

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3 RENATO F. VILLAMOR AND JESSIE “JOY” MAGHILOM (AT LARGE), ACCUSED.

G.R. Nos. 140407-08. January 15, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

At around dusk of November 24, 1995, brothers Jerry Velez and Jelord Velez were on their way home to Barangay Mitakas, Baliangao, Misamis Occidental, on board a motorcycle after having dinner at a friend’s house at Barangay Landing, Baliangao, Misamis Occidental. Jerry was driving. As they neared the junction of Barangays Lusot and Mitakas, they heard a speeding motorcycle fast approaching from behind. The brothers ignored the other motorcycle, which caught up with them. As they were about to cross the bridge leading to their home, gunshots rang out from behind them. They abruptly turned the motorcycle around towards the direction of the gunfire. The light of their motorcycle’s headlamp fell on their attackers aboard the second motorcycle. The assailants fired at them a second time and fled towards the direction of Calamba, Misamis Occidental. Jerry sustained gunshot wounds on the abdomen and left elbow, but survived. He got a good look at their assailants. Jelord, however, was not as fortunate, as he died on the spot during the first gunburst.

For the deadly assault on the Velez brothers, PO3 Renato F. Villamor and Jessie “Joy” Maghilom were indicted for Murder in Criminal Case No. 1312-36-14 in an Information which reads:

That on or about November 24, 1995, in Baliangao, Misamis Occidental, and within the jurisdiction of this Honorable Court, accused PO3 Renato F. Villamor, public officer, being a member of the Philippine National Police, conspiring and confederating with accused Jessie “Joy” Maghilom, likewise a public officer, being a Barangay Councilman, with treachery and intent to kill, did then and there, wilfully, unlawfully and feloniously shoot Jelord Velez, inflicting upon him mortal wounds that caused his death.

CONTRARY TO LAW.[1]

A charge of Frustrated Murder was likewise filed, docketed as Criminal Case No. 631-14-68-36-27, under an Information which reads:

That on or about November 24, 1995, at about 6:30 in the evening in Baliangao, Misamis Occidental, and within the jurisdiction of this Honorable Court, accused P03 Renato F. Villamor, public officer, being a member of the Philippine National Police, conspiring and confederating with Jessie “Joy” Maghilom, likewise a public officer, being a Barangay councilman, with treachery and intent to kill, did then and there, wilfully, unlawfully, and feloniously shoot Jerry Velez who as a result thereof, suffered gunshot wounds on the left upper quadrant abdomen and stomach which ordinarily would cause the death of said Jerry Velez, thus performing all the acts of execution which should have produced the crime of murder as a consequence but which, nevertheless, did not produce it by reason of causes independent of their (accused) will, that is, by the timely and able medical attendance rendered to said Jerry Velez which prevented his death.

CONTRARY TO LAW.[2]

By agreement of the parties, the two cases were tried jointly.[3] At the pre-trial conference, the following facts were stipulated:

- The identity of accused PO3 Renato F. Villamor to be the very same person who is one of the accused in the two above-entitled criminal cases;
- The defense admitted that in Criminal Case No. 1312-36-14, the victim is Jelord Bongcaron Velez who was killed in the evening of November 24, 1995 in Baliangao, Misamis Occidental;
- The defense admitted in Criminal Case No. 631-14-68-36-27 that Jerry Velez was shot and wounded in the evening of November 24, 1995 at Baliangao, Misamis Occidental;
- In Criminal Case No. 1312-36-14, the defense admitted the authenticity and genuineness of the Certificate of Death of Jelord Bongcaron Velez, issued by Public Health Officer Nelson R. Abrinez;
- In Criminal Case No. 631-14-68-36-27, the defense admitted the authenticity and genuineness of the Medico Legal Certificate dated March 22, 1996, issued in favor of Jerry Velez by Medical Officer III Olyzar H. Recamadas, as attested to by Chief of Clinics designate Livera A. Amil, M.D.[4]

Upon arraignment, only accused PO3 Renato F. Villamor pleaded “not guilty” to the crimes charged.[5] His co-accused, Jessie “Joy” Maghilom, remained at large, hence, trial proceeded only with respect to accused Villamor.

