

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR BALDERAMA AND ERNESTO BALDERAMA, DEFENDANTS. ERNESTO BALDERAMA, DEFENDANT-APPELLANT.

G.R. Nos. 89597-98. September 17, 1993

Ponente: VITUG, J.

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VITUG, J.:

The filing of separate informations against brothers Ernesto Balderama and Oscar Balderama for murder and homicide, respectively, for the killing of 21-year-old Nestor Duran in Tondo, Manila, brought up a number of legal issues, albeit heretofore resolved, that initially intermitted these proceedings. The first information for homicide against Oscar Balderama was filed with the Regional Trial Court of Manila on 10 August 1984, thus -

"That on or about September 3, 1983, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one NESTOR DURAN, by then and there stabbing the latter with a bladed weapon on his body, thereby inflicting upon the said NESTOR DURAN serious physical injuries which was the direct and immediate cause of his death thereafter.

Contrary to law."

The information was docketed as Criminal Case No. 28993.

Upon arraignment, Oscar pleaded not guilty to the charge.[1] The prosecution, however, moved to set aside the arraignment, reminding the court that it had granted beforehand its motion to defer the same based on the pending review of the case by the Ministry of Justice, which, on 9 April 1985, finally directed the withdrawal of the information for homicide against Oscar and the filing of an information for murder against both Oscar and Ernesto.[2] The court, through Judge Antonio M. Martinez of Branch XX, granted the motion.[3] Hence, on 14 May 1985, the following information for murder, docketed as Criminal Case No. 36370, was filed against both Oscar Balderama and Ernesto Balderama:

"That on or about September 3, 1983, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one NESTOR DURAN, by then and there stabbing the latter with a bladed weapon on his body, thereby inflicting upon the said NESTOR DURAN mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law."

In Criminal Case No. 28993, the trial court, in its Order of 22 May 1985, denied the fiscal's motion to withdraw the information for homicide but allowed the filing of an amended information for murder against Oscar and Ernesto.[4] Oscar filed a motion for the reconsideration of said Order, invoking double jeopardy, which the court

denied on 5 July 1985, holding that the defense violated the "principle of right dealing and good faith" in failing to inform the court of the pending petition for review before the Ministry of Justice.[5] Later, however, the lower court relented. Noting that the information for homicide was sufficient in form, that the court had acquired jurisdiction thereover, and that the accused had pleaded not guilty to the charge, the court held that to dismiss the information for homicide and to amend it to the more serious charge of murder could put the accused in double jeopardy.[6]

In an Order, dated 20 January 1986, Judge Conrado T. Limcaoco of Branch XI, directed that Criminal Case No. 36370 be consolidated with Criminal Case No. 28993.[7]

On 24 March 1986, the court further directed that Oscar and Ernesto be "tried under separate informations." [8] The prosecution filed a motion for the reconsideration of this Order but the lower court denied it in an Order, dated 23 May 1986, handwritten on the face of the motion itself.[9]

Criminal Case No. 28993 was later again raffled; this time the case went to the sala of Judge Eduardo R. Bengzon who formally denied the motion for the reconsideration of the Order of 24 March 1986.[10] The denial prompted the mother of the victim, Aurora Duran, to file with this Court a petition (G.R. No. 76804-05) for certiorari.[11] The petition, however, was referred to the Court of Appeals for proper determination pursuant to this Court's Resolution of 19 January 1987.[12] In its Decision of 29 June 1987, the Court of Appeals[13] said that since Oscar's plea in Criminal Case No. 28993 had been ordered withdrawn on account of its improper entry, there could not have been a valid arraignment. It concluded that inasmuch as the existence of a plea was an essential requisite for double jeopardy to set in, the trial court had abused its discretion in quashing the information for murder against Oscar. Accordingly, the Court of Appeals ordered the lower court to dismiss Criminal Case No. 28993 and to proceed with Criminal Case No. 36370.[14]

