

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS DEUNIDA Y ENRIQUEZ, ACCUSED-APPELLANT.

G.R. Nos. 105199-200. March 28, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Following his arrest six months after the fatal shooting of Felipe Ramos, Jr. in the evening of 31 December 1990, accused Jesus Deunida was charged before the Regional Trial Court of Manila with murder and illegal possession of firearms under P.D. No. 1866 in two separate informations, dated 26 June 1991, which were docketed as Criminal Case Nos. 91-95987 and 91-95988, respectively,[1] and consolidated with and raffled to Branch 49 of the said court.

However, after a reinvestigation which the court ordered upon motion[2] of the accused and for lack of the requisite prior preliminary investigation, the prosecution, in a Manifestation filed on 18 September 1991,[3] moved for the withdrawal of the information for murder and the amendment of the information for illegal possession of firearms on the ground stated in the resolution of the investigating prosecutor[4] that the filing of two separate informations was erroneous since what the accused had committed is only one offense, viz., the violation of the second paragraph of Section 1 of P.D. No. 1866 or "Qualified Illegal Possession of Firearm." The amended informations[5] attached to the manifestation bears the docket number for the case for murder, viz., Criminal Case No. 91-95987. However, the body thereof is for violation of P.D. No. 1866, which is the offense charged in Criminal Case No. 91-95988, and reads as follows:

"The undersigned accuses JESUS DEUNIDA Y ENRIQUEZ of violation of Presidential Decree No. 1866, committed as follows:

"That on or about December 31, 1990, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and knowingly have in his possession and under his custody and control the following, to wit: one (1) caliber .38 revolver (Paltik) marked Smith and Wesson, without first having secured the necessary license or permit therefor from the corresponding authorities, which described firearm was used by the accused in the commission of the crime of homicide."

Although the original records transmitted to this Court by the trial court do not show that the latter formally acted on the manifestation, the challenged decision states that the withdrawal and amendment were both granted.[6] From the certificate of arraignment,[7] it likewise appears that the accused was arraigned in Criminal Case No. 91-95987, evidently on the amended information for illegal possession of firearms.[8]

During the testimony of Dr. Marcial Cenido, the first witness for the prosecution, the trial court discerned,[9] and the defense counsel confirmed,[10] that the theory of the accused was self-defense. The parties then stipulated that: (1) the amount of actual damages (funeral expenses) incurred by the private complainant was P50,000.00;[11] (2) the gun used in the fatal shooting was the "paltik" .38 caliber revolver ("Exhibit "P") turned over by the accused to P/Cpl. Meneleo Renon after the shooting, and the copper slug (Exhibit "E") was the one

recovered from the body of the victim;[12] and (3) at the time the gun was fired, the accused had no license or permit to possess the gun and the recovered live bullets (Exhibit "P-1") as certified to by the Firearms and Explosives Unit of the Philippine National Police (PNP).[13] The parties then agreed to have the "reverse trial" method to expedite the disposition of the case and the prosecution marked and submitted its evidence consisting of the post-mortem findings of Dr. Cenido, the human sketch prepared by him, the certificate of death, the recovered slug, sworn statements of Marlon Comia, Joel Baltazar, Cpl. Meneleo Renon, advance information on the case, progress report, certification of the Firearms and Explosives Unit, booking sheet and arrest report, the paltik revolver, and the bullets.[14] The defense then presented as its witnesses the accused himself and his two friends, Aurelio Sta. Cruz and Agustin Arigore. The prosecution presented as rebuttal witnesses Mrs. Belen Fortes, an eyewitness to the shooting, and P/Cpl. Meneleo Renon, an off-duty traffic policeman who had placed the accused under arrest shortly after the shooting. These witnesses are neighbors of the accused. Thereafter, the defense recalled the accused as a surrebuttal witness.

The inculpatory evidence adduced by the prosecution is faithfully summarized by the appellee as follows:

"On December 31, 1990, New Year's Eve, at about 10:30 o'clock in the evening, Belen Fortes of 2347-A Amatista St., San Andres Bukid, Manila, went to the store of her neighbor, accused Jesus Deunida, at 2323 Amatista St., San Andres Bukid, Manila (TSN, Nov. 13, 1991, p. 8), to buy some things in preparation for the midnight celebration to welcome the New Year. As she approached the store, she saw ahead of her Felipe Ramos, Jr. who was about two feet away to her left (TSN, Feb. 4, 1992, p. 8) also approaching the store. Ramos was about two feet away from the store and he addressed appellant Deunida who was inside the store, 'Hinahanap mo raw ako?' (Ibid., pp. 2 and 4).

