

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO AGUILAR ALIAS &NONONG,& ACCUSED-APPELLANT.*G.R. Nos. 98425-26. May 21, 1993*

Ponente: DAVIDE, JR., J.

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At around 8:30 o'clock in the evening of 1 August 1989 at Sitio Simsiman of Barangay Marguez in the Municipality of Esperanza, Province of Sultan Kudarat, Marcelino Aquino, who was then shelling corn under his house with his mother, Lilia Aquino, was suddenly shot at and hit by a bullet on his abdomen. He could only shout the word "Nay," before he fell dead. Three (3) more gunshots from different directions followed. Then came the shattering explosion of a hand grenade which had been lobbed into the house causing injuries to Lilia Aquino, Aileen (or Aileen) Aquino and Argie Aquino.

On the basis of the claim of Aileen Aquino and her husband, Salustiano Aquino, that one of the perpetrators of the heinous acts was Nonong Aguilar, the Station Commander of Esperanza, Sultan Kudarat filed two (2) separate criminal complaints for Murder[1] and Multiple Frustrated Murder[2] against Nonong Aguilar and two (2) unidentified persons designated as John Doe and Peter Doe with the 4th Municipal Circuit Trial Court (MCTC) of Bagumbayan-Esperanza, Sultan Kudarat on 9 August and 24 August 1989, respectively. Aguilar was arrested on 16 August 1989 on the strength of a warrant of arrest issued in the first case.[3] In the meantime, Aguilar filed a motion to fix bail bond,[4] which was opposed by the prosecution.[5] However, on the basis of an agreement between Aguilar's counsel and the prosecution, the MCTC issued on 6 September 1989 an order allowing the withdrawal of the motion without prejudice to its refiling in the Regional Trial Court and ordering the transmittal of the cases to the Office of the Provincial Prosecutor of Sultan Kudarat.[6]

On 25 September 1989, the Office of the Provincial Prosecutor of Sultan Kudarat filed with Branch 19 of the Regional Trial Court (RTC) of the Twelfth Judicial Region at Isulan, Sultan Kudarat, two (2) separate Informations for Murder and for Multiple Frustrated Murder against REYNALDO AGUILAR alias Nonong (the Nonong Aguilar referred to above) which were docketed as Criminal Case No. 1856 and Criminal Case No. 1857, respectively. The accusatory portions thereof read as follows:

CRIMINAL CASE NO. 1856

"That in the evening of August 1, 1989, at Sitio Simsiman, Barangay Marguez, Municipality of Esperanza, Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, in company with two (2) unidentified companions whose cases are still pending preliminary investigation before the 4th Municipal Circuit Trial Court of Bagumbayan-Esperanza, Sultan Kudarat, armed with firearms, conspiring, confederating together and helping one another, with intent to kill, with evident premeditation and treachery, did then and there, wilfully, unlawfully and feloniously, attack, assault and shot (sic) one MARCELINO AQUINO with the use of the afore-mentioned weapons, thereby inflicting gunshot wounds upon the latter which caused his instantaneous death.

CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines.”[7]

CRIMINAL CASE NO. 1857

"That in the evening of August 1, 1989, at Sitio Simsiman, Barangay Marguez, Municipality of Esperanza, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, in company with two (2) unidentified companions, conspiring, confederating together and helping one another, armed with a Hand Grenade, with intent to kill, with treachery, evident premeditation and by means of explosion, did then and there, wilfully, unlawfully and feloniously, throw said Hand Grenade beside the house of Marcelino Aquino, which said Hand Grenade exploded and as a result thereof, caused serious injuries upon the persons of Aileen Aquino, Argie Aquino and Lilia Aquino, thus performing all the acts of Multiple Murder as a consequence thereof, but which nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to the victims which prevented their deaths.

CONTRARY TO LAW, particularly Article 248 in relation to Article 6, of the Revised Penal Code of the Philippines.”[8]

During his arraignment on 2 November 1989, accused Reynaldo Aguilar pleaded not guilty to both charges.[9] Both cases were then consolidated for joint trial.[10]

At the trial on the merits, the prosecution presented as its witnesses Salustiano Aquino and Lilia Aquino as its evidence in chief and Aileen Aquino and Salustiano Aquino on rebuttal. The defense relied upon the testimonies of Crescencio Dolero, Dionisio Castor, Ricardo Aguilar, Pfc. Merly Sevilla and the accused himself. The latter was recalled as a sur-rebuttal witness.

