

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHN JENN PORRAS AND SERGIO EMELO, ACCUSED-APPELLANTS.*G.R. Nos. 114263-64. March 29, 1996*

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-114263-64/>**FRANCISCO, J.:**

The separate indictments are for MURDER and for FRUSTRATED MURDER respectively. The appealed judgment went for the People, found appellants John Jenn Porras and Sergio Emelo guilty of MURDER (Criminal Case No. 245-91) and sentenced them to "imprisonment of reclusion perpetua, to indemnify the heirs of Rosendo Mortel in the amount of P50,000.00 plus actual damages, funeral expenses in the amount of P67,000.00 and moral damages in the amount of P100,000.00,"[1] and appellant Sergio Emelo guilty of FRUSTRATED HOMICIDE (Criminal Case No. 246-91) and sentenced him to "imprisonment of Four (4) years, two (2) months and one (1) day of prision correccional, as minimum to Eight (8) years of prision mayor, as maximum, John Jenn Porras is hereby acquitted. With costs in both instances."[2]

Appellants impute fourteen alleged errors committed by the trial court which can be substantially reduced as follows: (1) misappreciation of facts;(2) giving credence to the inconsistent testimonies of the prosecution witnesses, i.e., Jose Malumay and Maribel German; (3) ignoring the defense of alibi; (4) not considering as fatal the prosecution's inability to present as witness Cpl. Crisanto de la Cruz; (5) admitting in evidence Sgt. Alvarez's hearsay testimony; and (6) in convicting appellants who were not positively identified in open court.[3]

Hereunder is the recital of facts of the case as summarized by the trial court and duly substantiated by the evidence on record:

"Piecing together the testimonial and material evidence submitted in these cases, the Court cannot but conceive the following resume: that on the night of June 20, 1990, (sic) accused John Jenn Porras and Sergio Emelo went to the Police Station looking for Pfc. Roldan Emelo of the Cavite City PNP, a cousin of the latter and was directed by Sgt. Pilapil to where he was; that they had some food and drinks at the Banaue Restaurant and Emelo asked for his black ammo pouch and some .38 caliber ammunition; that thereafter, perhaps in connivance with Marcelo Real of the Philippine Coast Guard who was then moonlighting in his tricycle, flagged him down along M. Gregorio St. and in which Marcos Luciano was a passenger at the time and was told to alight as they were already overloaded and whereat Luciano identified John Jenn Porras, who was then wearing a maong jacket and maong pants when he was focused by the headlights of the incoming vehicle; that they proceeded to the Aroma Beer House where the victim Rosendo Mortel was tabled (sic) and wherein some misunderstanding happened and Ronnie Mortel went out and was shot at close range by either Porras or Emelo as seen by a waitress, Maribel Herman who pointed to Porras as the assailant and who after seeing Rosendo Mortel sprawled on the ground and bloodied, fled into an alley and thereafter returned and shot the prostrate victim twice and sped away and who hailed Sgt. Catalino Bermas (sic) was then monitoring the situation as an Intelligence Operative on his motorcycle to give chase; that during the shooting Jose Malumay who was on a bicycle on his way home after going to a house near Sangley Point also heard a gun shot which he mistook for a blow-out and when he offered to assist, he saw two men, one in dark attire and the other in white T-shirt who

from the information of the witnesses fixed their identities as the two accused John Jenn Porras and Sergio Emelo who fired the initial shot and ran away and later on returned to finish the job with Porras allegedly having fired the last two shots killing the victim instantaneously as he was brought to the hospital 'dead on arrival.

"During the chase given by Catalino Bermas he was shot by Emelo along the way after having told them (Emelo and Real) to go to the Police Station and Bermas, feeling the effects of his wounds chanced upon Cpl. Dela Cruz in front of the 501 Beer House and asked for his assistance and they rode in tandem and pursued the tricycle at the Saulog Terminal Compound where only the tricycle was left together with the driver Marcelo Real who pointed to the two accused as the assailants.

