

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUNE IGNAS Y SANGGINO, ACCUSED-APPELLANT.

G.R. Nos. 140514-15. September 30, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In the amended decision[1] dated June 2, 1999, in Criminal Case No. 96-CR-2522, the Regional Trial Court (RTC) of La Trinidad, Benguet, Branch 8, found appellant June Ignas y Sanggino guilty of murder aggravated especially by the use of an unlicensed firearm. Appellant was initially sentenced to suffer the penalty of reclusion perpetua,[2] but on motion for reconsideration by the prosecution, the penalty was upgraded to death by lethal injection.[3] Hence, the case is now before us for automatic review.

Appellant is an elementary school graduate. He resided at Cruz, La Trinidad, Benguet, where he operated a bakery.[4] He is married to Wilma Grace Ignas, by whom he has a son of minor age.[5] Wilma Grace used to be the cashier of Windfield Enterprise, which is owned by Pauline Gumpic.[6] Pauline had a brother, Nemesio Lopate. It was he whom appellant fatally shot.

In the amended Information,[7] pursuant to Section 14, Rule 110[8] of the 1985 Rules of Criminal Procedure, the Provincial Prosecutor of Benguet charged appellant as follows:

That on or about the 10[th] day of March 1996 at Trading Post, Km. 5, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, without any authority of law or without any lawful permit did then and there willfully, unlawfully and knowingly have in his possession, control and custody a Cal. .38 hand gun and two (2) ammunitions, (sic) which firearm and ammunitions were used by the accused in unlawfully killing NEMESIO LOPATE at the above-mentioned place and date in violation of the said law.

CONTRARY TO LAW.[9]

Appellant was arraigned and pleaded not guilty to the foregoing amended information. The case then proceeded to be heard on the merits.

Gleaned from the records, the facts of this case are as follows:

Sometime in September 1995, appellant's wife, Wilma Grace Ignas, confided to her close friend, Romenda[10] Foyagao, that she was having an affair with Nemesio Lopate.[11]

On the evening of October 16, 1995, Wilma Grace, Romenda, and Nemesio went to Manila. Romenda and Nemesio were sending off Wilma Grace at the Ninoy Aquino International Airport as she was leaving for Taiwan to work as a domestic helper. Upon arrival in Manila, the trio checked at Dangwa Inn, with Nemesio and Wilma Grace sharing a room.[12] All three of them stayed at the inn until October 18, 1995, when Wilma Grace left for Taiwan.[13]

Thereafter, Romenda received from Taiwan four letters written by Wilma Grace on various dates. Although all the letters were addressed to Romenda, two of them were meant by Wilma Grace to be read by her paramour, Nemesio.[14] In the other two letters, Wilma Grace instructed Romenda to reveal to appellant her affair with Nemesio.

It was only sometime late in February 1996 that Romenda, following her bosom friend's written instructions, informed appellant about the extramarital affair between Wilma Grace and Nemesio. Romenda informed him that the two had spent a day and a night together in a room at Dangwa Inn in Manila.[15] Appellant became furious. He declared "Addan to aldaw na dayta nga Nemesio, patayek dayta nga Nemesio" (There will be a day for that Nemesio. I will kill that Nemesio).[16] Appellant then got all the letters of Wilma Grace from Romenda.[17]

That same week Alfred Mayamnes, appellant's neighbor who was presented at the trial as a prosecution witness, had a talk with appellant. Mayamnes was an elder of the Kankanaey tribe to which appellant belonged. He wanted to confirm whether Nemesio Lopate, who was likewise from the same tribe, [18] was having an affair with appellant's spouse. Talk apparently had reached the tribal elders and they wanted the problem resolved as soon as possible.[19] A visibly angry appellant confirmed the gossip.[20] Mayamnes also testified that he advised Nemesio to stay at the Mountain Trail Kankanaey community until things had cooled down.[21]

Shortly after their talk, appellant closed down his bakeshop and offered his equipment for sale. Among the potential buyers he approached was Mayamnes, but the latter declined the offer.[22]

Sometime during the first week of March, Mayamnes saw appellant load his bakery equipment on board a hired truck and depart for Nueva Vizcaya.[23]

At around 10:00 p.m. of March 10, 1996, according to another prosecution witness, Annie Bayanes, a trader in vegetables, she was at the Trading Post, La Trinidad, Benguet.[24] The Trading Post is a popular depot where vegetable growers in the Cordilleras bring their produce late in the evenings for sale to wholesalers and retailers. Witness Bayanes said she was at the unloading area (bagsakan), conversing with another dealer at the latter's booth, when suddenly two gunshots shattered the quiet evening.[25]

Bayanes turned towards the place where the sound of the gunshots came from. She testified that she saw a person falling to the ground.[26] Standing behind the fallen individual, some 16 inches away,[27] was another person who tucked a handgun into his waistband and casually walked away.[28]

Initially, she only saw the gunman's profile, but when he turned, she caught a glimpse of his face.[29] She immediately recognized him as the appellant June Ignas. She said she was familiar with him as he was her townmate and had known him for several years. Witness Bayanes was five or six meters away from the scene, and the taillight of a parked jeepney, which was being loaded with vegetables, plus the lights from the roof of the bagsakan, aided her recognition of appellant.[30]

Also at the bagsakan area that night was prosecution witness Marlon Manis. He testified that on hearing gunshots from the Trading Post entrance, he immediately looked at the place where the gunfire came from. He saw people converging on a spot where a bloodied figure was lying on the ground.[31] Witness Manis saw that the fallen victim was Nemesio Lopate, whom he said he had known since Grade 2 in elementary school.[32] Manis then saw another person, some 25 meters away, hastily walking away from the scene. He could not see the person's face very well, but from his gait and build, he identified the latter as his close friend and neighbor, June Ignas.[33] Manis said that the scene was very dimly lit and the only illumination was from the lights of passing vehicles, but he was familiar with appellant's build, hairstyle, and manner of walking.[34]

Prosecution witness Mona Barredo, a bakery worker, testified that she knew appellant. She said they were

co-workers formerly at the Annaliza Bakery at Km. 10, Shilan, La Trinidad, Benguet.[35] Barredo declared that at around 10:30 p.m. of March 10, 1996, appellant came to her residence at Pico, La Trinidad. After being served refreshments, appellant took out a handgun from his jacket and removed the empty shells from the chamber.[36] Appellant then told her to throw the empty cartridges out of the window. Because of nervousness she complied.[37] Barredo also said that appellant disclosed to her that he had just shot his wife's paramour.[38] Appellant then stayed at her house for 8 or 9 hours; he left only in the morning of March 11, 1996,[39] according to her. Police investigators later recovered the spent gun shells from witness Barredo's sweet potato garden.[40]