On 15 January 1991, the trial court promulgated its decision in the two (2) cases convicting accused Reynaldo Aguilar of the crimes charged.[11] The dispositive portion thereof reads:

"WHEREFORE, upon all the foregoing considerations, the court finds the accused, Reynaldo Aguilar alias Nonong, guilty beyond reasonable doubt of the crimes of Murder in Criminal Case No. 1856 and of Multiple Attempted Murder in Criminal Case No. 1857, as above-entitled.

ACCORDINGLY, the trial court sentences:

IN CRIMINAL CASE NO. 1856

1. The accused, Reynaldo Aguilar alias Nonong, to suffer the penalty of Reclusion Perpetua: to indemnify the heirs of the late Marcelino Aquino the sum of P30,000.00, as indemnity for death; and to pay the costs.

IN CRIMINAL CASE NO. 1857

1. The accused Reynaldo Aguilar alias Nonong, to suffer the indeterminate penalty of imprisonment ranging from TWO (2) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of prision correctional, as minimum, to SIX (6) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS of prision mayor, as maximum; and to pay the costs.

Being a detention prisoner, the accused is entitled to full credit of the entire period of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended by R. A. No. 6127, provided he has voluntarily complied in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.

IT IS SO ORDERED.”[12]

The evidence for the prosecution upon which the judgment of conviction is based is summarized in the Appellee's Brief[13] in this wise:

"On August 1, 1989, at around 8:30 p.m. in sitio simsiman, Marquez (sic), Esperanza, Sultan Kudarat, Marcelino Aquino and his mother Lilia Aquino, were under their house shelling corn, when suddenly the dogs barked.

Sensing that there may be somebody around, Marcelino went out flashing his flashlight presumably to look for someone who may be the object of the barking of the dogs. When Marcelino found nobody outside, he went back inside the house, sat beside his mother, and continued shelling corn.

On the other hand, Salustiano Aquino, brother of Marcelino, was upstairs preparing to go to sleep while his wife, Aileen Aquino, was breastfeeding their child, Argie Aquino.

The stillness of the night, however, was broken by a gunshot. Marcelino was hit in the abdomen and he was only able to say 'Nay', after which he died.

The first gunshot was followed by three more coming from different directions and then, there was a shattering explosion of a handgrenade (sic) causing shrapnel injuries to Aileen, Argie and Lilia.

After the grenade explosion, Salustiano, together with his wife and child slowly and quietly went downstairs and proceeded to the kitchen. Thereupon, Aileen saw appellant Nonong Aguilar standing about a meter away from the kitchen and holding a long firearm. (TSN, July 13, 1990, pp. 5-6).

Noting the presence of appellant near the kitchen of their house, Aileen whispered to Salustiano that appellant was there. Salustiano looked towards the man and he himself recognized him to be Nonong Aguilar. Salustiano was able to recognize appellant because he was very near to him, only about a meter away, and the light coming from the kerosene lamp was reflecting on him (appellant). (TSN, Jan. 9, 1990, pp. 13-15).

In their escape to the rice paddies nearby, Lilia, the mother of Salustiano, was able to catch up with them in the ricefield and together they were able to reach the house of Dionisio Castor. From there, they went to the Esperanza Police Station where they reported the incident.

For the death of Marcelino, a death certificate marked as Exh. "E" was issued and for the injuries sustained by Argie, Aileen and Lilia Aquino, medical certificates, marked as Exhs. "A" "B" and "D," respectively, were issued by Dra. Ramos, the physician who treated them.”[14]

On the other hand, the accused puts up the defense of alibi and advances the following factual version:

At 7:00 o'clock on that fateful evening of 1 August 1989, he was already asleep in his house in Simsiman, Marguez, Esperanza, Sultan Kudarat. At 9:30 o'clock that same evening, however, he was awakened by his father because the latter had heard "gun reports," followed by an explosion. The two of them went outside. Then, the group of Crescencio Dolero, the team leader of the CAFGU in the barangay, arrived; they wanted to know where the gun reports came from and he told them that they came from the direction of the house of the Aquinos. Dolero's group then proceeded to the house of the Aquinos.