Oscar appealed the decision of the Court of Appeals to this Court (G.R. No. 79030-31). In a Resolution, dated 11 January 1988, this Court ruled that the appellate court's order could indeed place Oscar in double jeopardy. The Court thus set aside the appealed order, and it remanded the case to the court of origin for trial of the accused Oscar Balderama for homicide on a separate information from that of the accused Ernesto Balderama.[15]

A motion for reconsideration of the above resolution having been denied,[16] Branch XLIX of the lower court, now presided over by Judge Romeo J. Callejo, set for trial Criminal Cases No. 28993 and No. 36370[17] which had theretofore been archived pending the resolution of the petition aforesaid before this Court.[18]

The prosecution's evidence would show that between two and three o'clock in the morning of 03 September 1983, Jose Noda, Jr., a jobless 28-year-old, was attending, at No. 214 and No. 216, Masikap Street, Tondo, Manila, the wake for deceased "Mang Surek". Between those early hours, a heated argument ensued between Nestor Duran and Ernesto Balderama. Cooler heads intervened. Ernesto went home. Nestor shortly thereafter also left and stayed just outside his own house which was nearby. Nestor and Ernesto lived along the same street.

Less than ten minutes later, Ernesto came back, carrying a piece of wood ("pamalong kahoy"), and challenged Nestor to a fight. Nestor did not take on the challenge; instead, he started to back away. Then, Ernesto shouted, "Birahin mo na, birahin mo na." Oscar, Ernesto's brother, suddenly emerged from behind and stabbed Nestor at the back. Nestor fell to the ground. Ernesto was about to and would have hit the fallen Nestor with the "pamalo" had it not been for someone's timely intercession. Ernesto instead turned his ire on this person, hitting him on the left forearm. Ernesto's wife, Mercy, also slapped the person and joined others in kicking him as he, too, now laid sprawled on the ground. He was pulled out by Noda and brought to the house of Aurora Duran, Nestor's mother. Noda then saw Oscar ran away. Nestor was later brought to the hospital by some good samaritans. The following day, Noda learned that Nestor had died.[19]

Corroborating Noda's testimony was that of Enrico Ebueng. According to Ebueng, Ernesto, who was also known in the community as Olong, arrived drunk and sought to stop the gambling ("Pusoy") being held at the wake. Nestor tried to reason with Olong, saying that the game proceeds ("tong") were intended for the wake. A heated argument ensued between Nestor and Ernesto. After the two were mollified, Nestor went home with Ebueng. Later, Ernesto also left but he soon returned and went in front of the house of Nestor. Ernesto, who was holding a nightstick ("batuta") used by barangay tanods,[20] challenged Nestor to a fight, "lalaki sa lalaki" but the latter, who was by the door of his house, answered, "tama na, tama na".[21] As Ernesto was stepping closer to Nestor, the latter, when Ernesto was now only about a meter away, moved backwards towards the corner of Masikap and Mabuhay Streets. At the corner, Ernesto shouted, "Birahin mo, birahin mo." Oscar suddenly appeared from behind swung his right hand "backward and forward" at waist level and stabbed Nestor from behind. Ernesto was going to hit Nestor with the "batuta" after he fell but Ebueng succeeded in pacifying Ernesto ("naawat ko na ho").[22]

Ebueng was two meters distant when he saw Oscar hit Nestor. The place was lighted by a fluorescent lamp and a light bulb from nearby houses. Ebueng had followed the duo to the street corner three houses away from Nestor's house.