According to witness on the scene, responding policemen immediately brought the victim, Nemesio Lopate, to the Benguet General Hospital where he was pronounced dead on arrival.[41]

Dr. Doris C. Jovellanos, Municipal Health Officer of La Trinidad, Benguet, testified during that trial that she conducted the post-mortem examination of the victim's cadaver. Among her findings were:

- Ovaloid hole, 2.0 x 5.0 cm. dms., with blackened edges (1.8 x 1.3 cms. span), on the right side of the mouth, above the edge of the upper lip

x x x

- Exit hole on the left side of the mouth, 5.0 x 1.3 cm. dms., with avulsion of the upper lip on the left side

x x x

- Circular hole, penetrating, on the back, right side, 0.7 cm. x 0.7 cm. diam., with blackened edges (0.9 x 0.9 cm. span), at the level of the fifth intercostal space, subscapular area, 13 cm. from the midline, directed to the left side of the chest, 38.0 cm. from the embedded bullet slug of the left shoulder.[42]

Dr. Jovellanos determined the cause of death to be "Hypovolemia due to gunshot wound, back, right, (Point of Entry - fifth intercostal space subscapular area)."[43] She further stated on the witness stand that she recovered a bullet from the victim's left shoulder, which she turned over to the police investigators.[44] According to her, given the blackened edges of the gunshot wound at the victim's back, Nemesio was shot from a distance of less than three (3) feet.[45]

On March 14, 1996, police investigators accompanied by one of appellant's brother as well as prosecution witness Julio Bayacsan, a friend of appellant, went to Kayapa, Nueva Vizcaya, to invite appellant to shed light on the slaying of Nemesio. The law enforcers found appellant selling bread at Kayapa and brought him back to La Trinidad, Benguet.[46]

Witness Bayacsan testified that shortly after they arrived from Kayapa, he had an opportunity to talk with appellant at the La Trinidad Police Station. There, appellant disclosed to this witness that he shot and killed Nemesio.[47] Bayacsan, however, did not inform the police about appellant's revelation as he considered appellant his good friend.[48]

Prosecution witness Pauline Gumpic, the victim's sister, testified that she and appellant had a private talk, while the latter was in police custody, and appellant admitted to her that he killed her brother.[49] Gumpic declared that appellant revealed to her that he shot Nemesio for having illicit relations with appellant's wife and failing to ask for his forgiveness.[50]

SPO4 Arthur Bomagao[51] of the La Trinidad police, who headed the team that investigated the fatal shooting of Nemesio, declared on the stand that appellant voluntarily admitted to him that he shot the victim with a .38 caliber handgun.[52] Bomagao further testified that appellant surrendered to him the letters of Wilma Grace, wherein the latter admitted her affair with Nemesio.[53]

Appellant interposed the defense of alibi. Sometime during the last week of February 1996, he said, he entered into a partnership with a friend and fellow baker, Ben Anoma, to operate a bakery in Kayapa, Nueva Vizcaya.[54] Appellant claimed that he was having a hard time operating his bakeshop in La Trinidad as he had no helpers. When Anoma proposed a business arrangement, he added, he immediately seized the opportunity.[55] On March 8, 1996, he and Anoma then transferred his equipment to Anoma's bakery in Kayapa,[56] which is some four (4) to five (5) hours away from La Trinidad, according to appellant. He averred that he was baking bread with Anoma in Kayapa on the night Nemesio was killed.[57] Under oath, appellant said that he never left Kayapa since his arrival on March 8, 1996. He and Anoma were engrossed in baking and marketing their produce, he testified, until the policemen from La Trinidad brought him back to Benguet for questioning on March 14, 1996.[58]

Defense witness Ben Anoma corroborated appellant's alibi. Anoma declared that during the last week of February 1996, he met with appellant in La Trinidad. There, the witness said, he proposed a partnership with appellant in the baking business to be based in Kayapa.[59] Appellant agreed and on March 8, 1996, they transferred appellant's equipment to Kayapa.[60] They immediately commenced their operations and on the evening of March 10, 1996, he and appellant baked bread at his bakery in Kayapa until 11:00 p.m., when they rested for the night.[61]

The trial court disbelieved appellant's defense and sustained the prosecution's version. Its initial judgment reads:

WHEREFORE, premises considered, the accused June Ignas is hereby found GUILTY beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code, and considering the aggravating circumstances of treachery, nighttime and the special aggravating circumstance of the use of an unlicensed firearm, without any mitigating circumstance, he is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is further sentenced to pay the heirs of the VICTIM the following sums:

- P150,000.00 for funeral expenses and those incurred for and during the wake;
- P1,800,000.00 for unearned income;
- P50,000.00 as death compensation established by jurisprudence; and
- P50,000.00 as and for moral damages; and
- P20,000.00 as attorney's fees.

Costs against the accused.

SO ORDERED in Chambers this 18[th] day of February 1999 at La Trinidad, Benguet, Philippines.[62]

Both the prosecution and the defense filed their respective motions for reconsideration. The prosecution sought the imposition of the death penalty.[63] The defense prayed for acquittal on the ground of reasonable doubt.

On June 2, 1999, the trial court granted the prosecution's motion. It amended its judgment to read as follows:

WHEREFORE, premises considered, the accused June Ignas is hereby found GUILTY beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code, and considering the aggravating circumstances of treachery, nighttime and the special aggravating circumstance of the use of an unlicensed firearm, without any mitigating circumstance, he is hereby sentenced to suffer the penalty of death by lethal injection. He is further sentenced to pay the heirs of the victim the following sums:

- P150,000.00 for funeral expenses and those incurred for and during the wake;
- P2,040,000.00 for unearned income;
- P50,000.00 as death compensation established by jurisprudence; and

- P50,000.00 as and for moral damages; and

- P20,000.00 as attorney's fees.

Costs against the accused.

SO ORDERED in Chambers.[64]

Hence, this automatic review, with appellant imputing the following errors to the court a quo:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE WEAKNESS OF THE CIRCUMSTANTIAL EVIDENCE OF THE PROSECUTION.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING EVIDENTIARY WEIGHT TO THE ALLEGED EXTRA-JUDICIAL ADMISSIONS MADE BY ACCUSED-APPELLANT DESPITE ITS BEING HEARSAY IN NATURE AND IN VIOLATION OF HIS RIGHTS UNDER CUSTODIAL INVESTIGATION.