The accused denies the testimony of Salustiano Aquino that he was seen by Aileen Aquino in the kitchen of the latter's house immediately after the incident in question and that Salustiano saw and recognized him, as he pointed a gun and fired at the victim Marcelino Aquino; he insists that he was then asleep in his house all the time during the occurrence of the incident.[15]

In giving full faith and credit to the version of the prosecution, the trial court made the following findings:

"From the foregoing summary of the testimonies of witnesses for both the prosecution and the defense, it can thus be seen that the prosecution would want the court to believe that its witnesses had duly identified and pointed to the accused, Reynaldo Aguilar, alias Nonong, as the person who shot and killed the deceased victim, Marcelino Aquino, in Criminal Case No. 1856, and the person responsible for the grenade explosion which caused and inflicted the shrapnel wounds to the victims in Criminal Case No. 1857, who were identified as Lilia Aquino, Aileen Aquino and Argie Aquino, which incidents happened in the evening of August 1, 1989; while on the other hand, the accused would like the court to consider his defense of denial and alibi.

Under the aforesaid factual backdrops (sic), had the prosecution successfully discharged the burden to prove the guilt of the accused beyond reasonable doubt?

There is no dispute, as the prosecution and the defense had openly admitted in court, that the accused, Reynaldo Aguilar alias Nonong, knows personally the deceased victim, Marcelino Aquino, the latter's brother, Salustiano Aquino and his wife, Aileen, and that the accused is, likewise, known personally to them, since the Aquino family and Aguilar family are friends and neighbors at Simsiman, Marguez, Esperanza, Sultan Kudarat.

Evidently, the prosecution relied heavily on the testimonies of Salustiano Aquino and Aileen Aquino who claimed to be eyewitnesses to the commission of the crimes, and had accordingly identified the accused, Reynaldo Aguilar alias Nonong, as the person who shot and killed their brother, Marcelino Aquino, in their house at Simsiman, Marguez, Esperanza, Sultan Kudarat, in the evening of August 1, 1989, and caused the shrapnel injuries suffered by Aileen Aquino, Argie Aquino and Lilia Aquino, as a result of a grenade explosion to which the said accused was pointed to as responsible.

While it is admitted that it was only a kerosene lamp that allegedly provided the light inside the house of Demetrio Aquino, in the evening of August 1, 1989, and which allegedly made possible the identification of the accused, Reynaldo Aguilar alias Nonong, by the prosecution witnesses, Salustiano Aquino and Aileen Aquino, who were only a meter away from the accused, the testimonies of the said prosecution witnesses on the identification of the accused would be credible. Thus, the Supreme Court in *People vs. Aboga, et al.*, No. L-70255, January 29, 1987, held that the testimony of a prosecution witness, who was only two arms length away and although there was no electricity but there was a wick lamp inside the house, is credible.”[16]

It then proceeded to cite several cases where this Court had reiterated the settled rule that alibi cannot prevail over the positive identification of the accused.

From this judgment, Reynaldo Aguilar interposed an appeal[17] to this Court which We accepted in Our Resolution of 10 July 1991.[18] In his Appellant's Brief,[19] he raises the following assignment, of errors:

"I. THE HONORABLE COURT A QUO ERRED IN GIVING FULL CREDENCE TO THE INCREDIBLE TESTIMONY OF PROSECUTION WITNESS SALUSTIANO AQUINO RELATIVE TO HIS ALLEGED POSITIVE IDENTIFICATION OF THE ACCUSED/APPELLANT.

II. THE HONORABLE COURT A QUO ERRED IN NOT FAVORABLY CONSIDERING THE UNBIASED TESTIMONIES OF DEFENSE WITNESSES CRESENCIANO (sic) DOLERO, DIONISIO CASTOR AND MERLY SEVILLA.

III. THE HONORABLE COURT A QUO ERRED IN CONVICTING, AND NOT ACQUITTING THE ACCUSED ON GROUNDS OF REASONABLE DOUBT.”[20]

The appeal is meritorious.