"Sgt. Amorico Alvarez who was then following up unsolved cases in the Station was apprised of the shooting and went to the place and was informed about the identity (sic) of the tricycle which they traced to the house of Real whereat they found the black ammo pouch and the camouflage holster with the name of Emelo inscribed and with live and spent bullets on the back seat and putting together the evidence thus far gathered, he was able to apprehend the three, namely: Porras, Emelo and Real." [4]

Now, to dispose of the issues raised:

Appellants claim that some of the trial court's factual findings[5] are product of imagination and gross misrepresentation allegedly due to lack of evidentiary support. While our examination of the record shows that (he assailed factual findings are in some respects inaccurate they, however, did not debilitate the prosecution's case and neither did they affect the appellant's finding of guilt. SPO3 Rolando Villegas, one of the prosecution's witnesses, indeed, positively identified the appellants as the persons who showed up at the Cavite City police station at around 9:00 o'clock in the evening of June 19, 1990, looking for Pfc. Roldan Emelo - persons who, the record reveals, were responsible for the dastardly crimes. Thus:

"xxx xxx xxx

Q:

While doing it, Mr. Witness, while waiting for this report you have just mentioned, can you tell the Court if there was an incident which transpired in your office?

A:

Because I have read my statement, I remember that two men arrived at the police station asking for the whereabouts of Pat. Roldan Emelo.

Q:

And this Pat. Roldan Emelo is connected with your office?

A:

Yes, ma'am.

Q:

Do you know this person who asked for Roldan Emelo?

A:

I came to know those persons when they were involved in a shooting incident in San Antonio.

Q:

At the time they came to you asking for Roldan Emelo, could you still recall how they look like?

A:

Yes, ma'am because the suspects were identified by the witnesses. One involved is a small man, dark, wearing white T-shirt, maong pants and carrying a black shoulder bag. The other one is chubby, and he is wearing a sleeveless cream T-shirt, carrying a maong jacket and wearing maong pants.

Q:

If you will be able to see these persons again, can you recall them?

A:

Yes, ma'am.

Q:

Kindly look around the Court room and point them out.

A:

(Witness pointing to Emelo as the one carrying a shoulder bag and the other one who is chubby identified himself as John Jenn Porras.)

Q:

You said these two persons came to you asking for Roldan Emelo, what did you do?

A:

I pointed to the traffic division.

Q:

And that is where Roldan Emelo was?

A:

Yes, ma'am.

Q:

When the two men got your answer, what did they do?

A:

They proceeded to the Traffic Division and a few moments later, they went out.'" [6](Italics supplied)

Next, appellants impugn the credibility of the prosecution witnesses by citing the seeming inconsistency between the testimonies of Maribel - German, who apparently saw one assailant, and Jose Malumay, who, on the other hand, claimed to have seen two assailants. The following are excerpts of the questioned testimonies:

JOSE MALUMAY:

"xxx xxx xxx

Q:

What was this incident, kindly relate to the Honorable Court?

A:

On that night, from Sangley going to Rafael Palma St. and M. Gregorio St., I passed by a tricycle upon reaching the corner of Calpo, I heard a shot which I presumed it (sic) was a tire which exploded so, I stopped my bicycle because I thought they would need help. When I stopped and look towards the tricycle, I saw the man riding at the back seat of the driver alighted (sic), mam.

xxx xxx xxx

Q:

What happened to the man who used to sit at the back of the driver?

A:

When the man went to the side of the sidecar, another man alighted from the sidecar, mam.

Q:

And then, what happened when that man alighted from the sidecar?

A:

When the man went to the side of the sidecar, another man alighted and (sic) jerked by the man coming from inside the sidecar?

xxx xxx xxx

FISCAL DIESMOS:

Let us just say the man who alighted from the driver (sic) seat, let us call him the second man and the man who alighted inside (sic) the tricycle as the first man.

COURT:

What did you see?

A:

When the first man jerked himself, (sic) the second man went to the front of the tricycle, sir.

FISCAL DIESMOS:

Q:

In what direction was the second man headed when he ran?

A:

He crossed the street going to Capt. Jose St., mam.

Q:

What else happened when the second man ran towards Capt. Jose St.?

A:

I hear (sic) another shot, then that second man fell on the ground, mam.

Q:

And then, what else happened when that second man fell on the ground?

A:

The third man alighted from the sidecar. When he alighted from the sidecar, he is going (sic) towards the back going to the fallen man, (referring to the second man). The third man went to the body of the fallen man which I thought he would help him but as I was about to go away, I heard another shot, then I saw a fire from the hands of that third man.

Q:

When you saw that fire coming from the hands of the third man, at this point in time, where was the third man?

A:

Beside the fallen man, mam.

