

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO CASINILLO, ACCUSED-APPELLANT.

G.R. No. 97441. September 11, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal from the Decision[1] of Branch 6 (Mati) of the Regional Trial Court (RTC) of Davao Oriental in Criminal Case No. 1847, promulgated on 22 October 1990, convicting appellant Domingo Casinillo for the rape of Leticia Soria and sentencing him:

"x x x to suffer the imprisonment of Reclusion Perpetua, to pay the offended party the sum of P20,000.00 and P10,000.00 as moral damages and attorney's fees, respectively, and to pay the costs of the suit. x x x"[2]

The case originates from a complaint for rape, dated 17 May 1989 and filed before the Municipal Trial Court of Mati, Davao Oriental by the offended party, Leticia Soria. Two (2) other complaints for robbery with rape and robbery in band, allegedly committed by the appellant and his companions, were also filed with said court. After a preliminary investigation, said court issued an order finding reasonable ground to hold the accused for trial.[3] On 12 July 1989, Provincial Prosecutor Salvador M. Bijis filed against herein appellant the following Information in Criminal Case No. 1847:

"The undersigned, at the instance of the offended party, accuses DOMINGO CASINILLO, of the crime of RAPE, defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

That on or about May 13, 1989, in the Municipality of Mati, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with .38 (sic) revolver hand gun and with lewd designs, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one LETECIA (sic) V. SORIA, a woman, against her will."[4]

He also filed two (2) separate Informations -- one for robbery with rape (Criminal Case No. 1844) and another for robbery in band (Criminal Case No. 1845) -- against the appellant and his co-accused Danilo Casinillo, Rolando Valles and Danilo Valles. The accusatory portions of said informations respectively read as follows:

"That on or about May 13, 1989, in the Municipality of Mati, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with .38 (sic) revolver hand gun by means of violence against or intimidation of persons and with intent to gain, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously take, steal and carry away cash amounting to THREE THOUSAND THREE HUNDRED FIFTY (P3,350.00) PESOS, Philippine Currency, belonging to one PACITA D. DICDICAN, to the damage and prejudice of the owner thereof in the aforestated sum; and, in pursuance or on the occasion of (sic) the said Robbery, the above-named accused, Rolando Valles, armed with said weapon and with lewd designs, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have arnal (sic) knowledge of one PACITA D. DICDICAN, a woman, against her will."[5]

and --

"That on or about May 13, 1989, in the Municipality of Mati, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with .38 (sic) caliber revolver and .45 (sic) hand gun pistol, by means of violence against or intimidation of persons and with intent to gain, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously take, steal and carry away from one LIBERTAD P. CALLAO cash amounting to FOUR (sic) THOUSAND TWO HUNDRED PESOS (P4,200.00) PESOS, Philippines (sic) Currency, to the damage and prejudice of the owner thereof in the aforestated sum."[6]

Upon arraignment on 8 August 1989, the appellant entered a plea of not guilty in these three (3) cases. His co-accused entered the same plea in Criminal Cases Nos. 1884 and 1845.[7]

Thereafter, the three (3) cases were tried jointly.

In its decision promulgated on 22 October 1990, the trial court acquitted all the accused in Criminal Cases Nos. 1844 and 1845, but convicted appellant in Criminal Case No. 1847. The dispositive portion of the decision reads:

"IN VIEW WHEREOF, judgments are hereby rendered:

I

IN CRIMINAL CASE NO. 1844

FOR: ROBBERY WITH RAPE

There being no evidentiary basis for a finding of guilt beyond reasonable doubt, accused Domingo Casinillo, Danilo Casinillo, Danilo Valles and Rolando Valles, are hereby acquitted of the offense under inquiry with costs de oficio.

II

IN CRIMINAL CASE NO. 1845

FOR: ROBBERY IN BAND

A reasonable doubt having been engendered in the mind of the Court as to their guilt, accused Domingo Casinillo, Danilo Casinillo, Danilo Valles and Rolando Valles are hereby acquitted with costs de oficio.

