

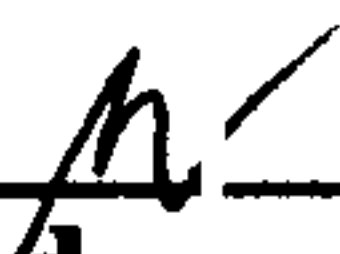
REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**      **CRIM. CASE NO. SB-13-CRM-0901**  
*Plaintiff,*      *For: Qualified Direct Assault*

- versus -

**EDGARDO S. COBANGBANG**      Present:  
*Accused.*      HERRERA, Jr., J., Chairperson  
   MUSNGI, J., Associate Justice  
   PAHIMNA, J., Associate Justice

*June 22, 2017*   
Promulgated

**RESOLUTION**

**MUSNGI, J.:**

The Court resolves the *Motion to Dismiss by Way of Demurrer to Evidence*<sup>1</sup> filed by accused Edgardo S. Cobangbang (“**Cobangbang**”) on 21 December 2016 and the *Opposition (To Accused Motion to Dismiss by Way of Demurrer to Evidence dated December 18, 2016)*<sup>2</sup> filed by the prosecution on 03 January 2017.

In his *Motion to Dismiss by Way of Demurrer to Evidence*, accused Cobangbang argues that the prosecution failed to overcome the constitutional presumption of innocence in his favor. He claims that the testimony of Dr. Amando Agdeppa (“**Dr. Agdeppa**”) only established that private complainant Angeles Savellano, Jr. (“**Savellano**”) suffered a contusion. It did not prove that the contusion was the result of a crime or that it was the accused who caused it. He also alleges that the affidavits of Savellano are hearsay because the latter did not testify as a witness before the Court. Therefore, accused asserts that he cannot be held liable for the crime of Qualified Direct Assault.

In its *Opposition (To Accused Motion to Dismiss by Way of Demurrer to Evidence dated December 18, 2016)*, the prosecution maintains that circumstantial evidence is sufficient to support a conviction. It asserts that the statement of private complainant Savellano before SPO2 Elimar Dela Cruz

<sup>1</sup> Records, Vol. 2, pp. 78-83.

<sup>2</sup> *Ibid.*, pp. 94-105.

("SPO2 Dela Cruz") was part of the *res gestae*, thus admissible as an exception to the hearsay rule. It claims that accused Cobangbang's failure to submit a Counter-Affidavit during the preliminary investigation of the present case should be considered as an admission by silence under Section 32, Rule 130 of the Revised Rules on Evidence.

### EVIDENCE FOR THE PROSECUTION

On 14 August 2013, an *Information*<sup>3</sup> was filed before the Court charging accused Cobangbang with the crime of Qualified Direct Assault under Article 148 of the Revised Penal Code. The *Information* reads:

"That on September 13, 2010, or sometime prior or subsequent thereto, in Barangay Bonifacio, Cabugao, Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, accused EDGARDO S. COBANGBANG JR., a high ranking public officer, being then the Mayor of Cabugao, Ilocos Sur, committing the offense in relation to office, and in the absence of a public uprising, did then and there willfully, unlawfully and feloniously assault/attack Angeles C. Savellano, Jr. (Savellano, for brevity), a person in authority, then the Punong Barangay of Barangay Bonifacio, Cabugao, Ilocos Sur, a fact known to the accused, while the latter was engaged in the performance of his duties or on the occasion thereof, by striking Savellano's head with a microphone during the Barangay General Assembly presided by the said victim, thereby inflicting physical injuries to him which required medical attention for Seven (7) to Ten (10) days.'

'CONTRARY TO LAW.'

To support its allegations, the prosecution offered the following:

1. The testimony of Dr. Agdeppa, stating that he attended to Savellano on 13 September 2010; that he issued a Medical Certificate dated 13 September 2010; and that if shown the said Medical Certificate, he will be able to identify the same as well as his signature thereon;<sup>4</sup>
2. The intended testimony of SPO2 Dela Cruz, who was not present in court during the initial presentation of prosecution evidence on 25 August 2015.<sup>5</sup> However, the presentation of SPO2 Dela Cruz's testimony was dispensed with due to stipulations made by both parties concerning the matters to be testified on. The parties stipulated the intended testimony of SPO2 Dela Cruz that he was a