Nestor, an amateur cyclist who had seven medals to his credit as a member of the Philippine Cycling Association,[23] died at the Jose Reyes Memorial Hospital.[24] He was autopsied at the Funeraria del Sol in Tondo by the medico-legal officer, Dr. Marcial Ceñido, of the Western Police District. Dr. Ceñido testified that Nestor's assailant used a "pointed bladed weapon" in attacking Nestor at the back.[25] Exhibit A, the postmortem report he prepared, states:

“EXTERNAL FINDINGS:

1. Hacking wound, debrided and sutured, left posterior lumbar extending to right of posterior midline, measuring 19 cm. x 2 cm. grazing the 2nd and 3rd lumbar vertebrae, cutting the tip of the 11th left rib, transecting the lower pole of the left kidney and perforating the cecum; and
2. Deep abrasion, left elbow measuring 4 cm. x 1.5 cm.

Others: Sutured laparotomy incision measuring 27 cm., colostomy at right anterior abdomen, drainage at left antero-lumbar region and cut down at the middle 3rd of the left arm.

INTERNAL FINDINGS:

1. Repaired lower pole of the left kidney and ascending colon, cutting of the tip of the left 11th rib and grazing of the 2nd and 3rd lumbar vertebrae; and generalized pallor;
2. Pneumonic consolidation and subpleural petechias, bilateral; and
3. Recovered from stomach about 1/2 glass of yellowish liquid without alcoholic odor.

CAUSE OF DEATH:

Hacked wound, penetrating, left posterior lumbar with terminal pneumonia."

A different version of the incident was narrated by the defense. Ernesto, a "paper agent" who was around 35 years old when the stabbing incident occurred, was a "barangay tanod". He testified that at around three o'clock in the morning of 03 September 1983, he and fellow "tanod" Eduardo Labadia went to Mabuhay Street. On chancing upon a group, among them Nestor and Ebueng, who were on a "drinking" spree, he warned them, "Bawal mag-inuman dito sa kalsada. Kung maari lang po umakyat kayo sa bahay, baka madaanan kayo ng pulis at

ipinagbabawal sa amin ng OIC namin."[26]

Ernesto and other "barangay tanods" then proceeded to the house where "Mang Surek" was lying in state. Shortly afterwards, Nestor arrived apparently drunk. He hurled invectives at Ernesto, saying "Putang ina mo, Olong," and suddenly he pulled out a knife. Ernesto retreated to around two meters. As Ernesto was backing towards the direction of Kagitingan Street, Nestor followed ("sumusugod po") and tried to stab Ernesto three times but never found their mark. Then someone, whom at the time Ernesto did not recognize, passed behind him, swung his arm "forward and backward" at waist level, and stabbed Nestor. The assailant ran away, while Ernesto proceeded home. He learned the following morning that the person who stabbed Nestor was his own brother.[27]

Oscar, 22 years old when he testified, was a native of San Policarpio, Eastern Samar, but came to Manila July, 1983. He stayed with his brother Ernesto and helped the latter in his paper business. On 02 September 1983, he slept at seven o'clock in the evening. Upon waking up at around three o'clock the following morning, Oscar peeped through the window at the ground floor of Ernesto's two-storey house and saw Ernesto being attacked by a person who was holding a bladed instrument. Posthaste, he looked for something with which he could use to defend his brother and found a knife used for slicing paper. He went out, passed behind Ernesto, faced Nestor and then stabbed him ("kinadyot ko siya"). He said that he had no intention to kill but merely to save his brother from Ernesto's attacker.[28] Oscar, after stabbing Nestor, ran towards Mabuhay Street, threw away the knife he used, boarded a jeepney to Divisoria and proceeded to Dasmariñas, Cavite, where his other brother stays.[29]

To corroborate the Balderama brothers' story, Peregrino Balais testified that between one and four o'clock in the morning of 03 September 1983, he was watching the gambling game being held at the wake. He recalled having seen Ernesto Balderama, Eduardo Labansa, and a cigarette vendor named Gloria, as among those watching the "pusoy". Suddenly, Nestor Duran arrived, hurled invectives at Ernesto and pulled out a knife. Nestor said, "Putang ina mo, Olong, pinahiya mo ako kanina sa mga bisita ko." Ernesto stepped back, and while still retreating a person came out from behind Ernesto and swung his right hand towards Nestor Balais recognized the attacker as Oscar Balderama because the place was well-lighted. Nestor tried to chase Oscar but Nestor fell to the ground face down.[30]

