the aforesaid dual bases is that its admission would be invulnerable to a theorized absence of an element of one of said exceptions. This is particularly important in this case, considering that the very identification of the assailant and the accuracy thereof are essentially based on that declaration of the victim.”[37] (Underscoring supplied.)

Third Issue: Credibility of Witness

Appellant assails the credibility of the witness Lolita Ambre because of her delay in reporting the antemortem declaration. We do not agree. Well-settled is the rule that delay in reporting the antemortem declaration does not automatically render the testimony doubtful. Failure to reveal or disclose the assailant’s identity at once does not necessarily affect, much less impair, the credibility of said witness. The initial reluctance to volunteer information about a criminal case and/or the unwillingness to be involved in criminal investigation due to fear of reprisal are common and have been judicially declared to have no effect on credibility.[38]

Lolita’s reason has been sufficiently explained in her testimony. While she did not intimate to the police that her husband had identified the assailant when she was interviewed on the night of the killing, she did reveal her husband’s antemortem statement a week later. Such delay, however, was not without reason. Lolita testified:

QUESTION - According to you, your husband told you that it was the accused Pare Pran who allegedly kill(ed) your husband, is it not?

ANSWER - Yes, sir.

Q - You were investigated by the Police on September 25, 1987, is that correct?

ANSWER - Yes, sir.

ATTY. SALUNAT - Did you mention to the Police that it was accused Pare Pran who killed your husband?

ANSWER - No, sir.

QUESTION - In other words, when you were investigated, you never mentioned that it was Francisco Santos who allegedly killed your husband?

ANSWER - Not yet sir because I was still afraid at that time because the accused was not yet apprehended that time.

Q - You were afraid to tell the Police that Francisco Santos was the villain because he was not yet arrested?

A - Yes, sir.

Q - Is it not a fact that when you identified Francisco Santos, the Police will arrest him?

A - Yes sir, it was Villamor Asuncion who told the Police that they have to arrest Francisco Santos.

Q - You love your husband?

A - Yes, sir.

Q - In fact you are crying because you love him so much?

A - Yes, sir.

ATTY. SALUNAT - So, why did you not tell the Police who killed him?

ANSWER - Because I was afraid that I would be the next victim because he was not yet arrested."[39]

Fear was therefore the compelling reason why Lolita did not divulge the identity of appellant when the police first investigated her. Self-preservation is, after all, the most fundamental of human instincts.[40] The following day, she lost no time in executing a sworn statement on the matter. She repeated the information before the municipal judge who conducted the preliminary investigation and thereafter to the fiscal. On the witness stand, she remained steadfast on the matter notwithstanding a grueling cross-examination.

Moreover, Corazon also heard the victim's antemortem declaration. She executed a statement to the police also on September 26, 1987. Even at the trial of the case, she adhered to her earlier account of what she heard the victim say.

Furthermore, the trial court found the testimonies of Lolita and Corazon to be credible. Because a trial court has the opportunity to observe the witnesses firsthand and to note their conduct and demeanor at the witness stand, its findings on their credibility deserve great weight and respect. In the absence of any showing that the trial court has overlooked, misapprehended or misinterpreted such facts or circumstances that materially affect the disposition of the case, its conclusions on the credibility of witnesses should not be disturbed.[41] We have examined the records of this case and we have been unable to find any reason -- and the appellant has not shown any -- to depart from this rule.

Fourth Issue: Alibi vs. Dying Declaration

Alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable, but also because it is easy to fabricate without much opportunity to check or rebut it. To establish alibi as a valid defense, an accused must show that he was at some other place for such a period of time and that it was physically impossible for him to have been at the place of the crime during its commission.[42] In the present case, appellant failed to establish the physical impossibility of his presence at the scene of the crime at the time of its commission. He anchored his defense on the fact that at that time, he was in his house which was only about 500 meters from the Ambre residence.[43]

Furthermore, alibi is unavailing as a defense where there is positive identification of the accused as the perpetrator of the offense, or when there is an antemortem declaration received in evidence either as a dying declaration or as part of *res gestae*,[44] or both.

Treachery

On the other hand, treachery qualifies the killing as murder. This qualifying circumstance of alevosia is present when an offender employs means and methods or forms in the execution thereof which tend directly and especially to insure its execution without risk to himself arising from the defense which the offended party might make.[45] Under the cover of darkness, appellant shot an unarmed and unsuspecting victim. The shooting was swift and without warning. The wounds sustained by the victim bespeak of the futility of any defense he could have mounted under these circumstances. Means, method or form was obviously employed in the execution of the felony which insured its commission without risk to assailant coming from any defense which the victim might have taken.[46]

The allegation in the Information on the use of an unlicensed firearm in this case has alerted the Court to appellant's possible separate criminal liability under Section 1, Presidential Decree No. 1866, following the ruling in *People vs. Quijada*.^[47] However, a thorough review of the records reveals that the prosecution abandoned its case against appellant for illegal possession of an unlicensed firearm. No gun was ever recovered nor presented in evidence, much less proven to be unlicensed. Thus, the *Quijada* ruling finds no application in the case at bar.

