

AMOR D. DELOSO, PETITIONER, VS. HON. SANDIGANBAYAN (FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 104805-07. January 13, 1993

Ponente: NARVASA, J.

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NARVASA, J.:

The petitioner, Amor D. Deloso, is the incumbent Governor of the Province of Zambales. Prior to being elected Governor, he was the Mayor of the Municipality of Botolan, Zambales. He stands charged with violating, sometime in the year 1978, Section 3 (e) of the Anti-Graft and Corrupt Practices Act,[1] in that while Mayor of Botolan -

"[**] taking advantage of his public and official position, he did [**] wilfully, unlawfully and feloniously give unwarranted benefits to [**] (five [5] private individuals) thru manifest partiality and evident bad faith in the discharge of his official functions by issuing to [**] (each of them) a tractor purchased by the Municipality of Botolan thru a loan financed by the Land Bank of the Philippines for lease to local farmers at reasonable cost without any agreement as to the payment of rentals for the use of said tractor [**]thereby causing undue injury to the Municipality of Botolan."

The names of the five (5) persons to whom the tractors were allegedly given, and the dates they received possession of the tractors in question, are as follows, viz.:

1. Alfonso Lim, Jr. February 3, 1978
2. Daniel Ferrer April, 1978
3. Maximiano Quinsay February 3, 1978
4. Augusto Deloso - do -
5. Isidro Encarnacion - do -

The charged involving these particular persons were set out in five (5) separate informations filed in 1984. The indictments were identically formulated -- except, of course, as regards the names of the identified beneficiaries -- and were respectively docketed in the Sandiganbayan as Criminal Cases Numbered 9200, 9201, 9202, 9203 and 9204.

It was not, however, until some five years later, or on January 6, 1989 that Deloso was arraigned. This was due to various motions filed by him with the Sandiganbayan seeking either a reinvestigation of the charges, or quashal of the informations, or consolidation of the accusations in one pleading, as well as an unsuccessful recourse to this Court impugning the Sandiganbayan's resolutions on those initiatives. On arraignment, Deloso entered a plea of not guilty, and trial followed as a matter of course.

After the prosecution rested its case, Deloso filed a demurrer to evidence impugning the sufficiency of the evidence adduced by the prosecution in all five (5) criminal actions. The demurrer was denied as regards Cases Numbered 9200, 9201 and 9204, but granted as to Cases Numbered 9202[2] and 9203.[3] The Sandiganbayan

agreed with Deloso that in these last two cases, the prosecution had indeed failed to establish a prima facie case against him. Deloso then presented evidence in his behalf in the remaining three (3) cases.

On October 18, 1991 the Sandiganbayan promulgated its Decision in the three cases (Numbered 9200, 9201 and 9204). In all said cases, it found Deloso guilty beyond reasonable doubt of a violation of Section 3 (e) of Republic Act 3019, as amended, and sentenced him in each case "to suffer the indeterminate penalty of imprisonment of SIX (6) YEARS and ONE (1) MONTH to TEN (10) YEARS; to suffer perpetual disqualification from public office; to indemnify the government [**[4]]; and to pay the costs." [5]

Upon certain of the material antecedents recounted in the Sandiganbayan's decision, the Court observes no serious disagreement between the prosecution and the defense. These are the following:

1. On recommendation of an ad hoc committee the Sangguniang Bayan, of Botolan authorized and caused the obtention by the Municipality (through the mayor) of a loan from the Land Bank of the Philippines, for the explicit purpose of purchasing five (5) farm tractors from the Gregorio Araneta Machines, Inc. to aid the farmers in the area "in tilling their respective agricultural land so as to undertake full production." [6]

2. However, after acquisition of the tractors in December, 1977, and public announcements that the machines were available for lease to farmers on an hourly or daily basis, not one farmer opted to make use thereof. This negative reaction was due, in Deloso's view, to the following circumstances:

a) at that time, the need of the farmers therefor "was not yet imperative;"

b) the demand for sugar for export had diminished, causing the Central Azucarera de Bataan to slow down operations; and

c) the proposed irrigation system in Botolan failed to operate as expected. [7]

3. To make the best of a bad situation, and to prevent deterioration of the tractors from non-use, the Sangguniang Bayan conceived a plan to lease them to "affluent landowners" to be selected by the municipality, who "would be responsible for maintenance and repair and [**] (payment of) annual rentals equivalent to 1/5 of the annual amortization payments payable by the municipality to the Land Bank of the Philippines." A committee was created to screen and evaluate the prospective lessees. [8] The persons chosen as lessees were (a) Alfonso Lim, Jr., (b) Daniel Ferrer, (c) Maximiano Quinsay, [9] (d) Augusto D. Deloso, [10] and (e) Isidoro Encarnacion, Jr. Mayor Deloso had no part in the selection. The award of the tractors to the beneficiaries was not made through canvass or public bidding.