Also testifying for the defense was Elma Rodriguez, a sexagenarian and a self-confessed police informer. She said that at 3:20 a.m. of 03 September 1983, she was walking along Masikap Street on her way to the Asuncion Market to buy fruits when she saw a person attacking ("sumusugod") another who was retreating towards Kagitingan Street. She identified the attacker as Ernesto Duran. After Ernesto Duran tried to stab his quarry, someone stepped out from the dark and stabbed Ernesto Duran.[31] The impression one gathers from the rest of her testimony is that, the defense would want to picture Nestor as "a killer, a holdupper and a rioter" and Ernesto a person of good character."[32]

On rebuttal, Aurora Duran swore that her son, Nestor, certainly was not the notorious person the defense would rather make him appear to be.[33] The prosecution also presented documentary evidence showing that police and NBI reports about a certain "Nestor Duran", long deceased, with criminal records, could not have been the victim who was only five or six years old at the time.[34] Noda, also on rebuttal, testified that he never saw defense witnesses Peregrino Balais and Elma Rodriguez in or around the vicinity of the stabbing incident.[35]

On 30 May 1989, the lower court[36] rendered a decision, convicting the accused of the crime charged, viz:

"WHEREFORE, the Court hereby renders judgment as follows:

1. In Criminal Case No. 84-28993, the Court finds the Accused OSCAR BALDERAMA guilty beyond reasonable doubt, as principal, for the crime of "Homicide" and hereby imposes on him an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor as Minimum to SEVENTEEN (17)

YEARS, FOUR (4) MONTHS and ONE (1) DAY, of Reclusion Temporal as Maximum;

2. In Criminal Case No. 85-36370, the Court finds the Accused ERNESTO BALDERAMA guilty beyond reasonable doubt, as principal for the crime of "Murder" and hereby imposes on him the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law.

Both Accused are hereby ordered to pay, jointly and severally to the heirs of Nestor Duran the amount of P10,000.00 as actual damages, the amount of P30,000.00 as moral and exemplary damages and P10,000.00 as attorney's fees (Clemente Brinas v. People, et al. 125 SCRA 687) and to pay the costs of suit. The Prosecution has not adduced sufficient competent evidence to prove that the deceased, at the time of his death, had a fixed regular income from his being an amateur cyclist. Although the Prosecution adduced evidence that Aurora Duran agreed to pay the Private Prosecutor a fixed fee of P15,000.00 and P500.00 for every appearance of the Private Prosecutor before the Court, however, the Court has the discretion to reduce the fees of counsel considering all attendant circumstances.

The period during which the Accused underwent detention during the pendency of these cases shall be credited to them provided that they agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail.

SO ORDERED."

The accused Balderama brothers interposed this appeal. Later, however, appellant Oscar Balderama withdrew his appeal which, after verification, was granted by this Court in its resolution of 10 February 1992,[37] leaving Ernesto's case for consideration.

The issues center on the credibility of witnesses and their declarations at the trial. As to be expected, the testimonies of the witnesses for the prosecution are diametrically opposed to those given by the defense witnesses. The established rule, of course, is that in assigning values to declarations on the witness stand, the trial judge must aptly be considered as the best evaluator.[38] Unlike an appellate court which has to rely almost entirely on inanimate records and transcripts of stenographic notes, the trial judge has the advantage of closely observing the demeanor of witnesses in responding to both direct and cross examinations during hearings.[39] Thus, in the absence of any real showing that it has overlooked or misconstrued some facts or circumstances of weight and substance which can affect his conclusions on a case, the trial judge's findings on credibility will not be disturbed on appeal.[40] We do not find any valid exception in this case.