Q:

And his hands was (sic), how would you describe, how was the position as the fire was coming from his hand?

A:

His hand was positioned as if, he was going to help the fallen man.

xxx xxx xxx

Q:

But, Mr. Witness since you saw the incident would you be able to tell the Honorable Court the attire of the third man who shot the second man?

A:

As far as I can remember, the man who shot the second man was wearing a dark attire, mam.

Q:

What about the first man, the man who alighted from the back of the driver of the tricycle, did you see how he was attired?

A:

It seems, he was wearing a white shirt because the upper portion of his attire was light, mam."[7]

MARIBEL GERMAN:

"Q:

While you were at work at Cathy's Refreshment, do you recall of (sic) any unusual incident that happened?

A:

Yes, Ma'am, there was.

Q:

What was this, will you please tell the Honorable Court?

A:

I heard two gunshots.

Q:

When you heard two gunshots, what did you do?

A:

I looked where the gunshots came from.

Q:

And you saw what? Did you see anything?

A:

There was.

Q:

What did you see, Madam Witness?

A:

A fallen man crawling on the ground.

Q:

What else did you see, if you saw anything else?

A:

And a man standing about to enter an alley.

Q:

Was that man able to enter the alley?

A:

Yes, Ma'am.

Q:

And what happened next after he enter (sic) the alley?

A:

And who again emerged therefrom.

Q:

After emerging from the alley, what did he do, if he did anything?

A:

Again he shot the crawling man two times.

Q:

After shooting the man twice, what did that man do next?

A:

He poked (sic) his gun in our direction, so we went inside the Cathy's Refreshment.

xxx xxx xxx

Q:

You said you went inside the restaurant when that man poked a gun at you, is that right?

A:

Yes, Ma'am.

Q:

Inside the restaurant, what did you do?

A:

I peeped.

Q:

Where did you peep, through the window?

A:

I peeped at the door.

Q:

What did you see?

A:

I saw the man boarded (sic) a tricycle.

xxx xxx xxx

Q:

But were you able to notice how he was dressed, his attire?

A:

He was wearing a T-shirt and maong pants and rubber shoes.[8]

We find that the purported inconsistency is more fancied than real. A closer scrutiny of Maribel German's testimony reveals that she merely saw an assailant shot the victim (Mortel) while sprawled on the ground, but nowhere in her testimony did she state that there is only one assailant. In fact, Maribel German never testified witnessing the crime from its inception which Jose Malumay witnessed to have been authored by two assailants. This explains the apparent inconsistency between the witnesses' testimonies.

At any rate, the alleged inconsistency just discussed, which was shown to be otherwise, is neither substantial nor of such nature to cast a serious doubt on the credibility of the prosecution witnesses. The established rule of

evidence is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony.[9] Inconsistencies in the testimonies of witnesses, if only in minor details, reinforce rather than weaken their credibility, for it is usual that witnesses to a stirring event should see differently some details of a startling occurrence.[10] Discrepancies on minor details, which do not destroy the substance of the witness' testimony show that the witness was not rehearsed.[11]

Appellants' defense of alibi must likewise fail. Against their positive identification, alibi cannot prevail.[12] Prosecution witness, Marcos Luciano positively identified appellant John Jenn Porras as one of the persons who were on board the tricycle which was used as get away vehicle by Mortel's assailants just before midnight on June 19, 1990;[13] SPO3 Rolando Villegas identified Sergio Emelo and John Jenn Porras as the persons who arrived at the PNP station looking for Pfc. Roldan Emelo at around 9:00 o'clock on that evening of June 19, 1990;[14] Maribel German described one of the assailants as wearing a T-shirt, maong pants and rubber shoes, and was riding in a tricycle;[15] and Sgt. Catalino Bermas confirmed the person described by Maribel German to be Sergio Emelo,[16] the same person he identified as his assailant on that same night.[17]

Furthermore, proof that they were somewhere else when the crime was committed is not enough. Appellants must likewise demonstrate that they could not have been physically present at the place of the crime, or in its vicinity, at the time of its commission.[18] In this connection, we quote with approval, the trial court's observation:

"The alibi set up by the two accused that they were in their barracks sleeping, all the time up to early morning, is of no moment, as alibi is the weakest of all defenses, specially (sic) so when the place where they alleged to have been at the time of the commission of the offense and the situs where the incident happened is (sic) not so far (sic) distant from each other and maybe (sic) reached within a reasonable time which, in the instant cases are no more than 100 or 200 meters apart." [19]