4. The tractors were turned over to the selected lessees without any written contract; and it was not until the tractors had been actually delivered to the lessees and used by them that a resolution was adopted by the Sangguniang Bayan setting out generally the conditions for the use of the tractors, this act being characterized as an "afterthought" by the Sandiganbayan. [11]

5. The tractors were returned to the Municipality after a year or so. The machines eventually deteriorated over time, and were later "sold as junk." After applying the proceeds of the sale and other amounts paid as rentals to liquidation of the loan obligation owing to the Land Bank, the Municipality was still left with a balance due to the Bank of P300,000.00 or so. [12]

It is in light of the foregoing undisputed facts, in relation to the evidence regarding other facts submitted by the parties, that the Sandiganbayan arrived at the following conclusions, to wit:

1. "The farm tractors were irresponsibly delivered to the individual beneficiaries [**] without so much as a piece of paper to evidence delivery." [13]

2. "There was no written agreement entered into between the municipality, on the one hand, and the aforesaid beneficiaries, on the other, (1) as to the nature of the transactions; (2) as to payment of consideration therefor; (3) as to maintenance and repair; and, (4) as to period of use or utilization by the beneficiaries [**]."[14]
3. "There was no bond which ordinarily is posted by tractor recipients to secure the proper performance by them of the terms and conditions of their alleged contract or even for the purpose of security for loss or damage from malevolent handling."[15]
4. "The beneficiaries paid nary a cent to the Municipality for the use of the tractors until agents of the National Bureau of Investigation had started to question them on the legality of their possession of the equipment. **;" and "only after July, 1983."[16] "(T)he tractors were given out to these beneficiaries without thought of compensation for their use **."[17]
5. "The grant of farm tractors to the beneficiaries were (sic) not made through canvas or public bidding. **."

From the verdict of conviction of October 18, 1991, Deloso has appealed to this Court. Here, he prays for acquittal, imputing the following errors to the Court a quo, viz.:

- 1) having "wrongly made many damaging conclusions that are highly speculative, without evidentiary basis and/or contrary to law and evidence," including "the crucial finding that there was no rental agreement between the lessees and the Municipality of Botolan, a conclusion that goes against the evidence of record, including the testimonies of the prosecution witnesses themselves;"[18]
- 2) having "improperly allowed the prosecution to impeach its own witness (Ferrer) through the use of a prior, allegedly contradictory affidavit; and subsequently ** (using) this affidavit ** not merely as impeaching evidence, but as substantive proof to establish the truth of the statement therein (that no conditions were imposed on Ferrer when a tractor was issued to him), for the purpose of contradicting Ferrer's court testimony that he received the tractor on the understanding that he would pay rent, among other prestations;"[19]
- 3) having made "a statement of economic policy (that it was wrong for the Municipality of Botolan to engage in the business of leasing farm tractors in competition with private enterprise) and ** using petitioner Deloso's participation in the formulation of said policy as a basis for his conviction;"[20]
- 4) having assumed "without proof that the Municipality of Botolan, through then Mayor Deloso, violated an unspecified COA Circular allegedly fixing rental rates for government equipment and in concluding on the basis of said assumption that the petitioner acted with 'manifest partiality and evident bad faith;"[21]
- 5) having concluded "that through the disputed lease contracts (which respondent Court refused to recognize allegedly due to absence of consideration), petitioner Deloso had caused undue injury to the Municipality of Botolan and given unwarranted benefits to the lessees; and that said act was done through manifest partiality and evident bad faith."[22]

The gravamen of the three (3) offenses ascribed to Deloso[23] -- the other two accusations against him, as already pointed out, having been dismissed upon a demurrer to evidence, supra[24] -- is that he "issued" (gave possession and custody) to each of three persons (Daniel Ferrer, Isidoro Encarnacion, Jr., and Alfonso Lim, Jr.) "a tractor purchased by the Municipality of Botolan thru a loan financed by the Land Bank of the Philippines for lease to local farmers at reasonable cost without any agreement as to the payment of rentals for the use of said tractor ** thereby causing undue injury to the Municipality of Botolan."[25]

The evidence adduced by both the prosecution and the defense, proves the contrary.