There is no evidentiary support to the conclusion of the trial court that the accused was personally responsible for the death of Marcelino Aquino and that he threw the hand grenade that exploded and caused injuries to Lilia Aquino, Aileen Aquino and Argie Aquino. Nobody saw the person who fired the first gunshot that hit Marcelino on his abdomen and killed him. The first gunshot was followed by three (3) more coming from different directions. This could only mean that there were three (3) different persons firing from different directions one of who fired the first shot, or that just one (1) person fired those three (3) shots while moving swiftly from one position to another, there being no proof that they were fired simultaneously. The three (3) gunshots were followed by the hand grenade explosion. On the assumption that there were at least three (3) assailants, the culpability of the accused would be dependent upon proof that either he was among the assailants and that he fired the first shot and threw the hand grenade toward the house of the victims, or that any of the assailants did either or both. In the latter case, proof of conspiracy among the assailants is a condition sine qua non to the culpability of the accused. Despite Our painstaking review and evaluation of the evidence, We find no credible and adequate proof that the accused either fired the first shot and threw the hand grenade or that there was a conspiracy among the assailants.

It appears clear to Us that the judgment of conviction of the accused for the death of Marcelino Aquino is anchored on the testimony in chief of Salustiano Aquino that minutes after the explosion which followed the three (3) gunshots, while he, his wife and son were proceeding towards the kitchen, he saw the accused pointing a gun at Marcelino Aquino. The portion of his testimony on this point is quoted by the trial court, thus:

"Q - While you were in the kitchen together with your wife Aileen Aquino and your son, what happened next?

A - My wife saw Nono Aguilar, sir.

Q - How did you know that your wife saw Nono Aguilar?

A - Because she whispered to me that Nono Aguilar was there, sir.

Q - And what did you do when your wife told you that Nono Aguilar was there?

A - I looked towards that man and I recognized him to be Nono Aguilar, sir.

Q - How far was Nono Aguilar from you when you saw him while you were in the kitchen of the house?

A - About one meter, sir. (Tsn., p. 13, Jan. 9, 1990, Underlinings supplied for emphasis).

x x x

Q - And when you saw him holding a gun, where did he point the gun?

A - Towards the victim, Marcelino Aquino, sir.

Q - How were you able to recognize Nono Aguilar when you saw him while you were in the kitchen when it was nighttime?

A - Because he is (sic) near to me and the light coming from the kerosine (sic) lamp was reflecting on him so I was able to recognize him, sir. (Tsn. p. 15, Jan. 9, 1990; Underlinings supplied for emphasis)."[21]

Salustiano testified that the accused then shot Marcelino, thus:

"Q - Did you actually see Nono Aguilar fire at the victim shortly before you ran away towards the rice paddies?

A - Yes, your Honor.

x x x

Q - Which came last, a gunshot or the grenade explosion?

A - A gunshot your Honor (Tsn., p. 46, Jan. 9, 1990)"[22]

It must be stressed here that Aileen was not presented by the prosecution to testify in chief. She was presented merely as a rebuttal witness to rebut the testimony of the accused that he was not in the house of the Aquinos during the evening in question. On rebuttal, she testified:

"Q - The accused in this case testified that he was not at your house at Sitio Simsiman, Marbuez (sic), Esperanza, Sultan Kudarat on August 1, 1989, at 8:30 in the evening carrying a long gun when Marcelino Aquino died at the said place, what can you say about this because he said he was at their house on that night?

A - That is not true, Sir.

Q - What is the truth then?