After trial, the Regional Trial Court of Calamba, Misamis Occidental, Branch 36, rendered judgment as follows:

WHEREFORE, premises considered, finding accused PO3 Renato F. Villamor guilty beyond reasonable doubt of having committed the crime of MURDER in Criminal Case No. 1312-36-14 as defined and penalized in Art. 248 of the Revised Penal Code with the presence of one aggravating circumstance of taking advantage of his public position as a policeman, accused PO3 Renato F. Villamor is hereby sentenced to the penalty of DEATH. PO3 Renato F. Villamor is hereby further ordered to pay the legal heirs of the late Jelord Velez the amount of FIFTY THOUSAND PESOS (P50,000.00) and another amount of THIRTY-NINE THOUSAND SIX HUNDRED FIFTY-TWO AND FIFTY-TWO CENTAVOS (P39,652.52) representing the expenses for the construction of the tomb, coffin and the expenses for the vigil and prayers of the late Jelord Velez.

In the FRUSTRATED MURDER docketed as Criminal Case No. 631-14-68-36-27, accused PO3 Renato F. Villamor is likewise found guilty beyond reasonable doubt of having committed the crime of FRUSTRATED MURDER as defined in Art. 248 of the Revised Penal Code in relation to Art. 6 and Art. 50 of the same Revised Penal Code and there being an aggravating circumstance of taking advantage of his public position as a policeman and applying the Indeterminate Sentence Law, accused PO3 Renato F. Villamor is hereby sentenced to a penalty of imprisonment of NINE (9) years of prision mayor as the minimum to EIGHTEEN (18) YEARS of reclusion temporal as the maximum. PO3 Renato F. Villamor is further ordered to pay to Jerry Velez and his family the amount of FORTY-SEVEN THOUSAND, NINE HUNDRED FIFTY-FIVE PESOS (P47,955.00) representing the medical expenses to include already the medical operation and hospitalization incurred by Jerry Velez and his family.

SO ORDERED.[6]

On automatic review before this Court, accused-appellant alleges –

- THAT THE HONORABLE LOWER COURT, THE HONORABLE REGIONAL TRIAL COURT, BRANCH 36, CALAMBA, MISAMIS OCCIDENTAL, GRAVELY ERRED IN ASSAILING THE DEFENSE OF ALIBI SIMPLY BECAUSE THE DISTANCE OF THE CRIME SCENE TO THE PLACE WHERE ACCUSED PO3 RENATO F. VILLAMOR WAS, AT THE TIME OF THE INCIDENT WAS (sic)

VERY NEAR AND IT WOULD BE POSSIBLE FOR HIM TO BE AT THE CRIME SCENE.

- THAT THE HONORABLE LOWER COURT, THE HONORABLE REGIONAL TRIAL COURT, BRANCH 36, CALAMBA, MISAMIS OCCIDENTAL, GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF JERRY VELEZ WHEN AS AN OFFENDED PARTY AND VICTIM NATURALLY WOULD PROTECT HIS INTEREST WHEN IN TRUTH AND IN FACT HIS TESTIMONY WAS NEVER CORROBORATED BY OTHER WITNESSES OF THE PROSECUTION.

- THAT THE HONORABLE LOWER COURT, THE HONORABLE REGIONAL TRIAL COURT, BRANCH 36, MISAMIS OCCIDENTAL, GRAVELY ERRED IN NOT HOLDING THAT THERE WAS NO REASON OR MOTIVE WHATSOEVER WHY SHOULD ACCUSED PO3 RENATO F. VILLAMOR SHOULD (sic) WISH THE DEATH OF JELORD VELEZ AND JERRY VELEZ.[7]

The prosecution established that when the brothers turned around to face their assailants, Jerry saw Villamor and Maghilom on board the motorcycle behind them. Maghilom was driving the motorcycle while Villamor was holding a short gun pointed at them.