All the three "beneficiaries" above mentioned: Ferrer, Encarnacion, and Lim, were presented by the prosecution

as its witnesses ; and all of them positively declared that they received the tractors from the Municipality of Botolan upon the explicit understanding that they would pay rentals therefor, and keep them in good repair.

Ferrer, described by the Sandiganbayan as "a 64-year old U.S. Navy retiree,"[26] testified that when he got one of the tractors, he was told by Mayor Deloso that he was bound to maintain the tractor in good repair and house it in a secure place,[27] as well as pay rental therefor -- equivalent to one-fifth (1/5) of the amortization due on the loan from the Land Bank used for the purchase of the tractor, the precise amount to be subsequently determined, the mayor's estimate being P60,000.00 per year;[28] that while using the tractor, and after the Municipal Treasurer had talked to him, he had in fact paid P5,000.00 in concept of rental,[29] and that he realizes that he still is bound to pay arrears in rentals to the Municipality of Botolan.[30]

Similarly, the second beneficiary, Encarnacion, referred to by the Sandiganbayan as "a merchant-farmer by occupation,"[31] deposed that (a) he was aware, on receiving the tractor allotted to him, that he was obliged to "share the payment of the amortization (to the Land Bank)," although the precise amount was yet undetermined, there being merely a "calculation" that the amount he would have to pay was P30,000.00 every six months;[32] (b) that he knew that he was obligated to maintain the tractor in good order and secure it in a safe place, at his own expense; and that (c) he had paid P10,000.00 on account of said amortization.[33]

The other lessee, Lim, a businessman, according to the Sandiganbayan,[34] testified to substantially the same things: that Mayor Deloso had told him of his obligations in connection with the award to him of the use of a tractor by the Municipality, one of which was to pay 1/5 of the amortization payment due the Land Bank, amounting to about P60,000.00 a year;[35] and that he had in fact paid something on account of the rental, P7,000.00.[36]

Of no little significance is that the facts established by these proofs of the prosecution relative to the lease are the same as those demonstrated by the evidence of the defense.[37]

Fredesvinda Encarnacion of the Integrated Health Office of Iba, the wife of Isidoro Encarnacion, Jr., corroborated her husband's declarations to the effect that he was aware of his obligation to pay an annual rental of P60,000.00 for the use of the tractor, and that in truth her husband had paid P10,000.00 on account of said rentals in 1978 and 1979 pursuant to requests therefor of the Botolan Municipal Treasurer.[38]

Mrs. Bernardita Sison -- the incumbent Municipal Treasurer of Botolan, appointed in August, 1980, and who held the position of Assistant Municipal Treasurer and Municipal Secretary from April, 1978 to December, 1979 -- testified that she addressed letters to the lessees of the farm tractors in July, 1978, in July, 1979, and on other subsequent occasions, requiring payment of the rentals for the tractors; and that in response, payments were made by the lessees in connection with which official receipts were issued in due course. Mrs. Sison was however able to produce copies only of the letters addressed to Alfonso Lim, and only the official receipts evidencing the latter's rental payments, the others having been lost or destroyed. According to her, these official receipts, and other relevant documents still available, show rental payments made for the tractors at various times during the period from 1979 to 1983 in the total amount of P69,978.03.[39]

Petitioner Deloso himself took the witness stand to give evidence in his defense. His testimony is more detailed than that of the other defense witnesses, but as regards the terms of the lease, is substantially of the same tenor. He declared that because no farmer came forward to avail of the public offer to all and sundry for lease of the tractors on an hourly or daily basis, the Sangguniang Bayan decided to choose five responsible lessees who would be answerable for the upkeep of the machines and would pay an annual rental equivalent to one-fifth of the amortization payment due to the Land Bank of the Philippines. The lessees were selected by a screening committee of said Sangguniang Bayan. The Mayor had asked that the terms of the lease be embodied in a

resolution, but the Sanggunian had declined at the time, professing its inability to do so because copies of the loan documents were not yet in its possession. What Deloso did was to instruct the Municipal Treasurer to incorporate the general terms and conditions of the lease in a memorandum receipt to be issued to each lessee on or about the time of delivery to them of the tractors.[40] This was done, albeit quite imperfectly; the receipts set out the following undertaking (aside, of course, from the acknowledgment of delivery of the tractors and accessories):[41]

"I undertake that by receiving and taking possession of the above items, I agree to all the terms and conditions which the Municipality of Botolan, Zambales may impose upon and I commit myself to sign any document necessary thereof."