Appellants also contend that the non-presentation of Cpl. Crisanto de la Cruz, one of the police officers who first investigated the crime, and Pfc. Roldan Emelo, the police officer who gave appellant Sergio Emelo the black ammo pouch bag and .38 caliber bullets, is fatal to the prosecution's case. We find this contention devoid of merit. The matter of deciding whom to present as witness for the prosecution is not for the accused or, for the trial court to decide, as it is the prerogative of the prosecutor.[20] Moreover, if the appellants believed that the testimony of the said police officers would bolster their theory, then they could have availed of the compulsory process to have the latter produced as their witnesses,[21] which they failed to do so.

Appellants likewise characterize as hearsay the testimony of Sgt. Amorico Alvarez on Pfc. Roldan Emelo's statements to the police investigator implicating them to the crime. This contention is bereft of legal basis for it is a settled rule that when a testimony is presented to establish not the truth but the tenor of a statement or the fact that such statement was made, as in this case, the same is not hearsay.[22] Furthermore, appellants' conviction did not hinge solely on the assailed testimony as there were other evidence extant in the records establishing their guilt beyond reasonable doubt.

Finally, appellants argue that they were not positively identified in open court by the two prosecution's witnesses (German and Malumay) to be the culprits, hence they may not be convicted of the crime charged. The argument is specious and erroneously assumes that there was no identification made. While witnesses German and Malumay did not point out the appellants in open court they, nonetheless, described the perpetrators' attire at the time of the commission of the crime, with one assailant wearing a T-shirt, maong pants and rubber shoes, and the other assailant wearing a dark attire. These descriptions conform with the other witnesses' testimony identifying the appellants to be wearing the same attire during the commission of the crimes. In any event, it is a settled rule that there can be a conviction based on circumstantial evidence when the circumstances proved form an unbroken

chain which leads to a fair and reasonable conclusion pinpointing the accused, to the exclusion of all others, as the perpetrator of the crime,[23] as in this case. In order that circumstantial evidence may be sufficient to convict, the same must comply with these essential requisites, viz: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[24] The record reveals that there were at least eleven circumstances correctly considered by the trial court in arriving at its judgment of conviction, viz: (1) moments before the incident of June 20, 1990, appellants were seen inside the Cavite City PNP Station looking for Pfc. Roldan Emelo;[25] (2) appellant Sergio Emelo was then wearing a white T-shirt, maong pants and rubber shoes while appellant John Jenn Porras was wearing a sleeveless cream T-shirt, maong pants and was carrying a maong jacket;[26] (3) on the same evening just before the incident, appellant John Jenn Porras, then wearing a maong jacket, was seen on board the tricycle of Marcelo Real, together with a man wearing a white T-shirt;[27] (4) the two assailants were described by Jose Malumay as respectively wearing a dark attire and white T-shirt;[28] (5) one of the persons who shot Rosendo Mortel was described by Maribel German as wearing a T-shirt, maong pants and rubber shoes;[29] (6) the assailants of Rosendo Mortel boarded a tricycle to flee from the scene of the crime;[30] (7) Sergio Emelo was identified by Sgt. Catalino Bermas as the person on board the tricycle that fled from the scene of the crime;[31] (8) Sergio Emelo was identified by Sgt. Catalino Bermas as the person who shot him during the chase;[32] (9) a magazine pouch, camouflaged holster with the name Emelo, .38 caliber empty shells and live bullets were found immediately after the shooting on the floor of the tricycle used by the appellants;[33] (10) Rosendo Mortel and Sgt. Catalino Bermas both sustained gunshot wounds from a .38 caliber handgun;[34] and (11) the plight of the appellants which was not sufficiently explained. There is no reason for us to disagree with the trial court on these matters. These findings are fully supported by the evidence on record and constitute an unbroken chain of events which by their concordant combination and cumulative effect, more than satisfy the requirements for the conviction of the appellants.[35]

The trial court, however, erred in appreciating the qualifying circumstance of treachery in Criminal Case No. 245-91. Treachery must be proved by clear and convincing evidence, or as conclusively as the killing itself.[36] And to appreciate it, two conditions must concur, viz: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) that said means of execution be deliberately and consciously adopted.[37] In this regard, the prosecution failed to definitively establish the manner in which the initial assault against the deceased victim was committed to justify the appreciation of treachery. This hiatus in the prosecution's evidence cannot be substituted by mere suppositions as what the trial court apparently did. It is a well settled rule that in order to appreciate treachery as a modifying circumstance in a continuous aggression, as in this case, the same must be shown present at the inception of the attack.[38] Absent any showing therefor, treachery as a qualifying circumstance may not be considered.

