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SO ORDERED.

Mendoza and *Buena, JJ .*, concur.

Quisumbing and *De Leon, Jr., JJ .*, are on leave.

SECOND DIVISION

[G.R. No. 126554. May 31, 2000]

ARB CONSTRUCTION CO., INC., and MARK MOLINA, *petitioners, vs.* **COURT OF APPEALS, TBS SECURITY AND INVESTIGATION AGENCY represented by CECILIA R. BACLAY,** *respondents.*

SYNOPSIS

TBS Security and Investigation Agency (TBSS) entered into two (2) Service Contracts with ARB Construction, Co., Inc., (ARBC) with a term of one-year, on renewable basis. However, with only a few months of existence, ARBC wanted to terminate their contract and replace TBSS with Global Security Investigation Agency (GSIA). TBSS did not agree because the contract could not be pre-terminated, in which ARBC agreed. Nevertheless, the number of guards assigned to them was reduced to only one by Mark Molina, ARBC's Vice-President for Operation. Thus, TBSS filed a complaint for Preliminary Injunction against ARBC and GSIA. TBSS prayed for the court to declare their contract to be subsisting and ARBC to refrain from replacing their guards with the GSIA guards, and for award of attorney's fees. ARBC moved to dismiss the complaint for lack of merit. TBSS filed a Motion for Leave to File Amended and Supplemental Complaint. TBSS submitted that it desired to pursue a case for Sum of Money and Damages instead of Preliminary Injunction and maintained that the cause of action would not substantially change as both were based on the same

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set of facts. ARBC opposed the motion. The trial court, however, granted the motion of TBSS to file the Amended and Supplemental Complaint. ARBC filed a Motion for Reconsideration, but it was denied. Meanwhile, Mark Molina filed a Motion to Dismiss the Amended and supplemental Complaint on the ground that it did not state a cause of action insofar as he was concerned. The trial court denied his motion, and directed him to file his answer. ARBC filed a petition with the Court of appeals (CA). Molina, likewise filed his own petition with the CA. The CA consolidated both appeals upon motion of TBSS. The CA rendered a decision denying both petitions. Hence, this petition.

The petition was partially granted. The Supreme Court reversed the denial of the Motion to Dismiss filed by Mark Molina. Molina could not be held jointly and severally liable for any obligation which petitioner ARBC may be held accountable, absent any proof of bad faith or malice on his part. It was incorrect to make him personally liable for his actuation as Vice President for Operation of ARBC. However, the Court affirmed the decision granting the TBSS's Motion for leave to file Amended and supplemental Complaint, for such did not alter the cause of action and the theory of the case.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; AMENDED AND SUPPLEMENTAL COMPLAINT; ADMISSIBLE WHEN AVERMENTS THEREIN REMAIN IDENTICAL WITH ORIGINAL.**— As correctly observed by the Court of Appeals, "the amendatory allegations are mere amplifications of the cause of action for damages xxx An amendment will not be considered as stating a new cause of action if the facts alleged in the amended complaint show substantially the same wrong with respect to the same transaction, or if what are alleged refer to the same matter but are more fully and differently stated, or where averments which were implied are made in expressed terms, and the subject of the controversy or the liability sought to be enforced remains the same." The original as well as amended and supplemental

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complaints readily disclose that the averments contained therein are almost identical.

2. **COMMERCIAL LAW; CORPORATION CODE; CORPORATE OFFICER NOT PERSONALLY LIABLE FOR OFFICIAL ACT UNLESS HE EXCEEDS HIS AUTHORITY; APPLICATION IN CASE AT BAR.**— It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. As a general rule, a corporation may not be made to answer for acts or liabilities of its stockholders or those of the legal entities to which it may be connected and vice versa. However, the veil of corporate fiction may be pierced when it is used as a shield to further an end subversive of justice; or for purposes that could not have been intended by the law that created it; or to defeat public convenience, justify wrong, protect fraud, or defend crime; or to perpetuate deception; or as an alter ego, adjunct or business conduit for the sole benefit of the stockholders. Prescinding from the foregoing, the general rule is that officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. Article 31 of the Corporation Code is in point — Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons xxx On the basis hereof, petitioner Molina could not be held jointly and severally liable for any obligation which petitioner ARBC may be held accountable for, absent any proof of bad faith or malice on his part. Corollarily, it is also incorrect on the part of the Court of Appeals to conclude that there was a sufficient cause of action against Molina as to make him personally liable for his actuations as Vice President for Operations of ARBC.