III

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING PROBATIVE VALUE TO THE DEFENSE OF ALIBI INTERPOSED BY ACCUSED-APPELLANT.

IV

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED WHEN IT RULED THAT THE KILLING OF THE DECEASED WAS ATTENDED BY EVIDENT PREMEDITATION, TREACHERY AND NIGHTTIME.

V

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT APPRECIATED THE ALLEGED USE OF AN UNLICENSED .38 CALIBER FIREARM AS AN AGGRAVATING CIRCUMSTANCE IN THE COMMISSION OF THE CRIME OF MURDER WITHOUT ANY FACTUAL AND LEGAL BASIS.

VI

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DID NOT APPRECIATE IN FAVOR OF THE ACCUSED-APPELLANT THE MITIGATING CIRCUMSTANCES OF IMMEDIATE VINDICATION OF A GRAVE OFFENSE, PASSION AND OBFUSCATION AND VOLUNTARY SURRENDER.

VII

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT AWARDED EXCESSIVE DAMAGES IN THE FORM OF FUNERAL EXPENSES AND UNEARNED INCOME OF THE DECEASED WHICH WERE NOT SUFFICIENTLY PROVEN.[65]

Appellant's assigned errors may be reduced to the following pertinent issues: (1) the nature of the crime committed, if any; (2) the sufficiency of the prosecution's evidence to prove appellant's guilt; (3) the correctness of the penalty; and (4) the propriety of the damages awarded.

1. Murder or Homicide

Assuming arguendo that the evidence on record suffices to sustain the appellant's conviction for the unlawful killing of Nemesio Lopate, the question arises: Was the killing murder as found by the trial court or mere homicide? Note that the amended information under which the appellant stands charged does not, unlike the original information, charge appellant with murder but with mere "unlawful killing" albeit through the use of an unlicensed firearm. Note further that the amended information does not definitely and categorically state that the "unlawful killing" was attended by the aggravating or qualifying circumstances of treachery, evident premeditation, and nocturnity.

The 2000 Revised Rules of Criminal Procedure requires that the qualifying and aggravating circumstances must be specifically alleged in the information.[66] Although the Revised Rules of Criminal Procedure took effect only on December 1, 2000 or long after the fatal shooting of Nemesio Lopate, as a procedural rule favorable to the accused, it should be given retrospective application. Hence, absent specific allegations of the attendant circumstances of treachery, evident premeditation, and nocturnity in the amended information, it was error for the trial court to consider the same in adjudging appellant guilty of murder. As worded, we find that the amended information under which appellant was charged and arraigned, at best indicts him only for the crime of homicide. Any conviction should, thus, fall under the scope and coverage of Article 249[67] of the Revised Penal Code.

As for the separate case for illegal possession of firearm, we agree with the trial court's order to dismiss the information for illegal possession of firearm and ammunition in Criminal Case No. 97-CR-2753.[68] Under R.A. No. 8294,[69] which took effect on July 8, 1997, where murder or homicide is committed with the use of an unlicensed firearm, the separate penalty for illegal possession of firearm shall no longer be imposed since it becomes merely a special aggravating circumstance.[70] This Court has held in a number of cases[71] that there can be no separate conviction of the crime of illegal possession of firearm where another crime, as indicated by R.A. No. 8294, is committed. Although R.A. No. 8294 took effect over a year after the alleged offense was committed, it is advantageous to the appellant insofar as it spares him from a separate conviction for illegal possession of firearms and thus should be given retroactive application.[72]

2. Sufficiency of the Prosecution's Evidence

But is the prosecution's evidence sufficient to sustain a conviction for homicide?

Appellant primarily contests the accuracy of the identification made by the prosecution witnesses who testified that they saw him at the locus criminis, tucking a gun in his pants and casually walking away. For one, he contends that the prosecution witnesses who were present at the scene did not in fact see appellant as the person who allegedly shot the victim. Witness Marlon Manis was not certain that the person he saw walking away from the fallen victim was appellant. As per Manis' own admission, he merely presumed that it was appellant. As to witness Annie Bayanes, her identification of appellant as the assailant was equally doubtful. The fact is she did not see the alleged gunman's face, considering that the only illumination on the scene was a vehicle's taillight. Appellant stresses that both Bayanes and Manis were in a state of excitement and nervousness as a result of the incident, hence the resultant commotion and fear distracted their powers of observation. Appellant insists that given these considerations, the testimonies of Bayanes and Manis failed to show that he was at the scene of the crime, much less prove that he was the gunman.

For the appellee, the Office of the Solicitor General (OSG) contends that the failure of Manis to see the actual shooting is irrelevant, as such was not the purpose for which his testimony was offered in evidence. Rather, Manis' testimony was meant to provide circumstantial evidence tending to show the physical description of Nemesio's attacker, and not as an eyewitness' testimony to positively identify said assailant. Neither was Bayanes presented to testify as an eyewitness to the shooting, but to declare that she got a clear look at the face of the

suspected gunman.

We note that at the heart of the prosecution's case is the familiarity of Annie Bayanes and Marlon Manis with appellant. Absent this familiarity, the prosecution's theory that circumstantial evidence shows that appellant killed Nemesio would collapse like a house of cards. It was precisely this familiarity with appellant, which enabled said witnesses to recognize him as the person tucking a gun in his waistband and walking away from the fallen victim. Bayanes had known appellant for some ten (10) years before the incident and even described him as a "good man." [73] She was only five or six meters away from the scene of the crime and was able to fully look at the face of the person tucking a gun in his pants and walking away. Familiarity with the physical features, particularly those of the face, is actually the best way to identify the person. [74] That the only illumination in the area came from the taillight of a parked vehicle and the lights on the roof of the bagsakan does not discredit her account. We have held that moonlight, [75] starlight, [76] kerosene lamps, [77] a flashlight, [78] and lights of passing vehicles [79] may be adequate to provide illumination sufficient for purposes of recognition and identification. Under the circumstances of these cases, this Court believes that Bayanes was in the position and had a fair opportunity to identify appellant as the person leaving the crime scene with a gun tucked in his waist.