Despite the screen covering the front of the store, Fortes could clearly see the face of appellant inside the store because the screen had an opening of about 10 by 12 inches and the street light overhead illuminated the store (Ibid., pp. 1-13). Fortes heard appellant reply but could not make out the words after which she saw appellant aim a gun at Ramos, the muzzle of the gun jutting through the opening in the screen (Ibid., pp. 4-5, 13-14).

When Ramos saw the gun aimed at him, he turned around and was about to run away when the gun fired hitting Ramos at the back and causing him to be thrown to the other side of the street (Ibid., p. 5).

Appellant came out of his store, approached Ramos and again aimed the gun at him. But neighbor pleaded with appellant not to shoot again, shouting 'Mang Jess, huwag, si Ato yan' (Ibid., pp. 5-6).

Appellant relented and Ramos stood up to look for help. Fortes ran home to tell her husband what happened and then returned to the scene and helped the other neighbors bring Ramos to the Philippine General Hospital where he would expire later (page 5 of the Amended Decision, as annexed in the Appellant's Brief).

The autopsy conducted by Dr. Marcial Cenido on January 1, 1991 revealed that Ramos suffered a gunshot entry wound in the back, specifically at the left posterior thorax below the level of the armpit with a copper slug found inside the body. According to Dr. Cenido, the entry wound and slug are consistent with a handgun as the firearm used in killing the victim (TSN, Nov. 5, 1991, pp. 10-11) and in the absence of powder burns that the muzzle of the gun was about 24 inches from the body when it fired. The trajectory of the bullet is forward or from back to front, very slightly downward and slightly towards the left lateral line penetrating the posterior thorax and left side of the liver. He concludes from the foregoing findings that the assailant was at the back of the victim, that the position of the assailant was possibly standing and the victim could have been seated. He also explained that the abrasions in the right forearm could have been due to a fall (TSN, Nov. 5, 1991, pp. 24, 17).

Appellant was placed under arrest by Cpl. Meneleo Renon who was at home watching television when the incident happened. He was called to the scene right after the shooting by his daughter and niece who called him; telling him 'Papa, papa, si Mang Jess binaril si Ato' (TSN, Jan. 28, 1992, pp. 49-50).

Renon immediately went to the crime scene. He saw appellant holding a gun and about to leave and he called appellant. Appellant handed to him the gun and said 'Pasensiya na kayo nabaril ko si Ato' (Ibid., pp. 51-52, 54, 56). Renon opened the gun and discovered one (1) empty shell and four (4) live bullets (Ibid., p. 53).

Renon told appellant that he was under arrest and made him sit in front of his house to wait for the policemen from homicide section (Ibid., p. 54).

While waiting for the policemen, appellant asked Renon if he could go inside his house to drink water. Since appellant was his neighbor, Renon allowed him to enter his house to drink (Ibid.).

When the policemen from the homicide section arrived, Renon called appellant but discovered that the latter had escaped to the roof top by using a long ladder (Ibid., p. 55).

Renon and the homicide operatives tried to locate the appellant at a place called Texas Anakbayan where the appellant was known to have many friends but they failed to find him (Ibid.).

Appellant was finally arrested on June 12, 1991 in Sta. Maria, Bulacan."^[15]

On the other hand, the accused denied both the possession of the fatal gun and the responsibility for shooting the victim, and offered a different version of the incident which he summed up in his brief, citing the testimonies of Aurelio Sta. Cruz and Agustin Arigore:

"[A]t about 11:00 o'clock in the evening of December 31, 1990, both of them [Sta. Cruz and Arigore] went to the house of the Accused-Appellant to invite him to join the celebration of their [barkada] in the house of Chairman Alfredo Tan. While he was outside the store and at the gate with his two (2) friends, the victim arrived, approached him, saying 'Mang Jess, babarilin mo raw ako,' then poked a gun at him. It was parried by the Accused-Appellant, but when it was poked again, the latter tried to get it by grappling with the victim. It was at the [sic] point when Accused-Appellant was twisting the victim's arm with the gun, and the latter almost on his knees, that the gun fired. The victim d[i]sengaged himself by running to the other side of the street. He was pursued by Accused-Appellant, poked the gun at him but he was prevented by his friends.