Jerry sensed that Jelord's grip on his back slackened. Jelord fell off the motorcycle and died on the spot. As Jerry neared the bridge, Villamor again fired at Jerry, hitting him on the abdomen. The two assailants drove away. When Jerry arrived at their house, he told his other brother, Jelvis, about the incident. They rushed Jelord to the Calamba District Hospital, but he was transferred to the Misamis Occidental Provincial Hospital, Oroquieta City. Meanwhile, Jerry was treated at the Provincial Hospital and, later, at the Metro Cebu Hospital.

The autopsy conducted by Dr. Nelson Gabrinez, Public Health Officer of Baliangao, on the cadaver of Jelord Velez showed several wounds on the chest, mid-clavicular area, abdomen and right diaphragm. The cause of death was indicated as multiple gunshot wounds.

On the other hand, Dr. Olayzar Recamadas of the Provincial Hospital examined Jerry Velez and found that he sustained "a gunshot wound [on the] left quadrant abdomen penetrating abdominal cavity with injury to stomach, mesentery transverse colon, hemoperitoneum." [8] Dr. Recamadas testified that without prompt medical attendance, Jerry could have died of "zero-zero (0-0) blood pressure." [9]

For his defense, accused-appellant Villamor claimed that he was not at the scene of the crime at the time of its occurrence. He testified that on November 24, 1995, at around 5:00 p.m., he was in Barangay Landing as security escort of Mayor Agapito Yap III, which was among his duties as a member of the Philippine National Police assigned to the Office of the Mayor of Baliangao. [10] The Mayor and his entourage, which included accused-appellant, left Baliangao for Barangay Landing at about 9:00 a.m. [11] They arrived there at 10:00 a.m. [12] In Barangay Landing, Mayor Yap visited the Barangay Captain and had lunch. [13] From there, the Mayor and his entourage proceeded to the cockpit to attend a derby. [14] At around 5:00 p.m., accused-appellant went home to take his child, who was suffering from diarrhea, to the clinic for treatment. [15] He arrived at the Yap Clinic but was advised to go to the Calamba District Hospital. [16]

Accused-appellant then radioed for an ambulance to bring his ailing child to the hospital. Since there was no ambulance available, he borrowed a vehicle from Mayor Yap. On board a jeep driven by Alvin Itum, accused-appellant left Baliangao at 5:30 p.m. When they passed the bridge at the junction of Barangays Lusot and Mitakas, they noticed no untoward incident. They arrived at the Calamba District Hospital at 7:00 p.m. [17]

Accused-appellant's child was confined at the said hospital for three days. [18] From the time he brought his child for confinement on the date of the incident, accused-appellant never went back to Baliangao. The only occasion he left the hospital premises on November 24, 1995 was when stepped out to buy biscuits and orange drink at the store 80 to 100 meters away. [19]

Accused-appellant testified that he only came to know of the incident when he was informed of it by Isyong Lomoljo.[20] He claimed having talked with Jerry Velez for several minutes at the hospital at around 7:30 to 8:00 p.m.[21] Jerry told him he could not identify the assailants because it was dark.[22] Accused-appellant averred that he was implicated in the incident because of “political reasons.” The Velezes and the Yaps were political rivals.[23]

Accused-appellant argues that even granting that the place where the crime was committed was near, it would still be impossible for him to go there and commit the crime because he was attending to his sick son.

We disagree.

Accused-appellant’s profession of innocence cannot prevail vis-à-vis his positive identification as the gunman by eyewitness-victim Jerry Velez, who testified thus:

Q

You said you were shot. In fact, Jelord Velez was hit what did you do when you noticed your brother was hit?

A

I noticed that his grip on my shoulder was loosen[ed].

Q

If you have noticed that his grip was loosen[ed], what did you do then?

A

I let the motorcycle turn around.

Q

What did you see when the motorcycle turned] around?

A

I saw Joy Maghilom and P03 Renato Villamor.

Q

What did you do when you see (sic) them?

A

I was frightened. I was afraid.

Q

Do you know who shot your brother when you said you were fired [upon]?

A

Yes, I know him.

Q

Whose (sic) that person?