Going through the records, we can see that the prosecution witnesses have come out straightforwardly, and hardly are we able to discern any serious flaw in their declarations that would cast doubts on their veracity. We cannot say that much in the case of the defense witnesses. Ernesto's own account of the incident lacks spontaneity, and leaves one to wonder how it can possibly be believed. Ernesto was a "barangay tanod". After the stabbing incident, he did not, despite the presence of other "barangay tanods", attempt to pursue and arrest the assailant; instead, he declared, he proceeded home. He was an eyewitness to the crime, and indeed, if we are to give credence to his testimony, the intended victim of Nestor, yet he apparently remained unconcerned. He said he did not, despite his proximity, recognize his own brother when he gave the fatal thrust to Nestor, yet, admittedly, the place was well-lighted. He did not even bother that evening to investigate who the assailant was. Oscar himself, strangely enough, left the scene of the crime and proceeded to Cavite without any word to Ernesto.

The testimonies of Noda and Ebueng were positive declarations, whereas those of the accused brothers and their witnesses, by and large, were in the nature of mere denials of appellant's culpability. For instance, Balais testified that appellant did not utter anything just before Oscar stabbed Nestor[41] to belie the testimonies of Noda and Ebueng that Ernesto shouted "Birahin mo," or "birahin mo na," as Nestor was backing away from the aggressive stance of Ernesto. In case of contradictory declarations and statements, greater weight is generally given to

positive testimonies than to mere denials.[42]

Appellant points out the supposed inconsistencies between the testimonies in court of Noda and Ebueng, on the one hand, and their respective sworn statements, Exhibits D and 5, on the other hand, particularly emphasizing that both failed to mention in their "sinumpaang salaysay" that appellant was carrying a "batuta" during the incident.[43] This particular inconsistency, the appellant argues, is so "glaring"- that the maxim *falsus in unum, falsus in omnibus*[44] should be applied. Besides the insignificance of the so-called inconsistency, similar argument in the past have repeatedly been put aside by the Court. In *People v. Villanueva*,[45] we said:

"x x x. Insofar as the alleged inconsistency between statements in Atienza's affidavit and Atienza's testimony in open court is concerned, it has often been noted by this Court that an affidavit being taken *ex parte* is almost always incomplete and often inaccurate, sometimes from partial suggestion and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject. Moreover, affidavits are frequently not complete reproductions of what the declarants had in mind, considering that affidavits are frequently prepared by the administering officer and cast in the latter's language or the latter's understanding of what the affiant had said, while the affiant frequently simply signs the affidavit after the same has been read to him. The statements made by witness Atienza during the preliminary investigation of the criminal case were merely reiteration of what Atienza's affidavit had set out and it may be recalled that preliminary investigations are commonly fairly summary or truncated in nature, being designed simply for the determination (not of guilt beyond reasonable doubt but) of probable cause prior to the filing of an information in court."

We add, a witness' testimony at the stand is open to scrutiny by both the prosecution and the defense, not to say even by the trial court. Since the parties and the court jointly shoulder the responsibility of ferreting out the truth, testimonies are certainly much more reliable than affidavits.

The defense has not shown any evil or improper motive on the part of Noda and Ebueng that would have prompted them to falsely impute responsibility on appellant for so grave a crime as that for which he is charged.[46] Appellant's contention that Ebueng's testimony is colored by his live-in relationship with the niece of Nestor hardly makes a dent.[47] In the absence of ill motive on the part of a witness, the mere fact that he may be a relative is not sufficient ground to disregard the witness' testimony nor does it render the same less worthy of credit.[48] In fact, it would be unnatural for a relative who is interested in vindicating a crime to accuse anyone other than the real culprit.[49]

The trial court's findings on the credibility of the prosecution witnesses and in giving credence to their testimonies coincide with the physical evidence. Thus, the defense theory that Oscar frontally attacked Nestor is completely belied by the autopsy report to the effect that Nestor sustained a mortal wound at the back. In the same manner, the defense story that it was Nestor who was drunk is belied by the postmortem report that "about 1/2 glass of yellowish liquid without alcoholic odor" was found in the victim's stomach.