Deloso also deposed that he personally explained the terms of the lease to Ferrer, Encarnacion and Lim, when they came to see him about the matter; and when the loan documents were eventually transmitted by the Land Bank to the Mayor's Office, the Sangguniang Bayan finally passed Resolution No. 19 dated March 30, 1979 (Exh. 21) putting in writing the terms of the parol agreements respecting the lease of the tractors.[42]

Full corroboration of petitioner Deloso's evidence also proceeds from the testimony of Dr. Tito Doble y Blanco -- at present the Mayor of Botolan, and from 1976 to 1979, a member of the Sangguniang Bayan of that town, representing the professional sector.[43]

It will thus be seen that the Sandiganbayan's conclusions fly in the teeth of the recorded evidence submitted by both the prosecution and the defense.

It is not true that, as the lower Court alleges, the tractors "were irresponsibly delivered to the individual beneficiaries without so much as a piece of paper to evidence delivery." [44] As just stated, memorandum receipts were in fact prepared by the municipality and signed by the lessees.[45]

It is not true that as the informations state, said tractors were delivered to the lessees "without any agreement as to the payment of rentals for the use of said tractor **," [46] or that, as the Sandiganbayan avers, "the tractors were given out to these beneficiaries without thought of compensation for their use **." [47] For all the witnesses of the defense as well as of the Government uniformly attested to the reality of verbal agreements between the Municipality and the tractors' lessees, i.e., that all said lessees were made aware of the obligations they were assuming prior to the delivery to them of the tractors; and that on their taking delivery thereof, they all bound themselves in writing "to all the terms and conditions which the Municipality of Botolan, Zambales may impose * *." [48] And the fact that the lease agreements were not initially reduced to writing, this having been done only some time later by the Sangguniang Bayan through a resolution adopted for that purpose, certainly does not make the transactions anomalous or felonious, nor preclude the generation of the contractual relation of lessor and lessee between the Municipality and the farmers. It is axiomatic that contracts may be entered into in any form, orally or in writing, or parol in part and written in part, it being needful merely that the essential requisites for their validity be present -- a precept of general application unless "the law requires that a contract be in some form in order that it may be valid or enforceable, ** *." [49] Quite obviously, the lease of the tractors in this case is not one of those required by law to be in writing or other particular form in order that it may be valid or enforceable..

It is also not true that the "beneficiaries paid nary a cent to the Municipality for the use of the tractors until agents of the National Bureau of Investigation had started to question them on the legality of their possession of the equipment. ** ;" and "only after July, 1983." [50] The un rebutted and uncontradicted declarations on the witness stand of all three (3) lessees is that they did make partial payments of rentals as early as 1979; and said declarations are entirely consistent with the testimony of an impartial witness, Mrs. Bernardita Sison -- who held the positions of Assistant Municipal Treasurer and Municipal Secretary of Botolan, concurrently, from April,

1978 to December, 1979. Mrs. Sison's evidence is to the effect that rental payments were made by the users of the tractors at various times during the period from 1979 to 1983 in the total amount of P69,978.03.[51] These rental payments are in fact summarized by the Sandiganbayan in its decision,[52] as follows:

"1979 Rental on Equipment (tractors) - P20,000.00
1980 Rental of Tractors - 13,160.00
1981 Rental of Tractors - 6,500.00
1982 Rental of Tractors - 11,222.00
1983 Rental of Tractors - 19,096.00."

Nor is it correct to conclude that the lessees made payment of rentals only because the National Bureau of Investigation had commenced in 1983 an investigation concerning their possession and use of the tractors. Nothing in the declarations of the lessees themselves justifies such a conclusion. On the contrary, such a conclusion is negated by the testimony of Bernardita Sison, just adverted to. Much less may an inference be drawn that they had agreed to pay rentals in consideration of their not being made defendants in cases to be filed against Mayor Deloso.[53] There is simply no evidence at all on which this inference may be predicated.