A

P03 Renato Villamor.

Q

Is he in court this morning?

A

Yes.

Q

Please point again.

INTERPRETER:

Witness pointed to the person and when I asked him, he answered PO3 Renato Villamor.

Q

You said that when you noticed that your brother's grip was loosen[ed] you turned around the motorcycle and you saw Renato Villamor and Joy Maghilom, were they riding also a motorcycle?

A

Yes.

Q

Why were you able to recognize them?

A

Because they were lighted by the light of the motor.

Q

Very clear?

A

Yes, very clear.

Q

How far where you able to turned (sic) around the motor and when you said they were lighted by the motor?

A

Two (2) meters.[24]

Despite repeated attempts by the defense counsel to throw him off track during cross-examination, Jerry remained resolute and unflinching in his account that he and his brother were fired upon by accused.[25]

In stark contrast to the clear and categorical declarations of the victim, accused-appellant merely raised alibi as his defense. However, such a defense is unavailing given the facts prevailing herein. The Court has consistently looked upon the defense of alibi with suspicion and received it with caution not only because it is inherently weak and unreliable but also because it can be easily fabricated.[26] Unless supported by clear and convincing evidence, the same cannot overcome the positive declarations of the victim who, in a simple and straightforward manner, convincingly identified the accused-appellant as one of the perpetrators of the crime.

Contrary to accused-appellant's contention, he failed to establish that it was physically impossible for him to be at the scene of the crime at the time it was committed. Since the distance between his alleged whereabouts and the place of the incident was, by his own admission "very near,"[27] it was not impossible for accused-appellant to be at the scene of the crime at the time of its commission.[28] His argument that he was attending to his son who was in the hospital is simply unavailing.

In the second assigned error, accused-appellant assails the trial court's reliance on the lone and uncorroborated testimony of eyewitness-victim Jerry Velez.

We remain unconvinced.

It must be stressed in this regard that the testimony of a single witness is sufficient to establish the guilt of the accused for evidence is weighed not counted.[29] Indeed, the testimony of a single witness, if positive and credible, is sufficient to convict the appellant even in a murder charge.[30]

In view of the foregoing considerations, accused-appellant's argument that he has no motive for committing the crime must likewise fail. Suffice it to state that ill motive is never an essential element of a crime. It becomes inconsequential where there are affirmative, nay, categorical declarations towards the accused-appellant's accountability for the felony.[31] Such is the case here.

All told, an overall scrutiny of the records of this case leads us to no other conclusion but that the trial court did not err in finding accused-appellant and his co-accused guilty of murder. The core issue raised by accused-appellant centers on the credibility of the witnesses. The doctrinal rule is that findings of fact made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the other testimonies are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to an appellate court.[32]

Truth does not always stalk boldly forth naked, but modest withal, in a printed abstract in a court of last resort. She oft hides in nooks and crannies visible only to the mind's eye of the judge who tries the case x x x x. The

brazen face of the liar, the glibness of the schooled witness in reciting a lesson, or the overeagerness of the swift witness, as well as honest face of the truthful one, are alone seen by him.[33]

The Information indicting accused-appellant for Murder alleged that treachery aggravated by abuse of public authority attended the killing of the victim.

We agree with the trial court that the killing of Jelord Velez was attended by treachery or alevosia. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[34] The qualifying circumstance of treachery attended the killing inasmuch as the two conditions for the same are present, i.e., (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[35] The essence of treachery is the swift, sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[36]

The treacherous manner in which accused-appellant and Jessie “Joy” Maghilom perpetrated the crime is shown not only by the sudden and unexpected attack upon the unsuspecting and apparently unarmed victims but also by the deliberate manner in which the assault was perpetrated. In this case, a totally unsuspecting Jelord Velez held onto his brother Jerry on board their motorcycle on their way home blissfully unaware of the onrushing peril behind them. As in the recent case of *People v. Padilla*,[37] treachery is evident when the accused-appellant suddenly positioned himself at the back of the unsuspecting victim, pointed his gun at him and, without any warning, promptly delivered the fatal shots. In short, the victim was unaware of the attempt on his life and the danger that lurked behind him. There was no way the victim could have defended himself, taken flight or avoided the assault. The attendance of treachery qualifies the killing to Murder.