We are not convinced, however, of the trial court's finding of murder.

Article 248 of the Revised Penal Code provides that murder is committed by any person who kills another treacherously. Under Art. 14 (16) of the same Code, there is treachery "when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make." It was while Nestor was retreating from Ernesto when Oscar stabbed Nestor at his back. An aggression from behind, however, does not necessarily make the act treacherous.[50] There is no showing that the aggressors "consciously" adopted a mode of attack to directly and specially ensure the execution of the act without any risk

to themselves. In fact, the stabbing was preceded by challenges to fight on Nestor by Ernesto. The first was when the two had a heated argument, and the second was less than ten minutes later, when Ernesto came back with a "batuta", which must have placed the deceased on guard; in any case, the latter cannot be said to have been totally unaware of possible danger.

We agree with the trial court that conspiracy has not been established beyond any reasonable doubt. While conspiracy may be inferred from the conduct of the accused and requires no evidence of prior agreement, such inference, however, must show that there was a concerted action before, during and after the commission of the crime evincing a common purpose or design.[51] Neither joint nor simultaneous action per se is sufficient indicium of conspiracy, a common design must further be shown to have motivated such action.[52] The only two pieces of evidence on this matter were that Ernesto had yelled "Birahin mo, birahin mo na" (Noda's account) or "birahin mo, birahin mo" (Ebueng's testimony), following which remark Oscar who was behind Nestor, stabbed Nestor, and that Ernesto thereafter attempted to strike at the fallen Nestor. Nevertheless, Ernesto's remarks make him no less than a principal by inducement. In *People v. Canial*,[53] the Court said that for the utterances of an accused to make him a principal by inducement, the same must be of a nature and uttered in such manner as to become the determining cause of the crime, and that the inducement precisely was intended to serve such purpose." As aptly observed by the trial court:

"That the (a)ccused Ernesto Balderrama had great moral ascendancy and influence over the accused Oscar Balderama is bolstered by the fact that: (a) the (a)ccused Oscar Balderama worked for his brother, the (a)ccused Ernesto Balderama who gave him money for his allowances and clothings; (b) the (a)ccused Ernesto Balderama gave the (a)ccused Oscar Balderama food and shelter because the (a)ccused Oscar Balderama stayed in the house of Ernesto Balderama; (c) the (a)ccused Ernesto Balderama who was 35-years old, was much older than the (a)ccused Oscar Balderama who was barely 18-years old at the time; (d) the (a)ccused Ernesto Balderama was a Barangay Tanod."

We are convinced that Oscar, who was not shown to have any rancor against Nestor, would not have given the fatal thrust had it not been for Ernesto's shout of "Birahin mo na" or "birahin mo."

Evident premeditation, which was alleged in the information, has not been indubitably proven in this case. None of the elements of evident premeditation - (1) proof of the time when the accused decided to commit the crime; (2) proof of an overt act showing that the accused had clung to his determination to commit the crime; and (3) the lapse of time between the decision and the execution of the crime sufficient to allow the accused to reflect upon the consequences of his acts[54] - had been established by the prosecution. The essence of premeditation is that the accused meditated and reflected on his criminal intent between the time when the crime was conceived by him and the time it was actually perpetrated.[55]

There being no aggravating circumstances nor mitigating circumstances, the prescribed penalty under Article 249, in relation to Article 64, of the Revised Penal Code is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, the penalty that can be imposed on the accused appellant is an indeterminate sentence within the range of prision mayor as minimum and reclusion temporal medium as maximum. The award of indemnity should be increased to P50,000.00, conformably to existing policy.