The absence of a bond does not make the transactions criminal either. There is no proof whatever that, under the circumstances, such a bond was required by any law or regulation of the "tractor recipients to secure the proper performance by them of the terms and conditions of their alleged contract or even for the purpose of security for loss or damage from malevolent handling." [54]

The lower Court's opinion that the "grant of (the) farm tractors to the beneficiaries were (sic) not made through canvass or public bidding, ** " is inconsequential. There is no evidence that this is a requirement for leases of government equipment, one exigible of the petitioner Mayor, prescinding from the fact that under the circumstances, a public bidding would have been a futile exercise, given the reluctance of the farmers in the area, as already mentioned, to accept the tractors by way of lease.[55]

The lower Court declared prosecution witness Daniel Ferrer to be unworthy of belief. It cited inconsistencies between Ferrer's sworn statement given to the NBI in 1983, on the one hand, and an affidavit subsequently executed by him in 1989 and his testimony before the Sandiganbayan, on the other. The Court a quo spurned Ferrer's testimony despite his proffered explanation of the specified discrepancies, and his categorical assertion that his later affidavit and his testimony before the Sandiganbayan reflected the truth. The lower Court theorized that Ferrer had been suborned by Deloso, a theory it draws from Ferrer's admission that prior to the execution of his affidavit, he had been invited by Deloso to his beach house to talk to the latter's lawyer "concerning the tractors;" and that he had accepted the invitation and had in fact spoken to the attorney. However, these occurrences are too tenuous a premise to support a conclusion of subornation on the part of Deloso, "by himself or through his lawyers and subordinates."

What is worse is that on the same speculative predicate -- -that Ferrer had had a conversation with the attorney of Deloso at the latter's beach house, without more -- the Court a quo extended its theory of subornation to the other two (2) lessees, Encarnacion and Lim, opining that they, too, had been induced by the mayor to execute recantations of prior statements. No such recantations were ever made by Encarnacion and Lim. Moreover, the fact that Ferrer might have been induced to make such a recantation is not competent proof that his fellow lessees were also induced to make similar recantations, a proposition that rests upon the same logical foundation, and would seem to the Court as acceptable, as the familiar doctrine of *res inter alios acta*.

The Court a quo completely ignored the plain circumstance that Ferrer's testimony is corroborated in all its material aspects by the other witnesses of the Government as well as the defense. What is more, even conceding

that Ferrer's testimony could be correctedly discarded and disregarded as self-contradictory, no reason exists to reject the evidence given by the other prosecution witnesses-lessees, specially considering that, as already repeatedly pointed out, their evidence is substantially identical to that of the defense witnesses.

Also incorrect is the declaration that Mayor Deloso did not follow the requirement of the "Local Government Audit Office, LGAO, of the Commission on Audit ** that (private individuals renting) government equipment or machineries must ** (pay) rental fees based on rates (set) by the Department of Public Works and Highways." Apart from the fact that no proof of any such requirement is found in the record, the statement is inconsistent with the lower Court's own view that the consideration for the use of the tractor "is too burdensome for a single person to uphold." [56]

The record shows that there was complete accord between the Sangguniang Bayan and Mayor Deloso regarding the acquisition and subsequent disposition of the tractors in question. Their acts were done officially and publicly, without any attempt at disguise or dissimulation. There is no indication of such intimacy or closeness of relation between Mayor Deloso, or any member of the Sangguniang Bayan, on the one hand, and any of the lessees, on the other, as could reasonably engender a suspicion that the former had cause to grant unwarranted benefits to the latter.

Considered in its entirety, the evidence is, as the Solicitor General manifests, "insufficient to induce that moral certainty of guilt beyond reasonable doubt. The conscience remains uneasy and unsettled after considering the nature and speculative character of the ** (declared basis of) the judgment of conviction."

What has already been said makes unnecessary the consideration and resolution of the other issues raised in this appeal.

WHEREFORE, the Decision of the Sandiganbayan promulgated on October 18, 1991 in Criminal Cases Numbered 9200, 9201 and 9204 is hereby REVERSED AND SET ASIDE, and the petitioner, Amor D. Deloso, is ACQUITTED of the crimes charged with costs de officio.

IT IS SO ORDERED.

Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide Jr., Romero, Nocon, Bellosillo, Melo, and Campos Jr., JJ., concur.