Her testimony was buttressed by that of witness Marlon Manis. A former neighbor of appellant, he had known appellant since 1993. He was a frequent customer at appellant's bakery. In the rural areas, people tend to be more familiar with their neighbors. This familiarity may extend to body movements, which cannot easily be effaced from memory. Hence, Manis' testimony that he could recognize appellant even just from his build and manner of walking is not improbable. His declaration that he was some twenty-five (25) meters away from the person walking away from the victim does not make recognition far-fetched. Once a person has gained familiarity with another, identification is an easy task, even from that distance. [80]

Evidence should only be considered for the purpose it was formally offered. [81] As the Solicitor General points out, the statements of Bayanes and Manis were not offered to positively identify appellant as the assailant, but to provide circumstantial evidence concerning Nemesio's assailant, tending to prove that appellant did shoot the victim. Thus, the court a quo committed no reversible error in giving weight and credence to the testimonies of Bayanes and Manis for the stated purposes therefor.

Appellant next assails the testimonies of the following prosecution witnesses: (1) Pauline Gumpic for being inconsistent and flawed with contradictions; (2) Annie Bayanes and Julio Bayacsan for their unexplained delay in giving their respective sworn statements to the police; and (3) Mona Barredo for "flip-flopping" with respect to the alleged admission to her by appellant and how the police investigators knew about said admission, after she claimed that she did not tell anyone about his revelation. Appellant submits that the trial court erred in giving weight to the aforementioned testimonies.

For appellee, the OSG argues that with respect to Gumpic's alleged contradictions, they refer only to unimportant and collateral matters; they do not affect her credibility. With respect to the delay or vacillation by Bayacsan and Bayanes in giving their statements to the authorities, the OSG points out that a reading of their declarations in court will show that the alleged delay was adequately explained. As to Barredo's testimony, a closer reading of her supposed "flip-flopping" shows that the alleged contradictions were due to an honest misapprehension of fact on her part.

When the issue boils down to the credibility of witnesses, the appellate court will not generally disturb the findings of the trial court because the latter is in the vantage position of observing witnesses through the various indicia of truthfulness or falsehood. [82] However, this rule is not absolute. One exception is where the judge who wrote the decision did not personally hear the prosecution's evidence. [83] In this case, the records show that Judge

Angel V. Colet, who authored the assailed decision, took over from Judge Benigno M. Galacgac only on April 29, 1997 or after the witnesses for the prosecution had testified. It does not follow, however, that a judge who was not present at the trial cannot render a just and valid judgment. The records and the transcripts of stenographic notes are available to him as basis for his decision.

After going over the transcripts of the witnesses' testimonies, we find no reason to disturb the findings of the trial court. With respect to the statements of Gumpic, we agree with the Solicitor General that alleged inconsistencies refer only to irrelevant and collateral matters, which have nothing to do with the elements of the crime. It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and show that the witness was not coached to fabricate or dissemble.[84] An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.[85]

We likewise find no basis for appellant's contention that Bayanes and Bayacsan failed to give a satisfactory explanation for the delay or vacillation in disclosing to the authorities what they knew. Bayanes gave a satisfactory reason for her delay in reporting to the authorities what she knew. She had simply gone about her normal business activities for some months, unaware that a case had been filed concerning the killing of Nemesio. It was only nine (9) months after the incident that she read a notice for help posted by the victim's relatives at the Trading Post, appealing to possible witnesses to the killing to come forth and assist them in their quest for justice. It was only then that she decided to reveal to the authorities what she knew.

As to Bayacsan, he candidly admitted in court that he considered appellant his friend and he wanted to protect him and hence, he only disclosed appellant's admission to him when the police started questioning him. There is no rule that the suspect in a crime should immediately be named by a witness.[86] Different people react differently to a given situation and there is no standard form of human behavior when one is confronted with a strange, startling, or frightful experience.[87] The Court understands the natural reluctance or aversion of some people to get involved in a criminal case.[88] More so where, as in these cases, a townmate of Bayanes and Bayacsan is involved. We have taken notice that when their townmates are involved in a criminal case, most people turn reticent.[89] Hence, the failure of Bayanes and Bayacsan to immediately volunteer information to the police investigators will not lessen the probative value of their respective testimonies. The delay, having been satisfactorily explained, has no effect on their credibility.[90]

We have likewise closely scrutinized the testimony of Mona Barredo regarding the alleged admission by appellant to her that he killed the victim. We find nothing "flip-flopping" about her testimony. Instead, we find a witness who admitted she was "nervous" that she might not be able to answer all the questions.[91] Said nervousness was engendered by her erroneous belief that to be a credible witness, she must have personal knowledge of the crime.[92] Even the most candid witnesses make mistakes and may give some contradictory or inconsistent statements, but such honest lapses need not necessarily affect their credibility. Ample margin should be accorded a witness who is tension-filled with the novelty of testifying before a court.[93]

Appellant further contends that the trial court erred in giving credence to the verbal admissions of guilt he made to Gumpic and SPO4 Bomagao inside the police station since said admissions are inadmissible in evidence as uncounseled confessions.

The OSG submits that said verbal admissions of complicity, as well as those made to appellant to Bayacsan and Barredo, are admissible as statements forming part of the *res gestae*. We agree on this point with the OSG.

The requisites of *res gestae* are: (1) the principal act or *res gestae* must be a startling occurrence; (2) the statement is spontaneous or was made before the declarant had time to contrive or devise a false statement, and the

statement was made during the occurrence or immediately prior or subsequent to thereto; and (3) the statement made must concern the occurrence in question and its immediately attending circumstances.[94] All these elements are present in appellant's verbal admission to Barredo that he killed the victim when he went to the latter's house half an hour after the fatal shooting of Nemesio.