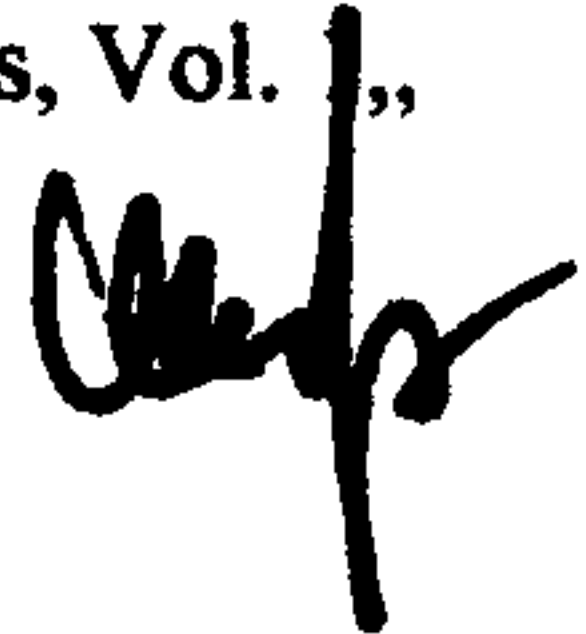
<sup>3</sup> Records, Vol. 1, pp. 1-2.

<sup>4</sup> *Ibid.*, at p. 336.

<sup>5</sup> Minutes of the Session Held by the Sandiganbayan, Second Division on 25 August 2015, Records, Vol. 1, p. 335.

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- police investigator of Cabugao Police Station; that he was assigned as police investigator in this case involving Angeles Savellano, Jr.; that he took down the Sworn Statement of Angeles Savellano, Jr. dated 15 September 2010; and that if shown that Sworn Statement, he will be able to identify the same as well as the signature thereon;<sup>6</sup>
3. The Complaint-Affidavit of Savellano dated November 2010 which was offered to prove the material allegations in the *Information* and establish that Savellano filed a complaint against accused Cobangbang before the Office of the Provincial Prosecutor of Ilocos Sur;<sup>7</sup>
  4. The Medical Certificate of Savellano issued by Dr. Agdeppa, from which the prosecution seeks to establish that Savellano went to Sinait District Hospital for medical attention after sustaining an injury on 13 September 2010;<sup>8</sup>
  5. The Complaint-Affidavit of Savellano executed at the Cabugao Police Station on 15 September 2010, which was offered to prove the material allegations in the *Information*<sup>9</sup> and to show that Savellano went to Cabugao Police Station on 15 September 2010 for the execution of his Complaint-Affidavit against accused Cobangbang, which was reduced in writing by SPO2 Dela Cruz,<sup>10</sup> and
  6. The Resolution of the Office of the Provincial Prosecutor of Ilocos Sur dated 01 February 2011, showing that the Office of the Provincial Prosecutor of Ilocos Sur found probable cause for the indictment of accused Cobangbang for Qualified Direct Assault arising from the complaint filed by Savellano.<sup>11</sup>

### RULING

The Court grants accused Cobangbang's *Motion to Dismiss by Way of Demurrer to Evidence*.

Article 148 of the Revised Penal Code provides:

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<sup>6</sup> Order dated 25 August 2015, Records, Vol. 1, p. 336.