A - He was at home (sic), Sir and I saw him holding a long gun."[23]

Assuming arguendo that the foregoing declarations of Salustiano and Aileen are true, the trial court forgot the fact that even before the explosion which preceded the last shot had occurred, Marcelino Aquino was already dead. As earlier stated, Marcelino was hit by the first shot and died as a consequence thereof. This fact was admitted by the Appellee in the summary of the facts in its Brief. Consequently, unless the accused could be held equally culpable for the first shot, he cannot be held liable for murder for the so-called second gunshot allegedly fired at Marcelino in the presence of Salustiano and Aileen because Marcelino had been dead minutes before. But was there in fact a second gunshot fired at Marcelino? Elsewise stated, is the testimony of Salustiano that he saw the accused pointing a gun at Marcelino and shooting the latter credible? If it is, then Marcelino should have sustained two (2) gunshot wounds. The trial court so believed for in its decision, it stated:

"Evidently, the deceased, Marcelino Aquino, was shot twice. The first gunshot that hit him was fired outside the house during the strafing (sic). The second gunshot was fired inside the house, after the grenade explosion, by the accused, Reynaldo Aguilar alias Nonong, who was apparently seen and positively identified by prosecution witnesses Salustiano Aquino and Aileen Aquino."[24]

So did the prosecutor who filed the information in Criminal Case No. 1856 and alleged therein that "gunshot wounds" were inflicted on the victim. The death certificate,[25] however, belies all of these. As to the cause of death, the said certificate simply states: "Internal Hemorrhage 2d Gunshot wound, abdomen about 7 cm below the umbilicus."[26] This is clear enough to mean only ONE (1) gunshot wound -- not TWO (2). This wound could only have been caused by the first gunshot because Marcelino immediately died as a consequence thereof. If he sustained any other wound, only the doctor who examined the cadaver and issued the certificate of death could have testified thereon. Unfortunately, for reasons only known to itself, the prosecution did not present Dr. Rhodora T. Antenor, the Municipal Health Officer, who issued the certificate of death.

As stated earlier, absent any showing that the accused fired the fatal shot at Marcelino Aquino or threw the hand grenade that caused injuries to Lilia Aquino, Aileen Aquino and Argie Aquino, his culpability could only be sustained on the ground of conspiracy. All told, the only thing the prosecution has on this point is the alleged presence of the accused in the house of the Aquinos at the time the alleged crimes were committed. The trial court did not hesitate to rule that the accused was positively identified by Salustiano Aquino. Accused disagrees. Thus, in his first assigned error he vehemently insists that the trial court erred in giving full credence to Salustiano's incredible testimony relative to the latter's positive identification of the accused. As early as 1910, in *United States vs. Ambrosio*,[27] this Court laid down the rule that It will not interfere with the judgment of the trial court

in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence, which has been overlooked or the significance of which has been misinterpreted. Our adherence to this rule has been unswerving and tenacious as evidenced by its application in a plenitude of cases.[28] The reason for this is that the issue of the credibility of witnesses is best resolved by the trial court since it is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial.[29]

In the instant case, however, there is more to the exception than to the rule. Our own evaluation of the evidence and the challenged decision points out the failure of the trial court to consider, appreciate or apply one very significant fact which, if properly considered, appreciated and applied, could lead it to no other objective and logical conclusion than that neither Salustiano nor his wife Aileen could have identified the accused. That fact was the extinguishment of the light of the kerosene lamp, the only source of light in the house, upon the explosion of the hand grenade. This was categorically admitted by Aileen Aquino to wit:

"Q - When that big explosion occurred, the light of your house was put off?

A - Yes, sir. "[30]

This was obvious because the lamp was only about one and one-half (1½) meters from where the hand grenade explosion took place as testified to by Salustiano:

"Q - About how far was that kerosene lamp from the place where the explosion occurred (sic)?

A - About 1 & ½ meter sir. (TSN, Jan. 9, 1990, p. 39)."[31]

It was allegedly the light of the kerosene lamp which aided Salustiano in seeing and recognizing the accused. More specifically, Salustiano declared:

"Q - How were you able to recognize Nono Aguilar when you saw him while you were in the kitchen when it was nighttime?