The Court, however, agrees with the Solicitor General that the trial court improperly applied the aggravating circumstance of taking advantage of public position as provided for in Article 14, paragraph 1 of the Revised Penal Code. To appreciate this aggravating circumstance, the public officer must use the influence, prestige or ascendancy which his office gives him as a means by which he realizes his purpose. The essence of the matter is presented in the inquiry “Did the accused abuse his office to commit the crime?”[38]

In this case, there was no showing that accused-appellant took advantage of his being a policeman to shoot Jelord Velez or that he used his “influence, prestige or ascendancy” in killing the victim. Accused-appellant could have shot Velez even without being a policeman. In other words, if the accused could have perpetrated the crime even without occupying his position, there is no abuse of public position.[39] Only recently, in *People v. Herrera*,[40] the Court emphatically said that the mere fact that accused-appellant is a policeman and used his government issued .38 caliber revolver to kill is not sufficient to establish that he misused his public position in the commission of the crime.[41]

There being no modifying circumstances to be appreciated, the proper imposable penalty for the killing of Jelord Velez is reclusion perpetua, pursuant to Article 63, paragraph 2 in relation to Article 248 of the Revised Penal Code, as amended by R.A. No. 7659.[42]

So, too, must the penalty imposed by the trial court for Frustrated Murder be modified considering that it necessarily arose from the same incident which caused the death of one of the victims. While we agree with the lower court that the penalty for a frustrated felony is one degree lower than that of a consummated crime, pursuant to Article 50 in relation to Article 6 of the Revised Penal Code, the proper penalty in the absence of any

modifying circumstances is likewise to be imposed in its medium period in accordance with Article 64, paragraph 1 of the Code.

In this case, the proper imposable penalty for Frustrated Murder is Reclusion Temporal in its medium period, which has a range of Fourteen (14) Years, Eight (8) Months and One (1) Day to Seventeen Years and Four (4) Months. The penalty one degree lower than Reclusion Temporal is Prision Mayor, from which the minimum term of the indeterminate penalty imposable on accused-appellant shall be taken.

In line with prevailing jurisprudence,[43] the Court affirms the award of P50,000.00 as civil indemnity for the death of the victim, even in the absence of proof other than the death of the victim.[44] Moral damages should likewise be awarded by the trial court to the victims' heirs in the case for Murder, pursuant to controlling jurisprudence on the matter.[45] Moral damages are pegged at P50,000.00,[46] taking into consideration the pain and anguish of the victim's family brought about by his death.[47] The award for the funeral and burial expenses incurred by heirs of Jelord Velez as well as the medical expenses for the treatment of Jerry Velez, being amply supported by documentary evidence are likewise sustained.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Calamba, Misamis Occidental in Criminal Cases Nos. 1312-36-14 and 631-14-68-36-37, finding accused-appellant guilty beyond reasonable doubt of Murder and Frustrated Murder, respectively, is **AFFIRMED** with **MODIFICATION**. As modified, accused-appellant PO3 Renato F. Villamor is sentenced to suffer the penalty of Reclusion Perpetua for Murder in Criminal Case No. 1312-36-14; and to suffer an indeterminate penalty of Eight (8) Years and One (1) Day of Prision Mayor, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal, as maximum, for Frustrated Murder in Criminal Case No. 631-14-68-36.

Accused-appellant is **ORDERED** to pay the heirs of the victim Jelord Velez the sum of P50,000.00 by way of moral damages, in addition to the civil indemnity of P50,000.00 and funeral expenses of P39,652.52 awarded by the trial court. The award of medical expenses to Jerry Velez in the amount of P47,955.00 is **AFFIRMED**.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Record, Vol. 1 (G.R. Nos. 140407-08), p. 1.

[2] Record, Vol. 2 (G.R. Nos. 141908-09), p. 1.

[3] Record, Vol. 1, p. 85; Vol. 2, p. 106.