III

IN CRIMINAL CASE NO. 1847

FOR: RAPE

Accused Domingo Casinillo is hereby pronounced guilty beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code, and as amended by RA No. 411. Accordingly, said accused is sentenced to suffer the imprisonment of Reclusion Perpetua, to pay the offended party the sum of P20,000.00 and P10,000.00 as moral damages and attorney's fees, respectively, and to pay the costs of the suit. No subsidiary imprisonment is imposed in case of insolvency.

SO ORDERED."[8]

In convicting the appellant, the trial court concluded that his guilt was positively established as he was clearly identified by the victim, and ruled that his defense of denial and alibi cannot prevail over the positive

identification made by the offended party who had known him long before the rape.

Dissatisfied with the foregoing decision, appellant filed his Notice of Appeal on 25 October 1990.[9]

The antecedent facts that gave rise to this prosecution are succinctly summarized in the Brief for the Appellee as follows:

"At the time of the incident that gave rise to this prosecution for Rape, complainant Leticia V. Soria was an 18-year-old barrio lass residing in a one-story house located at Barangay Danao in Mati, Davao Oriental (TSN, 6 November 1989, pp. 43-45). Her companions in the house at that time were her mother Consolacion, her married sister Julita Soria and her elder brother Mario Soria (ibid., pp. 45, 50, 52; TSN, 23 October 1989, p. 6).

Appellant Domingo Casinillo, on the other hand, was known to complainant since 1988, he being the uncle of Rosita Dialon, her class-mate and friend when she was still studying at Iba sometime in 1988 (TSN, 6 November 1989, pp. 46-48; TSN, 13 November 1989, p. 22; TSN, 19 April 1990, p. 23).

At about 8:30 in the evening of 13 May 1989, while complainant, along with her mother Consolacion, her brother Mario and her sister Julieta, were resting inside the kitchen of their house in said locality, somebody suddenly pushed the kitchen door and barged inside the house, followed by two companions (TSN, 6 November 1989, pp. 45-46, 50, 70; TSN, 13 November 1989, pp. 8-9; TSN, 21 September 1989, p. 22; TSN, 26 October 1989, pp. 58-59). By the light of the fluorescent lamp in the kitchen, she recognized the intruders to be appellant, who was armed with a short firearm and wearing a black T-shirt and pants covered by an orange jacket, and his co-accused Danilo Valles and Rolando Valles (TSN, 6 November 1989, pp. 46, 48-50, 52, 70-71; TSN, 13 November 1989, pp. 9-10).

Appellant asked them if other persons were inside the house and, without waiting for an answer, proceeded to search the rooms (TSN, 6 November 1989, p. 49; TSN, 26 October 1989, p. 61). When her mother Consolacion asked appellant why he was searching the house, the latter poked a revolver at her head and peremptorily told her to keep quiet or else he would kill all of them (TSN, 6 November 1989, p. 50; TSN, 21 September 1989, pp. 18-21, 40).

Thereafter, appellant took a curtain inside the house, tore it to pieces and tied her mother and brother's hands with it (TSN, 6 November 1989, pp. 51-52). Thereafter, when accused Rolando Valles and Danilo Valles brought Mario outside the house, appellant grabbed her hands and also tied them (TSN, 6 November 1989, pp. 52-54).

Subsequently, appellant forcibly brought complainant (sic) outside the house with a gun poked at her (ibid., pp. 55-56). Appellant then told her they would go to the house of her neighbor, Emok Ganabe, and that she would be the one to knock on the door (ibid., p. 57). Fearful for her life, she went along with him (ibid.).

On the way and at a distance of about 300 meters away from her house, appellant suddenly stopped complainant from proceeding further and dragged her towards the bushes (ibid., p. 58; TSN, 13 November 1989, pp. 47-48).

Appellant suddenly boxed complainant twice in the solar plexus which caused her to collapse on the ground (TSN, 6 November 1989, p. 58).