[*] EN BANC

[1] Republic Act No. 3019, as amended

[2] Involving Maximiano Quinsay as the supposed beneficiary

[3] Involving Augusto Deloso as the supposed beneficiary

[4] In the sum of P52,500.00, P55,000.00, and P50,000.00, respectively

[5] Rollo, pp. 96-97

[6] Id., pp. 83, 141

[7] Id., p. 84

[8] Id. pp. 84-85, 141-143

[9] SEE footnote 2, *supra*

[10] SEE footnote 3, *supra*. Petitioner Deloso however asserts that Augusto Deloso was not one of the five (5) lessees; that aside from the other four (4) already named, the fifth was a certain Domingo Deviva (petition, pp. 17-18).

[11] Rollo, p. 84

[12] *Id.*, p. 95

[13] *Id.*, p. 88

[14] *Id.*, p. 88

[15] *Id.*, pp. 88-89

[16] *Id.*, p. 89

[17] *Id.*, p. 94

[18] *Id.*, p. 21; pars. 1 and 2, page 9, petition

[19] *Id.*, p. 21: par. 3, page 9, petition

[20] *Id.*, pp. 21-22: par. 4, pp. 9-10, petition

[21] *Id.*, p. 22, par. 5, p. 10, petition

[22] *Id.*, p. 22, par. 6, p. 10, petition

[23] In *Crim. Cases No. 9200, 9201 and 9204*

[24] *Crim. Cases No. 9202 and 9203*; SEE footnotes 2 and 3, *supra*

[25] *Italics supplied*

[26] Rollo, p. 232

[27] *Id.*, pp. 32-33

[28] TSN, May 16, 1989, pp. 10-11; 40-41 (in re, particularly, pars. 7 and 8, Exhibit 1 [affidavit, Feb. 8, 1989])

[29] TSN, May 16, 1989, pp. 34-38

[30] *Id.*, p. 79

[31] Rollo, p. 60

[32] TSN, May 16, 1989, pp. 122-125

[33] *Id.*, p. 125

[34] Rollo, p. 61

[35] TSN, May 17, 1989, pp. 7-8

[36] *Id.*, p. 18

[37] This would include the testimony of Government witness Bonifacio Villacorta, Senior NBI Agent, NBI Sub-Office in Olongapo City, respecting his investigation of Maximiano Quinsay in March, 1979, the latter's

recorded answers being materially to the same effect as the declarations of the other lessees (Rollo, pp. 62-63; TSN, June 5, 1989, pp. 3-20, 22-23, TSN, May 17, 1989, pp. 5-7, 8-10). The only other witness for the prosecution was Mariano Rojas, Regional Director, NBI Region and Agent-in-Charge of the NBI Sub-Office in Olongapo City, who took the statement of petitioner Deloso in question-and -answer form (Rollo, pp. 240-241).

[38] Rollo, p. 65; TSN, Jan., 29, 1990, pp. 3-10

[39] Rollo, pp. 69-70, 86; SEE TSN, May 16, 1989, pp. 34-35; TSN, May 17, 1989, pp. 14, 27; TSN, Jan. 29, 1990, pp. 30-31, 41, 43-47 [Exhs. 4-6]; TSN, Jan. 30, 1990, pp. 34, 47-50, 52-66 [Exhs. 7-13]; TSN, June 7, 1990, pp. 63-64

[40] Rollo, pp. 76-79

[41] Id., pp. p 19-20 (pp. 7-8, petition, citing various portions of the transcript of stenographic notes)

[42] Id., p. 79

[43] Id., pp. 71-75

[44] Id., p. 88; SEE footnote 12, supra

[45] SEE footnote 40, supra

[46] SEE footnote 24, supra

[47] Rollo., p. 94

[48] SEE footnotes 40 and 44

[49] ART. 1356, Civil Code

[50] Rollo, p. 89

[51] Rollo, pp. 69-70, 86; SEE TSN, May 16, 1989, pp. 34-35; TSN, May 17, 1989, pp. 14, 27; TSN, Jan. 29, 1990, pp. 30-31, 41, 43-47 [Exhs. 4-6]; TSN, Jan. 30, 1990, pp. 34, 47-50, 52-66 [Exhs. 7-13]; TSN, June .7, 1990, pp. 63-64

[52] Rollo, p. 86 (Decision, p. 35)

[53] Rollo, p. 89 (Decision, p. 38)

[54] SEE footnote 14: Rollo, pp. 88-89

[55] SEE footnote 7, supra

[56] Rollo, p 94

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