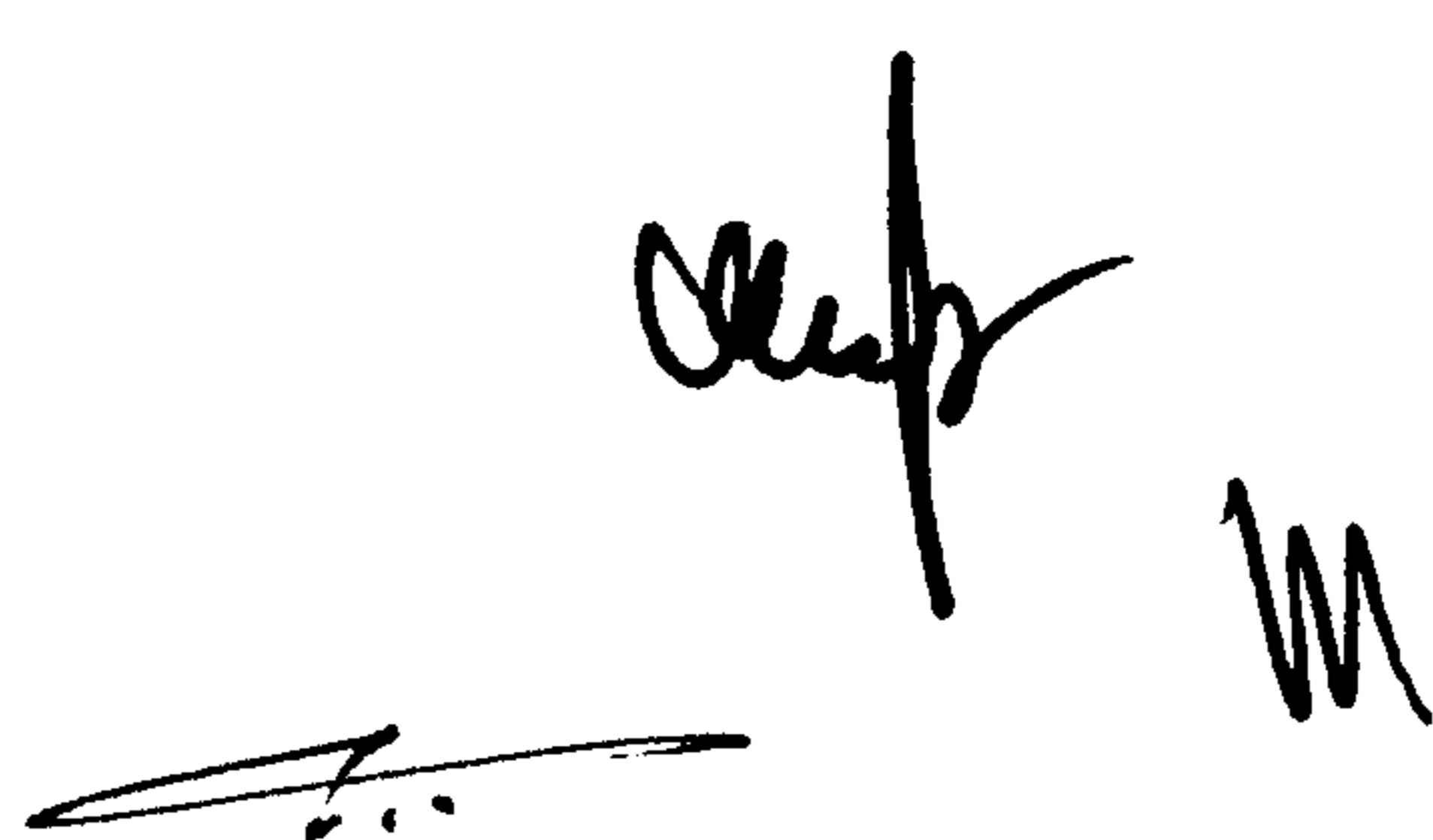
<sup>7</sup> Records, Vol. 2, p. 26.

<sup>8</sup> *Ibid.*, at pp. 26-27.

<sup>9</sup> *Ibid.*, at p. 27.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, at pp. 27-28.

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**“Article 148. Direct assaults.** - Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purpose enumerated in defining the crimes of rebellion

and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its medium and maximum periods and a fine not exceeding P1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period and a fine not exceeding P500 pesos shall be imposed.”<sup>12</sup>

The Supreme Court enumerated the essential elements of the crime of Direct Assault as follows:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance.
2. That the person assaulted is a person in authority or his agent.
3. That at the time of the assault the person in authority or his agent (a) is engaged in the actual performance of official duties, or [b] that he is assaulted by reason of the past performance of official duties.
4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.
5. That there is no public uprising.<sup>13</sup>