When Cpl. Meneleo (Pandong) Renon arrived, the Accused-Appellant handed him the gun saying 'Pandong, baril ito ni Ato, naagaw ko' to which the policeman responded, 'Sige Jess, ako na ang bahala dito.' With his two (2) friends, they proceeded to the drinking party, stayed there overnight. When in the morning he was informed that Ato died and that he was being hunted by the victim's relatives, he went to his in-laws in Bulacan, stayed there until his arrest."^[16]

This version is of course not absolutely consistent with the accused's earlier stand that he acted in self-defense, which resulted in an agreement for the holding of a "reverse trial" method. This prompted the trial court to remark that by the evidence he offered in court, the accused:

"evolved an alternative defense, to wit, (a) that at the time the gun, Exhibit 'P,' was fired, the first right finger of the deceased was on the trigger and that the accused was merely holding the handle of the gun and implied that it was not the Accused who shot the deceased; and (b) assuming, gratia arguendo, that it was the Accused who shot the deceased, while they were wrestling for the possession of the gun, he did so only in self-defense."^[17]

In its Decision^[18] promulgated on 3 April 1992, the trial court found the accused guilty beyond reasonable doubt of the crime of "qualified violation of Section 1 of Presidential Decree No. 1866" and sentenced him to suffer the penalty of reclusion perpetua and to pay the heirs of the deceased the amount of P50,000.00 by way of actual damages and P50,00.00 by way of indemnity. It further ordered the confiscation in favor of the government of the gun and the four live bullets and one empty cartridge and directed the branch clerk of court to cause the delivery thereof to the Firearms and Explosives Unit of the PNP for disposition in accordance with law upon the finality of

the decision.

On 10 April 1992, the trial court amended its decision,[19] a copy of which was received by the accused's counsel on 14 April 1992. The trial court rejected the accused's claim of self-defense in view of the "cogent facts and circumstances spread in the records, not to mention the testimony of the [a]ccused himself, belying and discrediting his claim." It gave more credence to the prosecution witnesses' accounts of the incident and the medical findings and opinion of Dr. Cenido, held that the accused's flight after the incident as an indication of guilt, and considered his statement to Cpl. Renon admitting the shooting as part of the *res gestae*.

It also disregarded for lack of substantial basis the accused's allegations of bias and ill-motive against witnesses Mrs. Belen Fortes and Cpl. Renon, ruling instead that the accused's self-serving claim that the victim was a "protege" or "bata" of Renon was belied by the latter's leniency and lack of vindictiveness towards the accused after the shooting, such as allowing the accused to go inside his house to drink water without being handcuffed, enabling him to escape.

The Court stated that Renon satisfactorily explained why he made his sworn statement only on 22 June 1991; moreover, he had promptly reported the incident to the Homicide Section, turned over the gun, the four live bullets and the empty cartridge, and informed the police of the accused's escape. The Court explained that Fortes did not report the incident to the police and give a sworn statement because she helped bring the victim to the hospital and thereafter the accused's relatives brokered for an amicable settlement of the case which would render her sworn statement useless. It also said that the accused's allegations that the relatives of the victim threatened to kidnap her daughter and that Fortes went on television to denounce him were unsubstantiated and pure hearsay since the same were only relayed to him by his wife who did not testify.[20]

On 21 April 1992, the accused filed his notice of appeal.[21]

In his Appellant's Brief,[22] the accused prays that we reverse the amended decision of the trial court and acquit him because the trial court erred: (1) in finding the testimonies of Fortes and Renon credible and free from ill-motive or vindictiveness, fabrication, and collusion; (2) in relying on the said testimonies as basis for his conviction; (3) in finding that the victim, Felipe Ramos, Jr., was not the aggressor; (4) in convicting him on the basis of contradicting testimonies, assumptions, and conclusions; (5) in considering his "alleged flight" as evidence of his guilt; (6) in "misappreciating and ignoring" his evidence of self-defense; and (7) in not applying the "equipoise rule" in his favor.[23] In further amplification thereof, he asserts that the testimonies of Fortes and Renon are inconsistent and improbable; that Dr. Cenido was not a qualified forensic expert to testify on the distance at which the victim was shot based on the absence of gunpowder burns at the victim's wound, which absence can be explained; that Dr. Cenido's findings also support his claim that the victim was shot from the back while seated; that his evidence amply proves self-defense; and that his flight was due to the threats to his life and his family and cannot be taken as evidence of guilt.[24]