The verbal admission by appellant to Barredo was made before appellant had the time and opportunity to contrive a falsehood. Similar statements have been held to be part of the *res gestae*: (1) a child's declaration made an hour after an alleged assault;[95] (2) the testimony of a police officer as to what the victim revealed to him some 30 minutes after the commission of an alleged crime;[96] and (3) a victim's declaration made some 5 to 10 minutes after an alleged felony took place.[97] Note that since appellant's admission was not solicited by police officers in the course of a custodial investigation, but was made to a private person, the provisions of the Bill of Rights on custodial investigation do not apply. The Rules of Court[98] provides that an admission made to a private person is admissible in evidence against the declarant.[99]

Prosecution's evidence here is admittedly circumstantial. But in the absence of an eyewitness, reliance on circumstantial evidence is inevitable.[100] Resort thereto is essential when the lack of direct evidence would result in setting a felon free.[101]

Circumstantial evidence suffices to convict if the following requisites are met: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[102] In our mind, the following pieces of circumstantial evidence show with moral certainty that appellant was responsible for the death of Nemesio:

- Appellant had the motive to kill Nemesio Lopate for having an affair with his wife, and appellant had openly expressed his desire and intention to do so;
- At around 10:00 p.m. of March 10, 1996, Annie Bayanes and Marlon Manis heard two gun shots at the Trading Post, La Trinidad, Benguet and saw Nemesio Lopate fall to the ground;
- Bayanes saw appellant behind the victim, tucking a gun into his waistband, and walking away;
- From another angle, Manis also saw a person whose gait and built resembled that of appellant walking away from the crime scene;
- At around 10:30 p.m. of March 10, 1996, appellant went to the house of Mona Barredo, brought out a handgun, emptied it of two spent .38 caliber shells and instructed Barredo to throw the shells out of the window, which she did;
- Appellant then told Barredo that he had shot and killed his wife's paramour, after which he stayed at Barredo's house for the night;
- On March 11, 1996, Dr. Doris C. Jovellanos, Municipal Health Officer of La Trinidad, Benguet recovered a .38 caliber slug from Nemesio's corpse and found two (2) bullet entry wounds on the said cadaver;
- On March 18, 1996, police investigators, assisted by Barredo, recovered two (2) spent .38 caliber shells from Barredo's sweet potato patch, immediately outside her residence wherein appellant had slept a week before.

The foregoing circumstances clearly show that appellant had the motive, the opportunity, and the means to commit the crime at the place and time in question. Simply put, the circumstantial evidence adduced by the prosecution has successfully overcome the claim of innocence by appellant. Under the proved circumstances, appellant's defense of alibi is untenable. More so, in this situation where prosecution witness Bayanes unflinchingly declared that she saw appellant standing behind the victim, tucking a gun in his pants, moments

after the latter was shot. As we held in *People v. Salveron*,^[103] and reiterated in *People v. Sesbreño*,^[104] where an eyewitness saw the accused with a gun, seconds after the gunshot and after the victim fell to the ground, the reasonable conclusion is that said accused killed the victim.

Appellant's alibi cannot prevail over the positive testimony of Bayanes concerning appellant's identification and presence at the crime scene. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime.^[105] Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.^[106] In these cases, the defense admitted that the distance between La Trinidad, Benguet and Kayapa, Nueva Vizcaya is 79 kilometers, which can be negotiated in 4 or 5 hours.^[107] Clearly, it was not physically impossible for appellant to be at the locus criminis at the time of the killing. Hence, the defense of alibi must fail.

In sum, we find that the prosecution's evidence suffices to sustain the appellant's conviction for homicide.

3. Crime and its Punishment

As appellant can only be convicted of homicide, it follows that he cannot, under the provisions of RA No. 7659, be sentenced to suffer the death penalty. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. Our task now is to determine whether there are aggravating or mitigating circumstances which could modify the penalty.

More specifically, may the special aggravating circumstance of use of an unlicensed firearm be taken against the appellant?

Appellant argues that the trial court erred in appreciating the special aggravating circumstance of use of unlicensed firearm in the present case. Like the killing, said aggravating circumstance must likewise be proved beyond reasonable doubt, says the appellant. On this point, he adds, the prosecution failed to adduce the necessary quantum of proof.

We find merit in the appellant's contentions. It is not enough that the special aggravating circumstance of use of unlicensed firearm be alleged in the information, the matter must be proven with the same quantum of proof as the killing itself. Thus, the prosecution must prove: (1) the existence of the subject firearm; and (2) the fact that the accused who owned or possessed it does not have the corresponding license or permit to own or possess the same.^[108] The records do not show that the prosecution presented any evidence to prove that appellant is not a duly licensed holder of a caliber .38 firearm. The prosecution failed to offer in evidence a certification from the Philippine National Police Firearms and Explosives Division to show that appellant had no permit or license to own or possess a .38 caliber handgun. Nor did it present the responsible police officer on the matter of licensing as a prosecution witness. Absent the proper evidentiary proof, this Court cannot validly declare that the special aggravating circumstance of use of unlicensed firearm was satisfactorily established by the prosecution. Hence such special circumstance cannot be considered for purposes of imposing the penalty in its maximum period.

Coming now to the obverse side of the case, is the appellant entitled to benefit from any mitigating circumstance?

Appellant, firstly contends that assuming without admitting that he is guilty, the lower court should have considered at least the mitigating circumstance of immediate vindication of a grave offense as well as that of passion and obfuscation. Appellant points out that the victim's act of maintaining an adulterous relationship with appellant's wife constituted a grave offense to his honor, not to mention the shame, anguish, and anxiety he was subjected to. Even the mere sight of the victim must have triggered an uncontrollable emotional outburst on appellant's part, so that even a chance meeting caused in him an irresistible impulse powerful enough to overcome

all reason and restraint. Secondly, appellant points out that the trial court failed to consider his voluntary surrender as a mitigating circumstance.

The Solicitor General counters that there was literally no "immediate vindication" to speak of in this case. Appellant had sufficient time to recover his serenity following the discovery of his wife's infidelity. Nor could passion and obfuscation be appreciated in appellant's favor because the killing was not proximate to the time of the offense. Appellant became aware of the treatment offensive to his dignity as a husband and to the peace and tranquility of his home two weeks earlier. This interval between the revelation of his wife's adultery and the fatal shooting was ample and sufficient for reason and self-control to reassert themselves in appellant's mind. As to the mitigating circumstance of voluntary surrender, the OSG stresses that his supposed surrender at Kayapa, Nueva Vizcaya was actually due to the efforts of law enforcers who came looking for him. There he did not resist, but lack of resistance alone is not tantamount to voluntary surrender, which denotes a positive act and not merely passive conduct.

According to the OSG, for the mitigating circumstance of vindication of a grave offense to apply, the vindication must be "immediate." This view is not entirely accurate. The word "immediate" in the English text is not the correct translation of the controlling Spanish text of the Revised Penal Code, which uses the word "proxima."^[109] The Spanish text, on this point, allows a lapse of time between the grave offense and the actual vindication.^[110] Thus, in an earlier case involving the infidelity of a wife, the killing of her paramour prompted proximately – though not immediately – by the desire to avenge the wrong done, was considered an extenuating circumstance in favor of the accused.^[111] The time elapsed between the offense and the suspected cause for vindication, however, involved only hours and minutes, not days. Hence, we agree with the Solicitor General that the lapse of two (2) weeks between his discovery of his wife's infidelity and the killing of her supposed paramour could no longer be considered proximate. The passage of a fortnight is more than sufficient time for appellant to have recovered his composure and assuaged the unease in his mind. The established rule is that there can be no immediate vindication of a grave offense when the accused had sufficient time to recover his serenity.^[112] Thus, in this case, we hold that the mitigating circumstance of immediate vindication of a grave offense cannot be considered in appellant's favor.