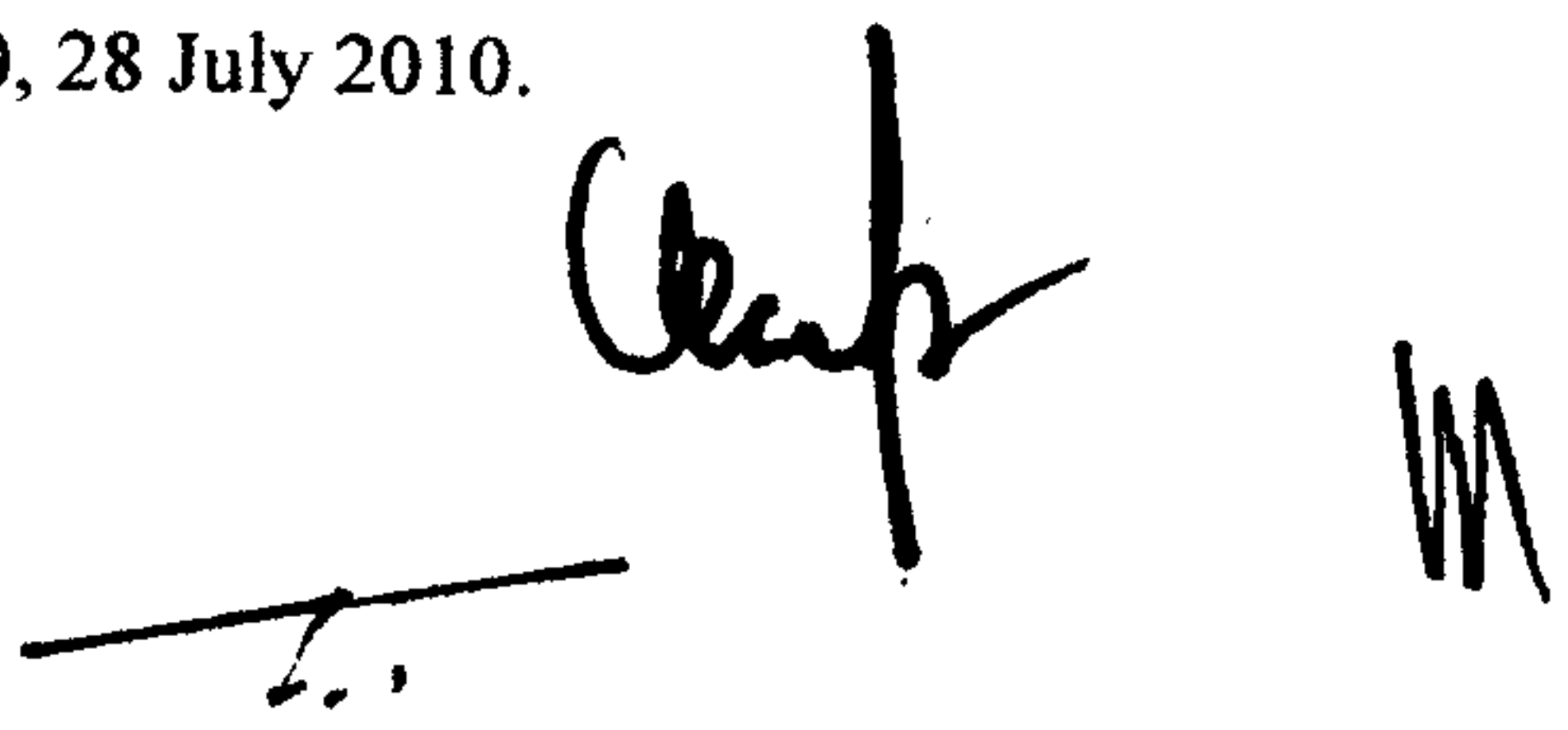
On the second element, the *Joint Stipulation of Facts* of the parties states that Savellano was a public officer at all times material to the case, being the Punong Barangay of Bonifacio, Cabugao, Ilocos Sur, and thus a person in authority.<sup>14</sup> There is no dispute as to the existence of the fifth element. There was no public uprising at all times material to the case.

The evidence of the prosecution, however, failed to prove the first, third, and fourth elements.

<sup>12</sup> An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 148 (1930).

<sup>13</sup> *Gelig v. People of the Philippines*, G.R. No. 173150, 28 July 2010.

<sup>14</sup> Records, Vol. 1, p. 277.

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The testimony of Dr. Agdeppa and the Medical Certificate of Savellano, while competent and relevant, only prove that Savellano suffered an injury. By itself, the said document do not establish an element of the crime of Direct Assault.

SPO2 Dela Cruz's intended testimony is hearsay. Section 36, Rule 130 of the Revised Rules on Evidence provides: "A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules."<sup>15</sup> In this case, SPO2 Dela Cruz has no personal knowledge of the alleged crime but merely relied on the alleged statements of Savellano, who failed to testify as a witness.

There is no merit to the prosecution's claim that the intended testimony of SPO2 Dela Cruz is an exception to the hearsay rule under Section 42, Rule 130 of the Revised Rules on Evidence, which provides:

**"Section 42. Part of res gestae. – Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae."**<sup>16</sup>

In *People of the Philippines v. Salafranca*,<sup>17</sup> the Supreme Court enumerated the requisites for the application of the rule on *res gestae*. Thus:

**"A declaration or an utterance is deemed as part of the res gestae and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur, to wit: (a) the principal act, the res gestae, is a startling occurrence; (b) the statements are made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances."**<sup>18</sup>

In the instant case, while the alleged criminal act of accused Cobangbang of hitting Savellano with a microphone may be considered a startling occurrence, the alleged statements of Savellano before SPO2 Dela Cruz were made after a considerable lapse of time. The Supreme Court has discussed the second requisite as follows:

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<sup>15</sup> REVISED RULES ON EVIDENCE, Rule 130, Section 36.