At the outset, it must be stressed that, contrary to the prosecution's legal position in withdrawing the information for murder, the offense defined in the second paragraph of Section 1 of P.D. No. 1866 does not absorb the crime of homicide or murder under the Revised Penal Code and, therefore, does not bar the simultaneous or subsequent prosecution of the latter crime. The 1982 decision in *Lazaro vs. People*[25] involving a violation of P.D. No. 9, which the investigating prosecutor invokes to justify the withdrawal, is no longer controlling in view of our decisions in *People vs. Tac-an*,[26] *People vs. Tiozon*,[27] and *People vs. Caling*. [28]

In *Tac-an*, we ruled that the accused who had been charged with illegal possession of a firearm and ammunition under the second paragraph of Section 1 of P.D. No. 1866 was not placed in double jeopardy when he was also charged in another case with murder because the former offense is a different offense punished by a special law

while the latter offense is defined and penalized under the Revised Penal Code. We reiterated that the constitutional right against double jeopardy protects one against a second or later prosecution for the same offense and that when the subsequent information charges another and different offense, although arising from the same act or set of acts, there is no double jeopardy. In *Tiozon*, we explicitly stated that the killing of a person with the use of an unlicensed firearm may give rise to two separate prosecutions: one for the violation of Section 1 of P.D. No. 1866 and another for murder or homicide under Article 248 or Article 249 of the Revised Penal Code. And in *Caling*, we also ruled that the use of an unlicensed firearm in the commission of homicide or murder gives rise to two distinct crimes, viz., unlawful possession of firearms, which may be either simple or aggravated as defined and punished respectively by the first and second paragraphs of Section 1 of P.D. 1866; and homicide or murder, committed with the use of an unlicensed firearm. The killing is obviously distinct from the act of possession and is separately defined and punished under the Revised Penal Code. Therefore, in the instant case, the information for murder was erroneously withdrawn.

Let us now draw our attention to the merits of the appeal.

After a careful review and consideration of the records, the evidence, and the arguments of the parties, we find the appeal to be without merit.

In the first place, having pleaded self-defense, the accused necessarily admitted having shot and killed the victim with an unlicensed firearm (Exhibit "P"). It was then incumbent upon him, to avoid criminal liability, to prove that justifying circumstance to the satisfaction of the court. To do so, he must rely on the strength of his evidence and not on the weakness of that of the prosecution, for even if that were weak it could not be disbelieved after he had admitted the killing.[29] Being an affirmative allegation, its elements, namely, (a) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to repel the aggression, and (c) lack of sufficient provocation on the part of the accused, must be proved with certainty by sufficient and convincing evidence which excludes any vestige of criminal aggression on the part of the person invoking it.[30]

The accused failed to discharge the burden which was shifted to him by his plea of self-defense. He was not able to show unlawful aggression on the part of the victim. On the other hand, the prosecution, through the testimony of Belen Fortes, successfully proved that it was the accused who assaulted the victim with a gun and shot the latter at his back,[31] which facts she elaborated in detail on cross-examination.[32] Cpl. Renon, to whom the accused surrendered the gun and the live bullets after the incident, testified that the accused told him that he shot Felipe Ramos.[33]

The allegation that the testimonies of Belen Fortes and Cpl. Renon are not credible does not convince us. The trial court gave them full faith and credit thus:

"More, the Court belabored to monitor and keenly observe the conduct and demeanor of Belen Fortes and Cpl. Memeleo Renon when they testified before the Court, and the Court is fully convinced, without equivocation that they testified before the Court spontaneously, in a candid and straightforward manner, their testimonies bereft of tell-tale signs and the affectations and artificialities of perjured or rehearsed witnesses." [34]

The rule in the appellate process is that the trial court's determination on the issue of the credibility of witnesses must be given great weight and respect, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. The rationale for this is that the trial court is in a much better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. It can thus easily detect whether a witness is telling the truth or not.[35] In the instant case, we find no cogent reason to depart from this rule. The alleged ill-motive or vindictiveness on the part of prosecution witnesses Fortes and Renon were not proved. They are thus presumed not to have been actuated by

any improper motive.[36]

Since unlawful aggression on the part of the victim was absent, the second requisite for self-defense, which presupposes the presence of the first, cannot logically exist.