Thereupon, appellant hugged and kissed her, telling her, 'if you would only agree to what we would do now, then everything would be alright' (ibid., pp. 58-59). Complainant tried to wriggle herself free but then appellant hit her hard on the right thigh with his firearm (ibid., p. 59). When she continued to resist, appellant boxed her thighs several times which made her feel weak (ibid.). Appellant poked his gun at her and ordered her to raise her hands. Appellant raised her T-shirt and then proceeded to suck her nipples and to kiss her all over the body (ibid., p. 60). Vainly, she tried with all her might to kick appellant but did not hit him (ibid.; TSN, 13 November 1989, p. 43). Appellant pulled down her checkered shorts and black panty (Exhs. "C" and "D",

Envelop of prosecution exhibits, Crim. Case No. 1847) which made her struggle all the more to free herself from his clutches but appellant boxed her again on both thighs which caused her to feel weaker (ibid., pp. 61, 63).

Thereafter, while she cried and begged him to stop, appellant undressed himself and went on top of her (ibid., p. 63). When she crossed her legs, appellant forcibly opened them and inserted his legs between hers (ibid., p. 64). Appellant then tried to kiss her but she evaded this by turning her face sideways. He boxed her again (ibid., pp. 64-65; TSN, 13 November 1989, p. 44).

Appellant covered complainant's mouth with one hand and pointed the gun at her throat with the other (ibid.; TSN, 13 November 1989, p. 40). This time she felt that appellant's penis was hard (TSN, 6 November 1989, p. 65). Whenever she resisted or moved her body, appellant would punch her thighs and body, thereby causing her to feel very very weak (ibid.). Finally, she felt appellant insert his penis inside her vagina which caused her so much pain, this being her first sexual experience (ibid., pp. 63, 66; TSN, 13 November 1989, pp. 40, 42).

Afterwards, appellant ordered her to dress up and she angrily screamed at him, 'How could I dress up when my hands are tied!' (TSN, 6 November 1989, p. 67). He untied her hands and while dressing up, she felt pain not only in her vagina but also all over her body and noticed bloodstains on her T-shirt (ibid., pp. 66-67; TSN, 13 November 1989, pp. 44-45).

Appellant brought her back to her house where she saw her mother, her elder sister and their neighbors Pacita Dicdican and Libertad Callao (TSN, 6 November 1989, pp. 68-69; TSN, 13 November 1989, p. 46). Appellant, warned her not to tell anybody that he raped her and headed downstairs (TSN, 6 November 1989, pp. 68, 76). After appellant left, however, she told her mother what happened (ibid., p. 69; TSN, 13 November 1989, p. 46).

The following morning, 14 May 1989, she and her mother, accompanied by her brothers Danilo, Sanito and Mario, together with their aforementioned neighbors reported the rape to Barangay Captain Patricio Cabingatan who, in turn, brought them to the police headquarters in Mati, Davao Oriental (TSN, 6 November 1989, pp. 72-74; TSN, 13 November 1989, pp. 17, 19, 36). From the police station, she proceeded to the Provincial Hospital of Davao Oriental, where she was physically examined, by Dra. Virginia Landigan issued (sic) her Medical (sic) Certificate (TSN, 6 November 1989, p. 74). (Exh. "A", Folder of Exhs., p. 1) which discloses the following findings:

'Hymenal laceration at 5:00 o'clock position of bleeding;

Multiple contusion-hematoma at medial aspect of both thighs.'

Afterwards, she returned to the police station in Mati, Davao Oriental, where she gave her Statement relating the incident (TSN, 6 November 1989, p. 75; TSN, 13 November 1989, pp. 19-20)."[10]

Appellant interposed the defense of alibi. According to him, on 13 May 1989, he was in his house in Dawan, Mati, Davao Oriental together with his wife and son; he alleges that he never left this place.[11] His wife (Rosalinda) and father (Guillermo) corroborated his story.