With respect to Criminal Case No. 246-91, we find that the trial court properly discarded the qualifying circumstance of treachery and correctly ruled that the crime committed is Frustrated Homicide and not Frustrated Murder as alleged in the information. The shooting of Sgt. Catalino Bermas who was fully aware of the risks in pursuing appellants was, at best, done in a spur of the moment, an act which can hardly be characterized as treacherous for it was nowhere proved that the same was deliberately adopted to deny Sgt. Bermas the opportunity to defend himself.

The actual participation of the appellants in the killing of Rosendo Mortel having been established by the prosecution, they are therefore equally liable pursuant to the rule on conspiracy that the act of one is the act of all.[39] Conspiracy was duly proven by the positive testimonies of the prosecution witnesses pointing to acts done in concert by the appellants to carry out their unlawful design, but only with respect to the killing of Rosendo Mortel. When an act done is beyond the contemplation of the co-conspirators and is not a necessary or logical

consequence of the intended crime then only the actual perpetrators are to be held liable.[40] And in this case, the conspiracy proved concerns solely the killing of Mortel and not the shooting of Sgt. Catalino Bermas. Thus, appellant Sergio Emelo alone should be held liable for the crime of Frustrated Homicide in Criminal Case No. 246-91.

WHEREFORE, in view of the foregoing, judgment is hereby rendered in Criminal Case No. 245-91, finding the appellants .JOHN JENN PORRAS and SERGIO EMELO guilty beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code. Considering the absence of any mitigating or aggravating circumstance and applying the Indeterminate Sentence Law, appellants are hereby sentenced to suffer an indeterminate penalty ranging from Eight (8) years and One (1) day of Prison Mayor, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day of Reclusion Temporal, as maximum, respectively, and to indemnify, jointly and severally, the heirs of the deceased Rosendo Mortel the amount of P50,000.00, plus actual damages and funeral expenses in the amount of P67,000.00. The award for moral damages in the amount of P100,000.00 which we find to be excessive is hereby reduced to P50,000.00. However, in Criminal Case No. 246-91, the judgment appealed from is hereby affirmed in toto.

SO ORDERED.

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

[1] RTC Decision dated November 16, 1993, p. 17; Rollo, p. 50.

[2] Id.

[3] Brief for the Appellants, pp. 1-5; Rollo, pp. 71-75.

[4] Supra pp. 12-14; Rollo, pp. 45-47.

[5] In their brief, appellants enumerated the following factual findings the trial court.

"xxx xxx xxx

"a. 'that on the night of June 20 1990, accused John Jenn Porras and Sergio Emelo went to the police station looking for Pfc. Roldan Emelo of the Cavite City PNP, a cousin of the latter and was directed by Sgt. Pilapil to where he was;' (DECISION, p. 12; italics ours.)

"b. 'that they had some food and drinks at the Banaue Restaurant and Emelo asked for his black ammo pouch and some .38 caliber ammunition;' (DECISION, p. 12);

"c. 'that thereafter, perhaps in connivance with Marcelo Real of the Philippine Coast Guard who was then moonlighting in his tricycle, flagged him down along M. Gregorio St. and in which Marcos Luciano was a passenger at the time and was told to alight as they were already overloaded x x x.' (DECISION, p. 12: italics ours.)

"d. 'that they proceeded to the Aroma Beer House where the victim Rosendo Mortel was tabled and wherein some misunderstanding happened and Ronnie Mortel went out and was shot at close range by either Porras or Emelo as seen by a waitress, Maribel Herman who pointed to Porras as the assailant x x x,' (DECISION, p. 13, italics ours.)

"e. 'that during the shooting Jose Malumay x x x also heard a gunshot x x x and when he offered too (sic) assist, he saw two men, one in dark attire and the other in white T-shirt who from the information of the witnesses fixed their identities as the two accused John Jenn Porras and Sergio Emelo who fired the initial shot and ran away and

later on returned to finish the job with Porras allegedly having fired the last two shots killing the victim instantaneously x x x.' (DECISION, p. 13; italics ours.)