The accused further failed to prove the third requisite of self-defense. On the contrary, his own evidence discloses that minutes before the shooting incident, the accused's daughter reminded the victim of the two empty beer bottles which he borrowed from the accused's store, but the victim, who appeared drunk as shown by his bloodshot eyes and "broken voice," arrogantly told her that no one had yet shouted at him. Because of the victim's attitude, the accused told him to return the empty bottles. The victim came back with the bottles which he dropped on top of the table in the store shouting at the same time, "Eto na ang bote. Wala na akong utang sa inyo na bote," which "irritated" the accused.[37] When the victim left, the accused even remarked, "Pag hindi mo hahabaan ang pasensiya mo dito kay Ato, mababaril mo." [38]

Finally, his own version of how the shooting took place further befuddled his belated claim that the victim himself pressed the trigger of the gun, thereby suggesting that the latter accidentally fired the gun and killed himself. This is belied by the physical evidence showing that the victim was shot from behind at a distance since there were no contusions or gunpowder burns on the skin at the point of entry of the bullet. The demonstration made by the accused in court[39] further showed that it was physically impossible for the victim to have shot himself, if indeed he was positioned in the manner demonstrated. The following findings and observations of the trial court are well taken:

"The vacillating and chameleon stance of the Accused bespoke of the unreliability of his testimony. It must be borne in mind that when he testified before the Court, and as borne by his Necropsy Report, Exhibit 'B', Dr. Marcial Cenido averred that the trajectory of the bullet which hit the back of the deceased was obliquely forward, slightly downward and very slightly towards the lateral, grazing the left lateral side of the 8th thoracic vertebra of the deceased. If the muzzle of the gun was directed to the left side of the body of the deceased when it fired, the deceased could not have been hit or that if he was hit by the bullet from the gun, the trajectory should have been directed towards well the left side of the body of the deceased, and not obliquely forward, slightly downward only and very slightly towards the lateral side.

On the other hand, if, as claimed by the Accused, his left palm held the right palm of the deceased and pressed it against the back of the deceased, the muzzle of the gun could not have been directed towards the back of the deceased, but towards the left side of the deceased. More, the deceased would have to move his right hand outward from his back and from the waist and bended his hand from his wrist towards his back which it would have been extremely difficult if not impossible for the deceased to do so considering that the right arm of the Accused was holding the right arm of the deceased between the elbow and the wrist.

The scenario evolved by the Accused could not have happened for another reason. According to Marcial Cenido, *infra*, he found no contusion collar or gunpowder burns on the skin of the point of entry of the bullet on the body of the deceased which meant that the deceased must have been twenty-four (24) inches away from the muzzle of the gun thus belied the claim of the Accused that the gun which was pressed against the back of the deceased when the latter was shot and, on the other hand, corroborated the testimony of Belen Fortes that the Accused shot the deceased at a distance of about two (2) feet from the store." [40]

The accused's contention that Dr. Cenido's testimony should not be considered "as he is not a forensic expert on the matter" is untenable for before Dr. Cenido gave his testimony, the accused's counsel admitted in open court "the competency of the witness as an expert witness." [41] Also, when the questioned testimony was given, the defense did not make any objection thereto.

Finally, the accused's flight after the incident removes any remaining shred of doubt on his guilt. His flight is

fully established and his allegation of threats to his life and to his family, rightly brushed aside by the trial court as unsubstantiated, dubious, and hearsay, is simply a fabricated tale to cover up the naked fact of his flight. Undeniably, his flight evidenced guilt.[42]

Consequently, there is no room for the accused's plea for the application of the "equipoise rule," invoking "Cruz [should be Corpuz] vs. People." [43] As Mr. Justice Isagani A. Cruz emphasized in the said case, the equipoise rule is applicable only where the evidence of the parties is evenly balanced; there is no such equipoise if the evidence of the prosecution is overwhelming and has not been overcome by the evidence of the defense.

The gravamen of the offense under the second paragraph of Section 1 of P.D. No. 1866 is the possession of a firearm without a license and the use of such unlicensed firearm in the commission of homicide or murder, which were alleged in the amended information in this case. The evidence established beyond reasonable doubt that the accused who had in his custody and possession the firearm (Exhibit "P") had no license or permit to possess it and that he used it in shooting to death Felipe Ramos, Jr.