In his Brief, appellant claims:

- "1. THAT THE LOWER COURT GRAVELY ERRED IN FINDING THAT THE PRIVATE OFFENDED PARTY, LETICIA V. SORIA, POSITIVELY IDENTIFIED THE ACCUSED;
2. THAT THE LOWER COURT GRAVELY ERRED IN RULING THAT THE PRIVATE OFFENDED PARTY, LETICIA V. SORIA, IS CREDIBLE AND THAT HER TESTIMONY IS WORTHY OF BELIEF; AND
3. THAT THE LOWER COURT GRAVELY ERRED IN DECIDING THAT THE ACCUSED IS GUILTY

BEYOND REASONABLE DOUBT."[12]

In his joint discussion of these errors, appellant insists that the offended party was not able to positively identify him as evidenced by the 14 May 1988 entries in the Police Blotter[13] which show that the persons who committed the crime of rape were wearing masks of white cloth. The particular entry reads:

"1020H -- The person of Consolacion Soria y Villamor, of legal age, married, farmer and a resident of Danao, this municipality, appeared this (sic) headquarters with the complaint that her daughter was raped by two unidentified persons wearing a mask (sic) (white cloth) at about 8:30 o'clock in the evening of May 13, 1989, inside their house at the bushy grasses, after, the reporter (sic) both hands hagtied (sic). Victim was advised to go to the provincial hospital. Case was referred to Investigation Section."[14]

There was likewise no positive identification because the victim failed to inform the barangay captain that it was the accused who raped her. She thus perjured herself when she stated in her affidavit and during the preliminary investigation before the Municipal Trial Court that she knew and recognized her assailant.

Appellant also questions the three (3) police "lineups" of the four (4) accused on the ground that the same were conducted without the assistance of counsel; moreover, the accused were not informed of their right to counsel. He further claims that these lineups "only help (sic) to underscore the nagging doubts that plagued the complainants as to the identity of the four accused," and "were resorted to because complainants Leticia Soria and Pacita Dicdican were unsure of their respective (alleged) assailants."[15]

Finally, he maintains that the prosecution deliberately failed to present P/Sgt. Arnold Malintad, who led the police team that arrested the four (4) accused, and barangay captain Patricio Cabingatan.[16]

What is then in issue in this appeal is the credibility of the offended party.

Rape is truly a most detestable crime for it involves not only an intrusion into a woman's privacy, but also a violation of her sensibilities and an assault on her human dignity. Its traumatic consequences on the unfortunate victim and gruesome injury to the peace and order of the community cannot be ignored.[17] Thus, once established, it must be severely and impartially punished.[18]

However, it is fundamental that an accusation is not synonymous with guilt;[19] in our legal system, every accused is presumed innocent until the contrary is proved.[20] It is therefore, incumbent upon the prosecution to demonstrate the culpability of the accused and overthrow the presumption of innocence with proof beyond reasonable doubt.[21] In determining whether or not the prosecution's evidence meets this standard, it is necessary for the court to scrutinize the same independently of the defense offered by the accused. It is only if and when, upon such a review, the court reaches the conclusion that the crime charged was committed by the very person standing trial may a judgment of conviction be correctly rendered.

Absolute certainty of guilt is not, however, demanded by law for a conviction. The sphere of criminal law does not call for such degree of proof as would exclude the possibility of error. Only moral certainty as to the presence of the elements constituting the offense, as well as to the identity of the offender, is required; in short, what is needed is that degree of proof which produces conviction in an unprejudiced mind.[22] The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged: that not only did he perpetrate the act, but that it amounted to a crime.[23] The strongest suspicion must not be permitted to sway judgment;[24] if a reasonable doubt exists, that doubt must be resolved in favor of the accused and he must be acquitted.[25]

Furthermore, considering the severity of the penalties prescribed for the offense of rape, courts are enjoined to take extreme care in weighing the evidence in order to avoid an injustice to the accused. Thus, this Court has set

three (3) basic guiding principles in reviewing rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two (2) persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[26]

Guided by the foregoing principles, this Court undertook a careful and meticulous review, analysis and evaluation of the evidence in this case and reached the inevitable conclusion that the appellant's guilt has been proven beyond reasonable doubt. The findings of fact of the trial court are supported by convincing and credible evidence upon which Our minds can rest unburdened by any doubt. The said court has not overlooked any fact of substance and value which, if considered, might affect the result of this case. We find then no reason to disturb such findings. This is a settled rule in this jurisdiction.[27]

In the instant case, the offended party positively recognized the appellant from the time he and his companions barged into the kitchen which was then well lit. His face was exposed from the time he dragged her out of the house to the time he raped her by the bushes and brought her back to the house. Hence, the appellant was not only clearly and unmistakably seen in the vicinity of the crime, he was also positively identified by the offended party as her assailant and ravager. Aside from the fact that her testimony is full of sincerity and candor, there is absolutely no proof that she was improperly motivated to testify against the appellant. It is difficult to conceive of a reason that would have motivated the offended party, a provincial lass, to undergo the embarrassment and humiliation of a public trial affecting her honor and submit herself to the examination of her private parts other than for the purpose of bringing her defiler to justice.[28] Her testimony deserves full faith and credit.[29] Besides, she was able to weather the rigorous cross-examination which sought to cast doubt on her testimony. She was unwavering in her identification of the appellant.