<sup>16</sup> REVISED RULES ON EVIDENCE, Rule 130, Section 42.

<sup>17</sup> G.R. No. 173476, 22 Feb. 2012.

<sup>18</sup> *Id.* (emphasis supplied).

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It goes without saying that the element of spontaneity is critical. The following factors are then considered in determining whether statements offered in evidence as part of the *res gestae* have been made spontaneously, viz., (1) **the time that lapsed between the occurrence of the act or transaction and the making of the statement**; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself. As to the first factor, the following proves instructive:

The rule is that the statements, to be admissible, should have been made before there had been time or opportunity to devise or contrive anything contrary to the real facts that occurred. What the law altogether distrusts is not afterspeech but afterthought.

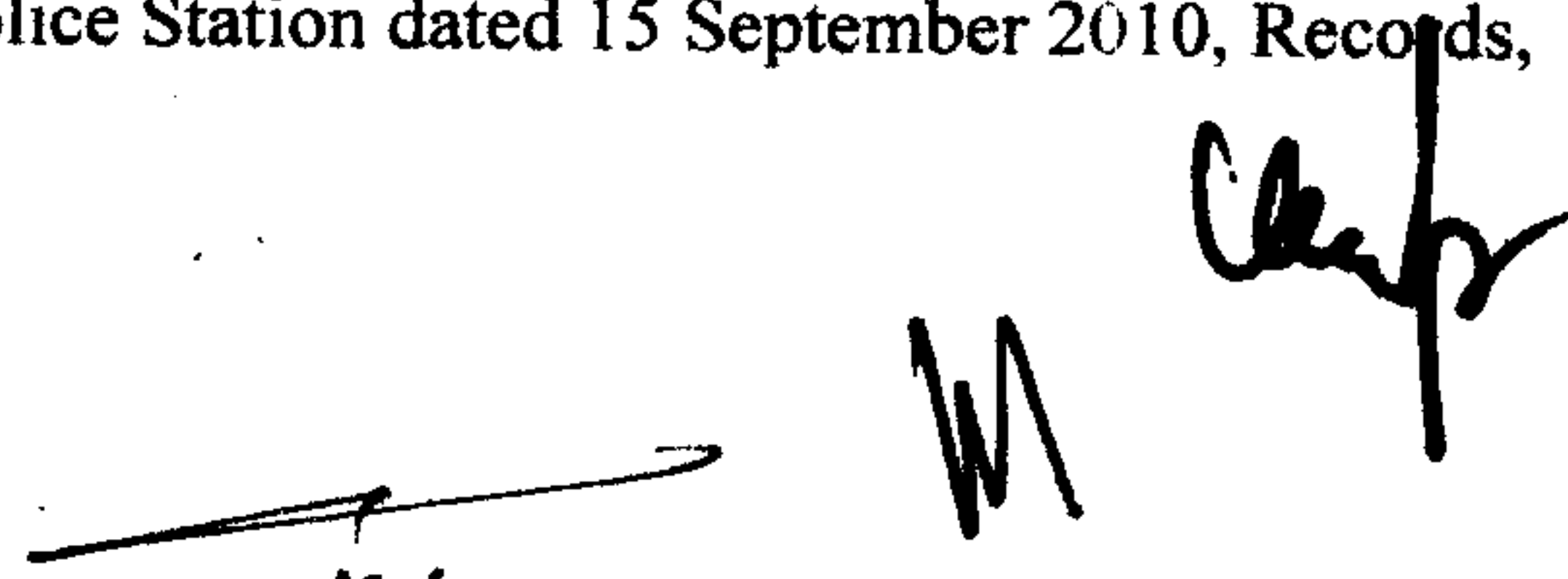
There are no limits of time within which the *res gestae* can be arbitrarily confined. These limits vary in fact with each particular case. The acts or declarations are not required to be contemporaneous with the primary fact, **but they must be so connected with it as to make the act or declaration and the main fact particularly inseparable, or be generated by an excited feeling which extends, without break or let-down, from the moment of the event they illustrate. In other words, if the acts or declarations sprang out of the principal transaction, tend to explain it, were voluntary and spontaneous, and were made at a time so near it as to preclude the idea of deliberate design, they may be regarded as contemporaneous in point of time, and are admissible.**<sup>19</sup>

In this case, the startling occurrence allegedly took place on 13 September 2010 between 8:00 to 10:00 o'clock in the morning.<sup>20</sup> The alleged declaration by Savellano to SPO2 Dela Cruz was made on 15 September 2010.<sup>21</sup> There was a time interval of **at least thirty-eight (38) hours** between the startling occurrence and the declaration by Savellano to SPO2 Dela Cruz. During the interim period, Savellano was even able to have a medical check-up before Dr. Agdeppa at the Sinait District Hospital. To the Court, such lapse of time failed to satisfy the requisites for the application of the *res gestae* exception to the hearsay rule.