The trial court thus correctly convicted the accused and imposed the penalty of reclusion perpetua only, instead of the prescribed death penalty under the second paragraph of Section 1 of P.D. No. 1866. At the time the offense was committed, the death penalty could not be imposed pursuant to Section 19(1), Article III of the 1987 Constitution.

However, the awards for actual damages in the amounts of P50,000.00, representing funeral expenses, although stipulated by the parties, and P50,000.00 as moral damages, which the parties left to the discretion of the trial court, are improper and should be deleted for, although death had taken place, the offense charged is illegal possession of firearm and the killing merely aggravated it. No private interest is therefore involved. The civil liability arising from death may be the subject of a separate civil action or impliedly instituted with the criminal action for murder or homicide.

WHEREFORE, judgment is hereby rendered AFFIRMING, with the above modification consisting of the deletion of the awards for actual and moral damages, the challenged amended Decision of the Regional Trial Court of Manila, Branch 45, dated 10 April 1992, in Criminal Case No. 91-95987.

Costs against accused Jesus Deunida y Enriquez.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Original Records (OR), Criminal Case No. 91-95987, 2; Criminal Case No. 91-95988, 1.

[2] Id., 18-21.

[3] OR, Criminal Case No. 91-95987, 32.

[4] Id., 33-35, citing *Lazaro vs. People*, 112 SCRA 430 [1982].

[5] Id., 36-37.

[6] OR, Criminal Case No. 91-95987, 144.

[7] Id., 44.

[8] There was an apparent confusion in the trial court for although the information for murder was withdrawn, the

subsequent orders, including the decision, bear the two docket numbers, viz., Criminal Cases Nos. 91--95987 and 95988, and because of the erroneous docket number for the amended information, Criminal Case no. 91-95987 ultimately became the case for illegal possession of firearms.

[9] Order of 5 November 1991; OR, Criminal Case No. 91-95987, op. cit., 77. Subsequent references to OR pertain to Criminal Case No. 91-95987.

[10] TSN, 5 November 1991, 22.

[11] Id., 22-23.

[12] Id., 19.

[13] Certification, Exhibit "M"; OR, 74.

[14] OR, 57-76; 119.

[15] Brief for the Appellee, 3-8; Rollo, 193-198.

[16] Rollo, 108-109.

[17] OR, 121-122.

[18] Id., 113-140; Rollo, 16-42. Per Judge Romeo J. Callejo.

[19] OR, 143-172; Rollo, 59-87.

[20] OR, 157-161.

[21] Id., 174.

[22] Rollo, 100-134.

[23] Id., 103-104.

[24] Rollo, 120-133.

[25] 112 SCRA 430 [1982].

[26] 182 SCRA 601 [1990].

[27] 198 SCRA 368 [1991].

[28] 208 SCRA 821 [1992].

[29] *People vs. Ansoyon*, 75 Phil. 772 [1946]; *People vs. Talaboc*, 30 SCRA 87 [1969]; *People vs. Molina*, 213 SCRA 52 [1992]; *People vs. Ybeas*, 213 SCRA 793 [1992]; *People vs. Mindac*, 216 SCRA 558 [1992].

[30] *People vs. Ybeas*, supra., citing *People vs. Paya-an*, 84 SCRA 353 [1978]; Article 11(1), Revised Penal Code; 1 RAMON C. AQUINO, *THE REVISED PENAL CODE*, 132 (1987 ed.).

[31] TSN, 4 February 1992, 4-6.

[32] Id., 10-15.

[33] TSN, 28 January 1992, 52.

[34] OR, 130.

[35] People vs. Pascual, 208 SCRA 393 [1992]; People vs. Garcia, 209 SCRA 164 [1992]; People vs. Florida, 214 SCRA 227 [1992].

[36] People vs. Simon, 209 SCRA 148 [1992].

[37] TSN, 13 November 1991, 13-14.

[38] Id., 33. "Ato" is the nickname of the victim.

[39] TSN, 13 November 1991, 41-42.

[40] OR, 164-165.

[41] TSN, 5 November 1991, 2.

[42] People vs. Garcia, 209 SCRA 164, 177 [1992], citing People vs. Alegado, 25 Phil. 510 [1913].

[43] 194 SCRA 73 [1991].

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