We likewise find the alleged mitigating circumstance of passion and obfuscation inexistent. The rule is that the mitigating circumstances of vindication of a grave offense and passion and obfuscation cannot be claimed at the same time, if they arise from the same facts or motive.^[113] In other words, if appellant attacked his victim in proximate vindication of a grave offense, he could no longer claim in the same breath that passion and obfuscation also blinded him. Moreover, for passion and obfuscation to be well founded, the following requisites must concur: (1) there should be an act both unlawful and sufficient to produce such condition of mind; and (2) the act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his moral equanimity.^[114] To repeat, the period of two (2) weeks which spanned the discovery of his wife's extramarital dalliance and the killing of her lover was sufficient time for appellant to reflect and cool off.

Appellant further argues that the lower court erred in failing to consider voluntary surrender as a mitigating circumstance. On this point, the following requirements must be satisfied: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.^[115] Records show, however, that leaflets and posters were circulated for information to bring the killer of Nemesio to justice. A team of police investigators from La Trinidad, Benguet then went to Kayapa, Nueva Vizcaya to invite appellant for questioning. Only then did he return to Benguet. But he denied the charge of killing the victim. Clearly, appellant's claimed surrender was neither spontaneous nor voluntary.

Absent any aggravating or mitigating circumstance for the offense of homicide the penalty imposable under Art. 64 of the Revised Penal Code is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the penalty which could actually be imposed on appellant is an indeterminate prison term consisting 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.

4. Proper Award of Damages

Appellant and the Solicitor General are one in contending that the trial court awarded excessive actual damages without adequate legal basis. Thus, the amount of P150,000.00 was awarded for funeral and burial expenses without any supporting evidence on record.[116] This cannot be sustained in this review. In order for actual damages to be recovered, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof, such as receipts or other documents to support the claim.[117] The records clearly show in this case that only the amount of P7,000 as funeral expenses was duly supported by a receipt.[118] Hence, the award of actual damages should be limited to P7,000 only.

Appellant further contests the award of P2,040,000 for loss of earning capacity as unconscionable. Since the victim's widow could not present any income tax return of her husband to substantiate her claim that his net income was P60,000 annually, then according to appellant, there is no basis for this award at all. At best, appellant says, only temperate or nominal damages may be awarded.

The OSG responds that the award for loss of earning capacity has adequate basis as the prosecution presented sufficient evidence on the productivity of the landholdings being tilled by the deceased and the investments made by the Lopate family from their income. Hence, said the OSG, it was not a product of sheer conjecture or speculation. Nonetheless, the OSG submits that the original amount of P1,800,000 for loss of earning capacity should be restored as it is this amount which takes into account only a reasonable portion of annual net income which would have been received as support by the heirs.

In setting said award at P2,040,000, amended from P1,800,000, for lost earnings, the trial court took note of the following factors in its computations:

The Death Certificate of Nemesio Lopate shows that he died at the age of 29.[119] His widow's detailed testimony shows that their average annual net income from vegetable farming was P60,000.[120] The victim's share of the annual net income from the couple's farm is half thereof, or P30,000. Using the American Expectancy Table of Mortality, the life expectancy of the victim at age 29 is set at 34 years.

Therefore, total loss of Earning Capacity (X) should be computed as follows:

$$X = 2/3 (80-29) \times P30,000$$

$$X = 2/3 (51) \times P30,000$$

$$X = 34 \times P30,000$$

$$X = P1,020,000$$

This amount should form part of the damages awarded to the heirs.

We sustain the award of P50,000 as indemnity ex delicto. But there being no testimony or other proof thereon, the award of P50,000 as moral damages cannot now be sustained. Instead, temperate damages in the amount of P25,000 should be awarded.

The award of P20,000 in attorney's fees should be maintained. Records show that the victim's widow had to hire

the services of a private prosecutor to actively prosecute the civil aspect of this case,[121] and in line with Article 2208 of the Civil Code,[122] reasonable attorney fees may be duly recovered.

WHEREFORE, the judgment of the Regional Trial Court of La Trinidad, Benguet, Branch 8, in Criminal Case No. 96-CR-2522 is MODIFIED as follows:

Appellant June Ignas y Sanggino is found GUILTY beyond reasonable doubt of the crime of HOMICIDE as defined and penalized under Article 249 of the Revised Penal Code, as amended. There being neither aggravating nor mitigating circumstance, he is hereby sentenced to suffer an indeterminate penalty of ten (10) 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.

Appellant June Ignas y Sanggino is ORDERED TO PAY the heirs of the victim, Nemesio Lopate, the following sums: a) P7,000 as actual damages; b) P1,020,000 for loss of earning capacity; c) P50,000 as civil indemnity; d) P25,000 as temperate damages; and e) P20,000 as attorney's fees. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.
Corona and Azcuna, JJ., on leave.

[1] Records, Crim. Case No. 96-CR-2522, pp. 505-506.

[2] Id. at 481.

[3] Id. at 506.

[4] TSN, 12 August 1997, pp. 3, 5.

[5] Id. at 4.

[6] Id. at 6.

[7] The initial information, docketed as Criminal Case No. 96-CR-2252, originally charged appellant with murder only, allegedly committed as follows:

That on or about the 10[th] day of March, 1996 at the Trading Post, Km. 5, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and evident premeditation and with intent to kill, did then and there, willfully, unlawfully, and feloniously attack, assault, shoot, and wound one NEMESIO LOPATE y AGNO with the use of a handgun, Cal. 38 thereby inflicting gunshot wounds on vital parts of the body of the latter which directly caused the subsequent death of the said NEMESIO LOPATE y AGNO.