<sup>19</sup> People of the Philippines v. Manhuyod, Jr., G.R. No. 124676, 20 May 1998 (emphasis supplied).

<sup>20</sup> Affidavit-Complaint of Savellano, Records, Vol. 1, p. 10.

<sup>21</sup> Affidavit-Complaint of Savellano executed in Cabugao Police Station dated 15 September 2010, Records, Vol. 1, pp. 15-16.

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While there is no specific standard as to the time interval in determining the applicability of the *res gestae* exception, the lapse of at least thirty-eight (38) hours in this case is just too much. In *People of the Philippines v. Navarro*,<sup>22</sup> the Supreme Court held that the declarant's answers to questions propounded in an investigation a day after the incident in question lacked the required spontaneity. In *People of the Philippines v. Preciados*,<sup>23</sup> the Supreme Court ruled that thirty-nine (39) hours is too long a time to be considered subsequent immediately to the startling occurrence. Consequently, the testimony of SPO2 Dela Cruz should be considered as hearsay.

Savellano's Affidavits dated November 2010 and 15 September 2010 are also hearsay. In *Republic of the Philippines v. Manotoc*,<sup>24</sup> the Supreme Court held:

**"Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon."**<sup>25</sup>

In the present case, Savellano was not presented as a witness. Hence, his affidavits are hearsay.

Lastly, the resolution of the Office of the Provincial Prosecutor of Ilocos Sur dated 01 February 2011 is not conclusive upon the Court.

While the preceding pieces of evidence were all admitted by the Court, the testimony of SPO2 Dela Cruz, the Affidavit Complaint of Savellano dated November 2010, and the Complaint Affidavit of Savellano dated 15 September 2010 and executed at the Cabugao Police Station should be given no weight for being hearsay. In *Bayani v. People of the Philippines*,<sup>26</sup> the Supreme Court explained:

<sup>22</sup> G.R. No. 129566, 07 Oct. 1998.

<sup>23</sup> G.R. No. 122934, 05 Jan. 2001.

<sup>24</sup> G.R. No. 171701, 08 Feb. 2012.

<sup>25</sup> *Id.* (emphasis supplied).

<sup>26</sup> G.R. No. 155619, 14 Aug. 2007.

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“While Evangelista’s statement may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight. **Admissibility of evidence should not be equated with weight of evidence. In this regard, it has been held that although hearsay evidence may be admitted because of lack of objection by the adverse party’s counsel, it is nonetheless without probative value, unless the proponent can show that the evidence falls within the exception to the hearsay evidence rule.**”<sup>27</sup>

All things considered, the prosecution has only proven the fact that Savellano suffered a contusion on 13 September 2010.

The prosecution’s claim that accused Cobangbang’s failure to submit a counter-affidavit during the preliminary investigation was an admission by silence is misplaced. In *Villanueva v. Balaguer*,<sup>28</sup> the Supreme Court clarified the applicability of the rule on admission by silence, to wit:

“Petitioner argues that by not responding to the above letter which expressly urged them to reply if the statements therein contained are untrue, respondents in effect admitted the matters stated therein, pursuant to the rule on admission by silence in Sec. 32, Rule 130, and the disputable presumption that acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact.

Petitioners argument lacks merit. **One cannot prove his claim by placing the burden of proof on the other party.** Indeed, (a) man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts [stated therein]. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. **Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission.**