"f. 'that 'During the chase given by Catalino Bermas x x x they rode in tandem and pursued the tricycle at the Saulog terminal compound where only the tricycle was left together with the driver Marcelo Real who pointed to the two accused as the assailants.' (DECISION, p. 13; italics ours)."

[6] TSN, SPO3 Rolando Villegas, May 25, 1993, pp. 12-15.

[7] TSN, Jose Malumay, April 13, 1992, pp. 6, 8-13.

[8] TSN, Maribel German, February 3, 1992, pp. 4-6, 10.

[9] People v. Irene, G.R. Nos. L-44410-11, August 5, 1988, 164 SCRA 121; People v. Cariño, G.R. No. L-73876, September 26, 1988, 165 SCRA 664.

[10] People v. De Gracia, G.R. No. L-21419, September 29, 1966, 18 SCRA 197.

[11] People v. Muñoz, G.R. No. L-61 152, July 29, 1988, 163 SCRA 730; Cordial v. People, G.R. No. L-75880, September 27, 1988, 166 SCRA 17; People v. Payumo, 187 SCRA 64.

[12] People v. Miranday, 242 SCRA 620 (1995), citing People v. Claudio, 216 SCRA 647 (1992); People v. Yadao, 216 SCRA 1(1992); People v. Cabuang, 217 SCRA 675(1993).

[13] TSN, Marcos Luciano, January 13, 1992, p. 14.

[14] TSN, SPO3 Rolando Villegas, May 25, 1993, pp. 11, 14-15.

[15] TSN, Maribel German, February 3, 1992, p. 10.

[16] TSN, Sgt. Catalino Bermas, January 13, 1992, p. 34-35.

[17] Id., p. 40-41.

[18] People v. Manero, Jr., 218 SCRA 85 (1993), citing People v. Pugal, 215 SCRA 247(1992).

[19] Supra, November 16, 1993, p. 14; Rollo, p. 47.

[20] See People v. Eligino, 216 SCRA 321(1992), and People vs. Alerta. Jr., 198 SCRA 656 (1991).

[21] See People v. Samillano, 207 SCRA 50 (1992).

[22] People v. Fule, 206 SCRA 652(1992); People v. Cusi, 14 SCRA 944 (1965).

[23] People v. Adriano, 226 SCRA 131, 135 (1993), citing People v. Galendez, 210 SCRA 360(1992); See also People v. Alvero, Jr., 224 SCRA 16(1993); People v. Briones, 219 SCRA 134(1993); People v. Ocampo, 218 SCRA 609 (1993); People v. Tiozon, 198 SCRA 368(1991); People v. Ganohon, 196 SCRA 431(1991); People v. Subano, 73 Phil. 692(1942).

[24] Section 4, Rule 133, Revised Rules of Court.

[25] TSN, SPO3 Rolando Villegas, May 25, 1993, pp. 11, 13,15.

[26] Id., p. 14.

[27] TSN, Marcos Luciano, January 13, 1992, pp. 14-15.

[28] TSN, Jose Malumay, April 13, 1992, pp. 12-13.

[29] TSN, Maribel German, February 3, 1992, p. 10.

[30] Id., p.8.

[31] TSN, Sgt. Catalino Bermas, January 13, 1992, p. 35.

[32] Id., p. 41.

[33] TSN, SPO3 Rolando Villegas, May 25, 1993, p. 18; Exhibits I, J, K, L,; Records pp. 199-200.

[34] Records, pp. 209, 212.

[35] People v. Alvero, Jr., 224 SCRA 16,28 (1993).

[36] People v. Tiozon, 198 SCRA 368,388(1991); People v. Agcaoili, 206 SCRA 606(1992).

[37] People v. Crisostomo, 222 SCRA 93, 100(1993); People v. Suitos, 220 SCRA 419, 430(1993).

[38] See People v. Canete, 44 Phil. 478 (1923); U.S. v. Balagtas, 19 Phil. 164 (1911).

[39] People v. Buligon, 205 SCRA 766, 771 (1992).

[40] People v. De la Cerna, 128 Phil. 605 (1967), citing People v. Hamiana, 89 Phil. 225 (1951); People v. Daligdig, 89 Phil. 598(1951); People v. Umali, 96 Phil. 185(1954).

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