All things considered, appellant has been proven guilty beyond reasonable doubt of the murder of David Ambre.

WHEREFORE, the appeal is hereby DENIED. The assailed decision is AFFIRMED, except that the indemnification to the heirs is INCREASED to P50,000.00 in line with prevailing jurisprudence.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.`

[1] Presided by Judge Carlos T. Aggabao.

[2] Rollo, p. 23aa.

[3] Rollo, p. 4.

[4] TSN, September 5, 1988, p. 32.

[5] *Ibid.*, pp. 6-7.

[6] TSN, October 10, 1988, pp. 5, 25-26.

[7] Exh. "E:", RTC Records, pp. 9-11.

[8] RTC Records, p. 13.

[9] Exh. "F", RTC Records, p. 12.

[10] TSN, October 3, 1988, p. 6.

[11] Exh "D", RTC Records, p. 2.

[12] TSN, October 5, 1988, pp. 73-76.

[13] TSN, April 11, 1989, pp. 2-3.

[14] *Ibid.*, p. 139.

[15] *Ibid.*, p. 138.

[16] TSN, September 25, 1989, pp. 161-162.

[17] TSN, December 11, 1989, pp. 168-169.

[18] TSN, March 26, 1990, pp. 179-180, 183.

[19] Appellant's original counsel, Atty. Ernesto S. Salunat failed to file the Brief for the accused. In a Resolution dated February 26, 1992, the Court appointed Atty. Ramon Ledesma as counsel de oficio who thereafter filed the Appellant's Brief.

[20] Pedro P. Solis, Legal Medicine, 1987 Ed., p. 316.

[21] Ibid., p. 296.

[22] 55 SCRA 465, 474, January 31, 1974.

[23] TSN, September 5, 1988, p. 10.

[24] TSN, February 6, 1989, pp. 4-5.

[25] TSN, September 5, 1988, pp. 6-8.

[26] TSN, October 10, 1988, pp. 3-5.

[27] People vs. Esquilona, 248 SCRA 139, 142, September 8, 1995.

[28] People vs. Hernandez, 205 SCRA 213, 220-221, January 21, 1992; People vs. Israel, 231 SCRA 155, 161-162, March 11, 1994; People vs. Apa-ap, Jr., 235 SCRA 468, 473, August 17, 1994; People vs. Pama, 216 SCRA 385, 402-403, December 11, 1992.

[29] Ibid.

[30] Ibid. and People vs. Macalino, 177 SCRA 185, 193, August 31, 1989.

[31] People vs. Apa-ap, Jr., supra, p. 473.

[32] Ibid. and People vs. Brioso, 37 SCRA 336, 341, January 30, 1971.

[33] TSN, February 6, 1989, pp. 6-9.

[34] Ibid, pp. 11-12.

[35] TSN, September 5, 1988, p. 7.

[36] People vs. Peralta, 237 SCRA 218, 224, September 28, 1994 and People vs. Maguikay, 237 SCRA 587, 600, October 14, 1994.

[37] From his separate opinion in People vs. Israel, supra., p.168.

[38] People vs. Israel, supra., p. 164.; People vs. Polangco, 251 SCRA 503, 508, December 26, 1995.

[39] TSN, October 10, 1988, pp. 21-23.

[40] People vs. Polangco, 251 SCRA 503, 508, December 26, 1995.

[41] People vs. Ombrog, G.R. No. 104666, February 12, 1997.

[42] People vs. Estrera, 207 SCRA 703, 709, March 31, 1992; and People vs. Montilla, supra., p. 127.

[43] Ibid., p. 140.

[44] People vs. Estera, 207 SCRA 703, March 31, 1992.

[45] People vs. Camahalan, 241 SCRA 558, February 22, 1995; People vs. Soldao 243 SCRA 119, March 31, 1995.

[46] People vs. Loste, 210 SCRA 614, 623, July 1, 1992; People vs. Molina, 213 SCRA 52, 69, August 28, 1992; People vs. Serdan, 213 SCRA 329, 343, September 2, 1992; People vs. Cruz, 213 SCRA 611, 620, September 4, 1992; People vs. Alcantara, 206 SCRA 662, 667, February 28, 1992.

[47] G.R. Nos. 115008-09, promulgated on July 24, 1996.

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