Appellant's reliance on the police blotter deserves nothing more than the scantest consideration. In the first place, "[t]he entry in the police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestion or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject." [30] In the second place, the entries relied upon by the appellant are sadly wanting in material particulars; this clearly shows that no effort at all was exerted by the policeman on duty to accurately obtain the facts of the reported crime. Thirdly, as indicated therein, it is not the offended party, but rather her mother Consolacion, who is alleged to have personally made the report. Fourthly, there is no evidence that the entries were read to the offended party or that they were presented to her. Not having been entered by her and their being no sufficient showing that she actively participated in their preparation, these entries cannot fairly or logically bind her.

The grievance concerning the police lineups is misplaced. The trial court's finding as to the identification of the accused did not even consider the said lineups. Moreover, in *People vs. Olvis*, [31] this Court ruled, in effect, that a police lineup is not encompassed in the Constitutional right against testimonial compulsion [32] and the right to counsel. Thus:

"x x x 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 body, [33] or compelling him to expectorate morphine from his mouth, [34] or making her submit to a pregnancy test, [35] or a footprinting

test,[36] or requiring him to take part in a police lineup in certain cases.[37] 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."

As to appellant's defense of alibi, We have time and again ruled that the same remains to be a patently weak defense when corroborated only by the testimony of the accused's spouse or parents who would naturally be expected to give statements that would free their spouse or son from criminal liability. For alibi to be acceptable, it must be presented with strong corroboration[38] for it is inherently weak and easily fabricated.[39] It cannot prevail over the positive identification of an accused.[40]

Moreover, for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed. It must likewise be undisputably demonstrated that it was physically impossible for him to have been at the scene of the crime at the time the same was committed.[41] Appellant failed to show such physical impossibility.

Equally without merit is appellant's contention that the prosecution deliberately suppressed evidence by not presenting P/Sgt. Arnold Malintad and Barangay Captain Patricio Cabingatan. The suggested reason, of course, is obvious -- their testimonies would have been adverse to the prosecution if produced. This rule, embodied in Section 3 (e), Rule 131 of the Rules of Court, does not apply if the evidence claimed to be suppressed is merely corroborative,[42] or is equally available to the accused[43] because in the latter case, the evidence would have the same weight against one party as against the other.[44] In the instant case, the testimonies of Malintad and Cabingatan would have been merely corroborative; furthermore, there is no showing at all that they were not available to the appellant even through compulsory process.

Presciding from all the foregoing, We thus affirm the decision appealed from, except as to the moral damages which, taking into account the bestiality with which the rape was committed -- leaving a perpetual scar in the memory of the victim which would affect her future and causing untold outrage to the moral sense of the community -- should be increased to P40,000.00.

WHEREFORE, except as above modified in respect to the moral damages, which is increased to P40,000.00, the decision appealed from is hereby **AFFIRMED**, with costs against the appellant Domingo Casinillo.

SO ORDERED.

Bidin and Romero, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

Melo, J., no part.

[1] Rollo, 23-69.

[2] Id., 69.

[3] Original Records, 4-5.

[4] Rollo, 9.

[5] Rollo, 23-24.

[6] Id., 24.

[7] Original Records, 25-26.