A - Because he is (sic) near to me and the light coming from the kerosine (sic) lamp was reflecting on him so I was able to recognize him, sir. (Tsn., p 15, Jan. 9, 1990; Underlinings supplied for emphasis)."[32]

This testimony is obviously untrue because by then, as aforestated, the light of the lamp had already been extinguished as a result of the hand grenade explosion. This leaves only Salustiano's "nearness" to the accused as a basis for the identification. The former asserts that he was only a meter away from the latter and it was his wife Aileen who whispered to him that the accused was there. Both assertions only strengthen the conclusion that the so-called positive identification is, in fact, concocted. Since Salustiano and Aileen were together, it was not necessary for him to learn of the presence of the accused from the whispered information of Aileen, unless he was looking toward a different direction. Proof of the latter is wanting. If Aileen had to do it and Salustiano then "noticed" the presence of the accused, it was precisely because of the darkness inside the house. Otherwise, if the light was not extinguished, Salustiano could have seen, and would have perforce testified that he saw the accused on his own accord without the prompting of the whisper. Taken with Our earlier finding that Salustiano's testimony that the accused pointed a gun at and then shot Marcelino cannot be believed because the latter sustained only one (1) wound which could only have been caused by the first gunshot, then reasonable doubt inexorably surrounds the alleged culpability of the accused in both cases. In fine, this Court is not satisfied with moral certainty as to his guilt. True it is, as correctly held by the trial court, that his defense of denial and alibi cannot prevail over his positive identification. That rule, however, presupposes that no doubt exists as to the positive identification of the accused and that, above all, the latter is shown to have committed the crime beyond reasonable doubt. Unless the prosecution proves the latter thereby discharging its burden to negate the

presumption of innocence which the Constitution guarantees an accused, the latter need not even offer evidence in his behalf; he would be entitled to an acquittal. As this Court stated in *People vs. Dramayo*:^[33]

"Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty."

This reasonable doubt standard has constitutional stature for the due process clause in the Constitution protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.^[34]

IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered REVERSING the challenged Decision of Branch 19 of the Regional Trial Court, Twelfth Judicial Region, at Isulan, Sultan Kudarat in Criminal Case No. 1856 and Criminal Case No. 1857 and, for lack of proof beyond reasonable doubt, ACQUITTING the accused REYNALDO AGUILAR alias Nonong in both cases and ORDERING his immediate release from detention unless he is otherwise detained for some other lawful cause, with costs de oficio.

SO ORDERED.

Feiciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Docketed as Crim. Case No. 1025-E ????.

[2] Docketed as Crim. Case No. 1036???

[3] Id., 11.

[4] Id., 15.

[5] Id., 20.

[6] Id., 22.

[7] OR, Crim. Case No. 1856, 24.

[8] Id., Crim. Case No. 1857, 1.

[9] OR, Crim. Case No. 1856, 32; OR, Crim. Case No. ????, 36.

[10] Id., 34.

[11] Id., 193-215; Rollo, 22-44. Per Judge Germac ????

[12] OR, 214-215; Rollo, 43-44.

[13] Id., 62, et seq.

[14] Appellee's Brief, 6-8.

[15] TSN, 22 June 1990, 15-18; 21-24.

[16] OR, Crim. Case No. 1856, 208-209; Rollo, 37-38.

[17] OR, 216.

[18] Rollo, 50.

[19] Id., 57, et seq.

[20] Appellant's Brief, 22.

[21] Decision, 5-6; OR, Crim. Case No. 1856, 197-198; Rollo, 26-27.

[22] Id., 7-8; Id., 200; Id., 28-29.

[23] TSN, 13 July 1990, 5-6.

[24] Decision, 8; OR, Crim. Case No. 1856, 200; Rollo, 29.

[25] Exhibit "E", Id., 221.

[26] Emphasis supplied.

[27] 17 Phil. 295 [1910].

[28] People vs. Cabilao, 210 SCRA 326, 335 [1992].

[29] People vs. Simon, 209 SCRA 148 [1992] and the cases therein cited in footnote no. 12; People vs. Florida, G.R. No. 90254, 24 September 1992.

[30] TSN, 13 July 1990, 8.

[31] Brief for Appellant, 11.

[32] Decision, 5-6; OR, Crim. Case No. 1856, 197-198; Rollo, 26-27.

[33] 42 SCRA 59, 64 [1971]. See also, People vs. Zamora, 54 SCRA 47 [1973].

[34] People vs. Torrejas, G.R. No. 94187, 4 November 1992, citing In Re Winship, 397 U.S. 358, 90 S. Ct. 1068 25 L.E. 2d 368. Excerpted from LEWIS and PEOPLES, The Supreme Court and the Criminal Process, 1978 ed., 712.

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