[4] Ibid., pp. 106-107.

[5] Id., p. 87.

[6] Rollo, G.R. Nos. 140407-08, pp. 51-52; penned by Judge Paulino L. Conol, Jr.

[7] Rollo, G.R. Nos. 141908-09, p. 59.

[8] Exhibit A, Criminal Case No. 631-14-68-36-27.

[9] TSN, 19 January 1999, p. 7.

[10] TSN, 8 March 1999, pp. 3-4.

- [11] Ibid., p. 17.
- [12] Id., p. 18.
- [13] Id., pp. 4, 17.
- [14] Id., pp. 18, 22.
- [15] Id., pp. 4-5, 18.
- [16] Id., pp. 4-5.
- [17] Id., pp. 6-9.
- [18] Id., p. 10.
- [19] Id., p. 7.
- [20] Id., p. 11.
- [21] Id., pp. 11, 30.
- [22] Id., p. 10.
- [23] Id., pp. 14-15.
- [24] TSN, 3 February 1999, pp. 5-7; emphasis supplied.
- [25] Ibid., pp. 15-25.
- [26] *People v. Hofileña*, 334 SCRA 214, 227 [2000].
- [27] Appellant's Brief, p. 5.
- [28] *People v. Castillo*, 273 SCRA 22 [1997].
- [29] *People v. Buendia*, 314 SCRA 655 [1999]; *People v. Quitariano*, 266 SCRA 373 [1997].
- [30] *People v. Barellano*, 319 SCRA 567 [1999]; *People v. Ocumen*, 319 SCRA 539 [1999]; *People v. Batidor*, 303 SCRA 335 [1999]; *Boneng v. People*, 304 SCRA 252 [1999]; *People v. Lotoc*, 307 SCRA 471 [1999]; *People v. Garcia*, 313 SCRA 279 [1999]; *People v. Villablanca*, 316 SCRA 13 [1999].
- [31] *People v. Optana*, G.R. No. 133922, 12 February 2001.
- [32] *People v. Visaya, et al.*, G.R. No. 136967, 26 February 2001.
- [33] *People v. Del Rosario*, 344 SCRA 382, 392 [2000].
- [34] Revised Penal Code, Article 14, par. 16.
- [35] *People v. Galam*, 325 SCRA 489 [2000].
- [36] *People v. Garcia*, G.R. No. 129216, 20 April 2001; *People v. Celeste*, G.R. No. 130281, 15 December 2000.
- [37] G.R. Nos. 138472-73, 9 August 2001.
- [38] *People v. Magayac*, 330 SCRA 767, 777 [2000].
- [39] *People v. Joyno*, 304 SCRA 655, 670-671 [1999].

[40] G.R. Nos. 140557-58, 5 December 2001.

[41] *People v. Villa, Jr.*, 331 SCRA 142, 154 [2000].

[42] *People v. Lao-as*, G.R. No. 126396, 29 June 2001.

[43] *People v. Amion*, G.R. No. 140511, 1 March 2001; *People v. Court of Appeals, et al.*, G.R. Nos. 103613 & 105830, 23 February 2001, citing *People v. Pedroso*, 336 SCRA 163 [2000]; *People v. Go-od*, 331 SCRA 612 [2000]; *People v. Flores*, 328 SCRA 461 [2000].

[44] *People v. Concepcion, et al.*, G.R. No. 131477, 20 April 2001, *People v. Mindanao*, 335 SCRA 200 [2000]; *People v. Quijon*, 325 SCRA 453 [2000].

[45] *People v. Caldonga*, G.R. No. 126019, 1 March 2001; *People v. Queigan*, G.R. Nos. 133586-603, 19 February 2001; *People v. Ortiz*, G.R. No. 133814, 17 July 2001.

[46] *People v. Pardua, et al.*, G.R. No. 110813, 28 June 2001; *People v. Ereneo*, 326 SCRA 157 [2000].

[47] *People v. Alba, et al.*, G.R. Nos. 130627 & 139477-78, 31 May 2001; *People v. Langit*, 337 SCRA 323 [2000].

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