- [8] Rollo, 68-69.
- [9] Original Records, 293.
- [10] Brief for the Appellee, 4-11; Rollo, 159.
- [11] TSN, 15 March 1990.
- [12] Brief for the Accused-Appellant, 4-5; Rollo, op. cit., 81.
- [13] Exhibits "11-A" and "11-E".
- [14] Brief for the Accused-Appellant, 7-8; Rollo, 81.
- [15] Id., 19.
- [16] Brief for the Accused-Appellant, 20-21; Rollo, 81, et seq.
- [17] People vs. Reyes, 60 SCRA 126 [1974].
- [18] People vs. Quintal, 125 SCRA 734 [1983]; People vs. Pido, 200 SCRA 45 [1991].
- [19] People vs. Dramayo, 42 SCRA 59 [1971].
- [20] Section 14 (2), Article III, 1987 Constitution.
- [21] People vs. Reyes, supra.; People vs. Dramayo, supra.
- [22] People vs. Pineda, 157 SCRA 71 [1988]; Formilleza vs. Sandiganbayan, 159 SCRA 1 [1988]; People vs. Guarnes, 160 SCRA 522 [1988].
- [23] People vs. Bania, 134 SCRA 347 [1985]; People vs. Ramos, 162 SCRA 804 [1988].
- [24] People vs. Dramayo, supra.
- [25] United States vs. Lasada, 18 Phil. 90 [1910]; People vs. Cabading, 174 SCRA 48 [1989]; People vs. Leoparte, 187 SCRA 190 [1990].
- [26] People vs. Aldana, 175 SCRA 635 [1989]; People vs. Calixto, 193 SCRA 303 [1991]; People vs. Tismo, 204 SCRA 535 [1991].
- [27] People vs. Gonzaga, 77 SCRA 140 [1977], People vs. Oñate, 78 SCRA 43 [1977]; People vs. Ramos, 167 SCRA 476 [1988]; People vs. Payumo, 187 SCRA 64 [1990]; People vs. Vocente, 188 SCRA 100 [1990].
- [28] People vs. Detuya, 154 SCRA 410 [1987]; People vs. Tuando, 150 SCRA 8 [1987]; People vs. Muñoz, 163 SCRA 730 [1988].
- [29] People vs. Ymana, 171 SCRA 174 [1989]; People vs. Esquillo, 171 SCRA 571 [1989]; People vs. Nunag, 173 SCRA 274 [1989]; People vs. Perez, 175 SCRA 203 [1989].
- [30] People vs. Santito, Jr., 201 SCRA 87, 94-95 [1991].
- [31] 154 SCRA 513 [1987].**
- [32] Section 17, Article III, 1987 Constitution.
- [33] Citing United States vs. Teng, 23 Phil. 145 [1912].

[34] Citing *United States vs. Ong Siu Hong*, 36 Phil. 735 [1917].

[35] Citing *Villaflor vs. Summers*, 41 Phil. 62 [1920].

[36] Citing *United States vs. Salas* 25 Phil. 337 [1913]; *United States vs. Zara*, 42 Phil. 308 [1921].

[37] Citing *United States vs. Wade*, 388 U.S. 218, 18 L ed 2d 1146, 87 S. Ct. 1926.

[38] *People vs. Muñoz*, supra.; *People vs. Hermosa*, 177 SCRA 574 [1989]; *People vs. Serenio*, 179 SCRA 379 [1989];

[39] *People vs. Rafallo*, 86 Phil. 22 [1950]; *People vs. Loveria*, 187 SCRA 47 [1990].

[40] *People vs. Barba*, 203 SCRA 436 [1991] and the cases cited therein at page 455.

[41] *People vs. Lamosa*, 173 SCRA 518 [1989]; *People vs. Manzanares*, 177 SCRA 427 [1989]; *People vs. Cabale*, 185 SCRA 140 [1990].

[42] *United States vs. Gonzalez*, 22 Phil. 325 [1912]; *People vs. Dinola*, 37 Phil. 797 [1918]; *People vs. Marasigan*, 51 Phil. 701 [1928]; *People vs. Tuzon*, 56 Phil. 649 [1932]; *People vs. Andiza*, 164 SCRA 642 [1988]; *People vs. Pugay*, 167 SCRA 439 [1988]; *People vs. Bati*, 189 SCRA 97 [1990].

[43] *People vs. De Otero*, 51 Phil. 201 [1927].

[44] *People vs. Morado*, 4 SCRA 292 [1962].

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