CONTRARY TO LAW. (See Records, Crim. Case No. 96-CR-2522, p. 1)

The appellant was arraigned on the foregoing charge and pleaded not guilty, following which trial commenced. During the course of the trial of Criminal Case No. 96-CR-2252, the Provincial Prosecutor of Benguet filed a new and separate case against appellant for illegal possession of firearm. The new information, docketed as Criminal Case No. 97-CR-2753 read:

That on or about the 10[th] day of March 1996, at the Trading Post, Km. 5, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named

accused without any authority of law or any lawful permit, did then and there, willfully, unlawfully and knowingly have in his possession, control, and custody a Cal. 38 handgun in violation of the said law.

CONTRARY TO LAW. (See Record, Crim. Case No. 97-CR-2753, p.1)

Before the appellant could be arraigned on this new charge, the prosecutor amended the information in Criminal Case No. 96-CR-2252 to charge appellant with murder committed with the use of an unlicensed firearm, as shown in the main text.

[8] SEC. 14. Amendment. – The information or complaint may be amended, in substance or form, without leave of court, at any time before the accused pleads, and thereafter and during the trial, as to all matters of form, by leave and at the discretion of the court, where the same can be done without prejudice to the rights of the accused.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Rule 119, Section 11, provided the accused would not be placed thereby in double jeopardy and may also require the witnesses to give bail for their appearance at the trial.

[9] Records, Crim. Case No. 97-CR-2753, p. 18.

[10] Also spelled as "Rominda" in some parts of the record.

[11] TSN, 3 October 1996, pp. 3-4.

[12] Id. at 4-6; TSN, 9 October 1996, p. 4.

[13] Id. at 5-6.

[14] TSN, 9 October 1996, p. 10. See also Exhibits "G" and sub-markings, Exhibit "I" and sub-markings, Folder of Exhibits, pp. 16-22, 25-26.

[15] TSN, 3 October 1996, p. 7.

[16] TSN, 9 October 1996, p. 6.

[17] Supra, note 15 at 6; Supra note 16 at 9.

[18] TSN, 27 August 1996, p. 5.

[19] Id. at 7.

[20] Id. at 7-8, 9-10, 11-12, 13.

[21] Id. at 8.

[22] Id. at 8-9.

[23] Id. at 9.

[24] TSN, 19 February 1997, p. 4.

[25] Id. at 4, 12.

[26] Id. at 5, 13; TSN, 27 February 1997, p. 3.

[27] TSN, 4 March 1997, p. 10.

[28] TSN, 19 February 1997, p. 5; TSN, 26 February 1997, pp. 6-8.

- [29] TSN, 26 February 1997, p. 3; TSN, 4 March 1997, pp. 13-14.
- [30] Id. at 4-5.
- [31] TSN, 22 October 1996, p. 3.
- [32] Ibid.
- [33] Id. at 4-5; TSN, 5 November 1996, p. 3.
- [34] TSN, 5 November 1996, p. 4.
- [35] TSN, 29 October 1996, p. 3.
- [36] Id. at 3-4, 15.
- [37] Id. at 9-10.
- [38] Id. at 18.
- [39] Id. at 12-13.
- [40] TSN, 29 October 1996, pp. 10, 17. TSN, 28 January 1997, pp. 5-7.
- [41] TSN, 17 December 1996, p. 6.
- [42] Exhibit "C" and sub-markings, Folder of Exhibits, p. 12.
- [43] Id.; TSN, 10 September 1996, p. 5.
- [44] TSN, 10 September 1996, pp. 6-7, 9. See also TSN, 29 April 1997, pp. 2-3; 7-8.
- [45] Id. at 11.
- [46] TSN, 17 December 1996, pp. 15-17.
- [47] TSN, 19 September 1996, pp. 10-11.
- [48] Id. at 19-20.
- [49] TSN, 3 September 1996, pp. 7-8.
- [50] Id. at 8.
- [51] Also spelled as "Bumogao" and "Bomogao" in some parts of the records.
- [52] TSN, 19 December 1996, pp. 22-23. Stress supplied.
- [53] Id. at 25-26.
- [54] TSN, 12 August 1997, p. 7.
- [55] TSN, 21 October 1997, p. 4.
- [56] TSN, 12 August 1997, pp. 8-9; TSN, 21 October 1997, p. 4; TSN, 18 November 1997, pp. 5-6; TSN, 4 December 1997, p. 2.
- [57] TSN, 12 August 1997, pp. 11-12; TSN, 13 August 1997, pp. 3, 6.
- [58] TSN, 11 February 1998, p. 3.

[59] TSN, 27 April 1998, pp. 3-4; TSN, 26 May 1998, pp. 5-6.

[60] Id. at 4-5; Id. at 8.

[61] TSN, 27 April 1998, p. 7.

[62] Records, Crim. Case No. 96-CR-2522, p. 481.

[63] Id. at 484. See also prosecution's "Opposition to Accused's Motion for Reconsideration," Supra, note 62 at 498-501, 500.

[64] Supra, note 62 at 506.

[65] Rollo, pp. 126-128.

[66] Rule 110, SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Rule 110, SEC. 9. Cause of the accusation. – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[67] ART. 249. Homicide – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[68] Rollo, p. 210.

[69] Entitled "An Act Amending The Provisions Of Presidential Decree No. 1866, As Amended, Entitled 'Codifying The Laws On Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition Of Firearms, Ammunition, or Explosives Or Instruments Used In The Manufacture of Firearms, Ammunition Or Explosives, And Imposing Stiffer Penalties For Certain Violations Thereof and For Relevant Purposes.'"

[70] Section 1 of Presidential Decree No. 1866 , as amended, is hereby further amended to read as follows:

x x x

If homicide or murder is committed with the use of an unlicensed firearm, such use of unlicensed firearm shall be considered as an aggravating circumstance.

[71] See People v. Panabang, G.R. Nos. 137514-15, 16 January 2002, 373 SCRA 560, People v. Valdez, G.R. No. 127663, 11 March 1999, 304 SCRA 611, People v. Mendoza, G.R. Nos. 109279-80, 18 January 1999, 301 SCRA 66, People v. Feloteo, G.R. No. 124212, 17 September 1998, 295 SCRA 607, and People v. Molina, G.R. No. 115835-36, 22 July 1998, 292 SCRA 742.

[72] See People v. Candido, G.R. Nos. 134072-73, 10 June 2002, p. 17.

[73] TSN, 4 March 1997, p. 13.

[74] People v. Rios, G.R. No. 132632, 19 June 2000, 333 SCRA 823, 832 citing People v. Lagnas, G.R. No. 102949-51, 28 May 1993, 222 SCRA 745, 757; People v. Reception, G.R. No. 94127, 1 July 1991, 198 SCRA

670, 677.