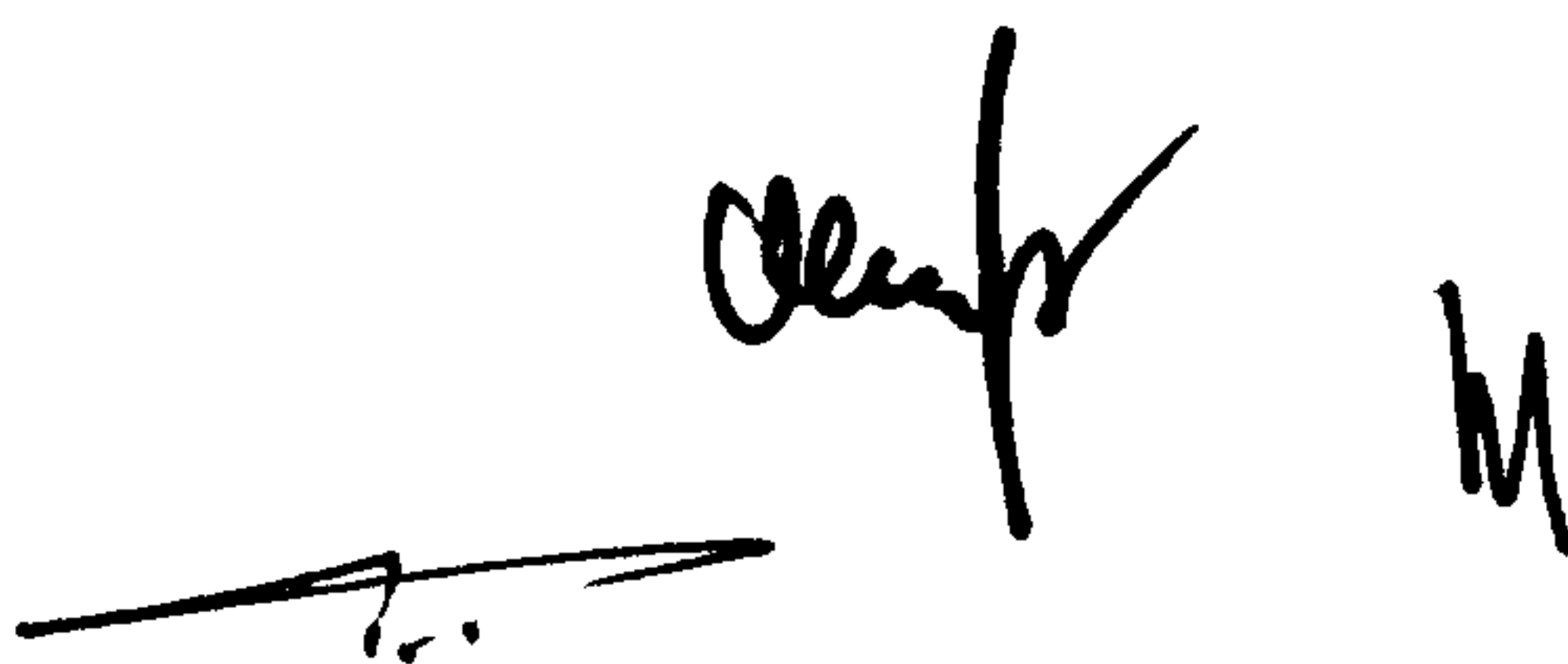
**Moreover, the rule on admission by silence applies to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant.** However, if there was no such mutual correspondence, the rule is relaxed on the theory that while the party would have immediately reacted by a denial if the statements were orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.

In the same manner, we also cannot assume an admission by silence on the part of Balaguer by virtue of his failure to protest or disclaim the attribution to him by the newspapers that he is the source of the articles. **As explained above, the rule on admission by silence is relaxed when the statement is**

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<sup>27</sup> *Id.* (emphasis supplied) (citation omitted).

<sup>28</sup> G.R. No. 180197, 23 June 2009.

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**not made orally in one's presence or when one still has to resort to a written reply, or when there is no mutual correspondence between the parties."**<sup>29</sup>

The Revised Rules of Criminal Procedure does not penalize the respondent for not submitting a counter-affidavit. If the respondent fails to submit a Counter-Affidavit, the investigating officer shall merely resolve the complaint based on the evidence presented by the complainant.<sup>30</sup> Accused Cobangbang's exercise of his constitutional right to remain silent shall not be taken against him. There was no mutual correspondence between him and the prosecution. Also, the statements in the Complaint-Affidavit were not made orally in the presence of the accused. Hence, the rule on admission by silence does not apply.

The prosecution argues that the circumstantial evidence that they presented should be enough to convict accused Cobangbang. Section 4, Rule 133 of the Revised Rules on Evidence provides:

**"Section 4. Circumstantial evidence, when sufficient. –**  
Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."<sup>31</sup>

In this case, the prosecution has only proven the circumstance that Savellano was injured on 13 September 2010. No other circumstance of the crime was proven. The facts from which the inference is derived were also not proven. The mere fact that Savellano suffered a contusion on 13 September 2010 is not sufficient to produce a conviction beyond reasonable doubt. In *Espineli v. People of the Philippines*,<sup>32</sup> the Supreme Court declared:

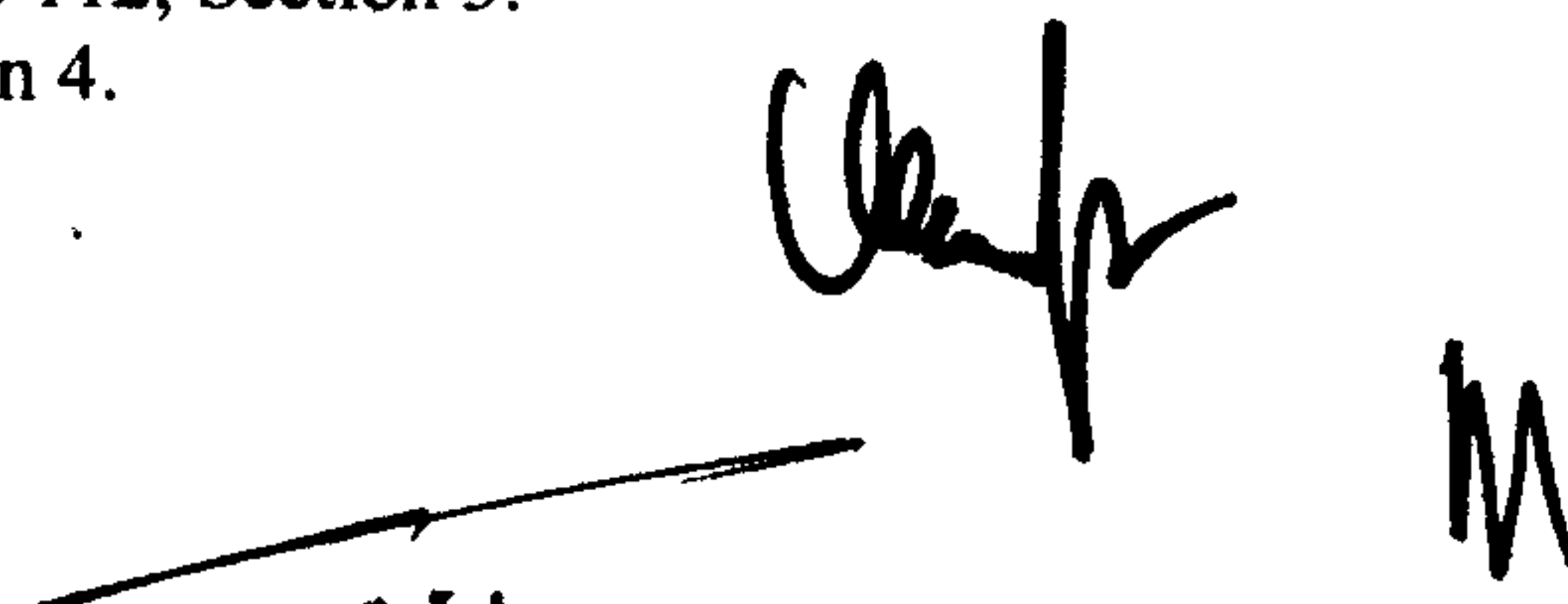
**"All the circumstances must be consistent with one another, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent. Thus, conviction based on circumstantial evidence can be upheld provided that the circumstances proved constitute an unbroken chain which leads to one fair and**

<sup>29</sup> Villanueva v. Balaguer, G.R. No. 180197, 23 June 2009 (emphasis supplied).

<sup>30</sup> REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, Section 3.

<sup>31</sup> REVISED RULES ON EVIDENCE, Rule 133, Section 4.

<sup>32</sup> G.R. No. 179535, 09 June 2014.



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**reasonable conclusion that points to the accused**, to the exclusion of all others as the guilty person.<sup>33</sup>

The prosecution failed to prove even a mere chain of events, whether unbroken or not. The fact that Savellano suffered a contusion on 13 September might mean so many things. Without any other evidence, the same is not enough to convict accused Cobangbang.

Therefore, the prosecution failed to prove the guilt of the accused beyond reasonable doubt.


**WHEREFORE**, in light of the foregoing, the *Motion to Dismiss by Way of Demurrer to Evidence* filed by Edgardo S. Cobangbang is **GRANTED**. Accordingly, the case against the accused is hereby **DISMISSED**.

The cash bond posted by the accused for his provisional liberty is ordered returned, subject to the usual accounting and auditing procedures of the Court, and the Hold Departure Order issued against him is ordered **LIFTED** and **SET ASIDE**.

**SO ORDERED.**

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

**WE CONCUR:**

  
**OSCAR C. HERRERA, JR.**  
Associate Justice  
Chairperson

  
**LORIFEL L. PAHIMNA**  
Associate Justice

<sup>33</sup> *Id.* (emphasis supplied) (citation omitted).