WHEREFORE, the appealed decision of the lower court is **AFFIRMED** as above modified. The accused-appellant Ernesto Balderama is hereby declared **GUILTY OF HOMICIDE** and sentenced to suffer the 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 medium as maximum. He is further required to pay the heirs of the victim the sum of Fifty Thousand Pesos (P50,000.00), plus the cost of the suit.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Feliciano, J., (Chairman), on leave.

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- [1] Record in Crim. Case No. 28993, p. 14.
- [2] Ibid., p. 17. The resolution of Deputy Minister Puno is found on p. 65.
- [3] Ibid., p. 24.
- [4] Ibid., p. 25.
- [5] Ibid., p. 34.
- [6] Ibid., p. 49.
- [7] Record in Crim. Case No. 36370, pp. 94.
- [8] Record in Crim. Case No. 28993, p. 72.
- [9] Ibid., p. 77.
- [10] Ibid., p. 108.
- [11] Ibid., p. 153.
- [12] Ibid., p. 150.
- [13] Associate Justice Oscar M. Herrera, ponente, with Associate Justices Leonor Ines Luciano and Justo P. Torres, Jr. concurring.
- [14] Ibid., p. 206.
- [15] Ibid., p. 247.
- [16] Ibid., p. 255.
- [17] Ibid., p. 257.
- [18] Ibid., p. 243.
- [19] TSN, April 22, 1988, p. 4-30.
- [20] TSN, June 29, 1988 (p.m.), p. 33.
- [21] Ibid., at 41.
- [22] TSN, June 29, 1988 (a.m.), pp. 3-25.
- [23] Exhs. F & N.
- [24] TSN, May 4, 1988, pp. 34-40.
- [25] TSN, April 22, 1988, p. 41 & 48.
- [26] TSN, November 11, 1988, p. 8-15.
- [27] Ibid., pp. 16-26.

- [28] TSN, October 5, 1988, pp. 2-12.
- [29] Ibid., pp. 17-18.
- [30] TSN, August 22, 1988, pp. 20-36.
- [31] TSN, March 6, 1989, pp. 4-15.
- [32] Ibid., pp. 16 & 21-22.
- [33] TSN, May 3, 1989, p. 33.
- [34] Exhs. L & M.
- [35] TSN, May 3, 1989, pp. 18 & 21.
- [36] Judge Romeo J. Callejo, presiding.
- [37] Rollo, 191.
- [38] *People v. Simbulan*, G.R. No. 100754, October 13, 1992, 214 SCRA 537.
- [39] *People v. Peran*, G.R. No. 95259, October 26, 1992, 215 SCRA 152.
- [40] *People v. Florida*, G.R. No. 90254, September 24, 1992, 214 SCRA 227.
- [41] TSN, August 22, 1988, p. 34-35.
- [42] *People v. Antud*, G.R. No. 95684, October 27, 1992, 215 SCRA 190 citing *People v. Clores*, G.R. No. 82362, April 26, 1990, 184 SCRA 638.
- [43] Supplemental Brief, pp. 2-3.
- [44] Ibid., p. 6.
- [45] G.R. No. 96469, October 21, 1992, 215 SCRA 22, 28?29.
- [46] *Supra*.
- [47] Supplemental Brief, p. 6.
- [48] *People v. Sagadsad*, G.R. No. 88042, November 13, 1992, 215 SCRA 641.
- [49] *People v. Almario*, G.R. No. 69374, March 16, 1989, 171 SCRA 291.
- [50] *People v. Pajarit*, G.R. No. 82770, October 19, 1992, 214 SCRA 678.
- [51] *Angelo v. Court of Appeals*, G.R. No. 88392, June 26, 1992, 210 SCRA 402.
- [52] *People v. Regular*, G.R. No. L-38674, 108 SCRA 23/1981/.
- [53] L-31042-3, August 18, 1972, 46 SCRA 634.
- [54] *People v. Clamor*, 198 SCRA 642.
- [55] *People v. Antud*, G.R. No. 95684, 215 SCRA 190/1992/.

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