[75] *People v. Gamboa, Jr.*, G.R. No. L-73463, 28 October 1986, 145 SCRA 289, 299; *People v. Pueblos*, G.R. No. L-32859, 24 February 1984, 127 SCRA 746, 754.

[76] *People v. Vacal*, G.R. No. L-20913, 27 February 1969, 27 SCRA 24, 28.

[77] *People v. Gapasin*, G.R. No. L-52017, 27 October 1986, 145 SCRA 178, 191.

[78] *People v. Boado*, G.R. No. L-44725, 31 March 1981, 103 SCRA 607, 617.

[79] *People v. Dolar*, G.R. No. 100805, 24 March 1994, 231 SCRA 414, 423.

[80] *People v. Alagon*, G.R. Nos. 126536-37, 10 February 2000, 325 SCRA 297, 309.

[81] RULES OF COURT, Rule 132, Sec. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[82] *People v. Pacantara*, G.R. No. 140896, 7 May 2002, p. 7 citing *People v. Abella*, G.R. No. 127803, 28 August 2000, 339 SCRA 129, 144.

[83] *People v. Leysa*, G.R. No. 130889, 6 June 2002, p. 7 citing *People v. Llaguno*, G.R. No. 91262, 28 January 1998, 285 SCRA 124, 136.

[84] *People v. Fernandez*, G.R. No. 134762, 23 July 2002, p. 12 citing *People v. Muyco*, G.R. No. 132252, 27 April 2000, 331 SCRA 192, 199.

[85] *People v. Asaldo*, G.R. No. 139790, 4 July 2002, p. 7. See also *People v. perez*, g.r. no. 113256, 5 March 2001, 353 SCRA 609, 616.

[86] *People v. Ayupan*, G.R. No. 140550, 13 February 2002, p. 16 citing *People v. Hilot*, G.R. No. 129532, 5 October 2000, 342 SCRA 128, 135. See also *People v. Queliza*, 344 Phil. 561, 574 (1997).

[87] *People v. Lumintigar*, G.R. No. 132557, 15 January 2002, 373 SCRA 126, 130.

[88] *People v. Guillermo*, 361 Phil. 933, 943 (1999).

[89] *People v. Acuña*, G.R. No. 94702, 2 October 1995, 248 SCRA 668, 674.

[90] *People v. Beruega*, G.R. No. 142931, 11 April 2002, 380 SCRA 674, 685. See also *People v. Rada*, 367 Phil. 466, 480 (1999).

[91] TSN, 29 October 1996, p. 21.

[92] *Id.* at 7.

[93] *People v. Salazar*, G.R. No. 84391, 7 April 1993, 221 SCRA 170, 177.

[94] *People v. Tolentino*, G.R. No. 87085, 2 February 1993, 218 SCRA 337, 345.

[95] See *Wheeler v. US*, 211 F.2d 19 (1954).

[96] See *State v. Finley*, 338 P.2d 790 (1959).

[97] *People v. Costa*, 252 P.2d 1 (1953).

[98] Rule 130, Sec. 26. Admissions of a party. – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

- [99] *People v. Zuela*, G.R. No. 112177, 28 January 2000, 323 SCRA 589, 606. See also *People v. Maqueda*, G.R. No. 112983, 22 March 1995, 242 SCRA 565, 590.
- [100] *People v. Pascual, Jr.*, G.R. No. 132870, 29 May 2002, p. 5 citing *People v. Rendaje*, G.R. No. 136745, 15 November 2000, 344 SCRA 738, 746.
- [101] *People v. Cuenca*, G.R. No. 143819, 29 January 2002, 375 SCRA 119, 133 citing *People v. Rendaje*, *supra*, at 747.
- [102] *People v. Manlansing*, G.R. Nos. 131736-37, 11 March 2002, p. 11; *People v. Mercado*, G.R. No. 116239, 29 November 2000, 346 SCRA 256, 283-284.
- [103] G.R. No. 102079, 22 November 1993, 228 SCRA 92, 97.
- [104] G.R. No. 121764, 9 September 1999, 314 SCRA 87, 110.
- [105] *People v. Ponsaran*, G.R. Nos. 139616-17, 6 February 2002, p. 14 citing *People v. Saban*, G.R. No. 110559, 24 November 1999, 319 SCRA 36, 46.
- [106] *People v. Pascual, Jr.*, G.R. No. 132870, 29 May 2002, p. 7.
- [107] TSN, 26 May 1998, p. 19.
- [108] *People v. Khor*, 366 Phil. 762, 777 (1999).
- [109] REGALADO, CRIMINAL LAW CONSPECTUS (1st Ed. 2000) 63.
- [110] REYES, I REVISED PENAL CODE (13th Ed. 1993) 270.
- [111] See *US v. Davis*, 11 Phil. 96, 99 (1908). See also *US v. Arribas*, 1 Phil. 86, 87 (1902).
- [112] *People v. Santos*, G.R. Nos. 99259-60, 29 March 1996, 255 SCRA 309, 321 citing *People v. Pajares*, G.R. No. 96444, 23 June 1992, 210 SCRA 237, 245 and *People v. Benito*, G.R. No. L-32042, 17 December 1976, 74 SCRA 271.
- [113] *People v. Real*, 312 Phil. 775, 781 (1995).
- [114] *People v. Takbobo*, G.R. No. 102984, 30 June 1993, 224 SCRA 134, 142. See also *People v. Alanguilang*, 52 Phil. 663, 665 (1929).
- [115] *People v. Alo*, G.R. No. 125533, 27 December 2000, 348 SCRA 702, 712 citing *People v. Sumalpong*, G.R. No. 124705, 20 January 1998, 284 SCRA 464, 488.
- [116] *People v. Ricafranca*, G.R. Nos. 124384-86, 28 January 2000, 323 SCRA 652, 666; *People v. Panaga*, G.R. Nos. 125967-70, 5 May 1999, 306 SCRA 695, 708-709.
- [117] See *People v. Jakosalem*, G.R. No. 130506, 28 February 2002, p. 9.
- [118] Exh. "M," Folder of Exhibits, p. 31.
- [119] Exh. "B," Id. at 11.
- [120] TSN, 12 November 1996, p. 8. Emphasis supplied.
- [121] Exh. "O," Folder of Exhibits, p. 33; TSN, November 12, 1996, pp. 11-12.
- [122] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs,

cannot be recovered, except:

x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x

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