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APPEARANCES OF COUNSEL

Jose F. Mañacop for petitioners.
Villamor Villamor & Bahia Law Offices for private respondent.

D E C I S I O N

BELLOSILLO, *J.*:

ARB CONSTRUCTION CO., INC. (ARBC) and MARK MOLINA, Vice President for Operations of ARBC, in this consolidated petition, assail the Decision of the Court of Appeals in CA-G.R. SP Nos. 36330 and 36489 as well as the orders of the trial court dated 9 September 1994 and 9 December 1994 granting private respondent TBS Security and Investigation Agency's *Motion for Leave to File Amended and Supplemental Complaint* and denying petitioner Mark Molina's *Motion to Dismiss*, respectively.

On 15 August 1993 TBS Security and Investigation Agency (TBSS) entered into two (2) Service Contracts with ARBC wherein TBSS agreed to provide and post security guards in the five (5) establishments being maintained by ARBC. Clause 10 of the Service Contracts provides —

10. This contract shall be effective for a period of one (1) year commencing from 15th August 1993 and shall be considered automatically renewed for the same period unless otherwise a written notice of termination shall have been given by one party to the other party thirty (30) days in advance.

In a letter dated 23 February 1994 ARBC informed TBSS of its desire to terminate the Service Contracts effective thirty (30) days after receipt of the letter. Also, in a letter dated 22 March 1994, ARBC through its Vice President for Operations, Mark Molina, informed TBSS that it was replacing its security guards with those of Global Security Investigation Agency (GSIA).

In response to both letters, TBSS informed ARBC that the latter could not preterminate the Service Contracts nor could

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it post security guards from GSIA as it would run counter to the provisions of their Service Contracts.

On 23 March 1994 Molina wrote TBSS conceding that indeed the "security contract dated 15 August 1993 stipulates that the duration of the service shall be for a period of one year, ending on 15 August 1994 x x x and could not be preterminated until then."[1] Nevertheless, Molina decreased the security guards to only one (1) allegedly pursuant to Clause 2 of the Service Contracts which provides —

2. The AGENCY shall adopt a guarding system and post guards in accordance thereof, in the premises of the client throughout the whole 24 hours daily, using variable shifts of the guards at such hours as may be designated by the CLIENT or AGENCY. As required by the CLIENT, the security guards to be assigned by the AGENCY shall consist initially of the following x x x subject to be increased or decreased by the CLIENT at its sole discretion depending on the security situation or the exigency of the service, by giving the AGENCY at least SEVEN (7) days prior notice.[2]

Thus on 28 March 1994 TBSS filed a *Complaint for Preliminary Injunction* against ARBC and GSIA praying —

A. Forthwith and *Ex-parte*, that a Temporary Restraining Order be issued declaring the *status quo* and directing the Defendants or any person(s) acting in their behalf from performing acts of replacing the Plaintiff's security guards from other agencies;

B. After due hearing that a Writ of Preliminary Injunction, in like tenor, be issued upon posting of such bond as the Honorable Court may require;

C. After due hearing, that judgment be rendered —

1. Declaring the two (2) contracts for Security Services between Plaintiff and ARBC to be subsisting until August 15, 1994;

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[1] *Rollo*, p. 55.

[2] *Ibid.*

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2. Ordering Defendant GLOBAL to refrain from taking over the security services of ARBC and to withdraw its guards from the premises of ARBC, if they have been posted earlier;

3. Ordering ARBC to pay Plaintiff attorney's fees in the amount of ₱50.000.00 x x x[3]

In Answer, ARBC claimed that it decreased the number of security guards being posted at its establishments to only one (1) as the security guards assigned by TBSS were found to be grossly negligent and inefficient, citing the following incidents —

8. On February 6, 1994, a Mitsubishi roadgrader of herein defendant was stripped of parts amounting to ₱58,642.00;

9. On February 25, 1994, a concrete vibrator and mercury light assembly were stolen from the construction site of the Multipurpose Hall beside the swimming pool of herein defendant which is worth ₱2,800.00 x x x[4]

In conclusion, it prayed that the complaint against it be dismissed for lack of merit.

On 16 May 1994 TBSS filed a *Motion for Leave to File Attached Amended and Supplemental Complaint*. TBSS submitted that it now desired to pursue a case for *Sum of Money and Damages* instead of the one previously filed for *Preliminary Injunction*. It maintained that the *Amended and Supplemental Complaint* would not substantially alter its cause of action as both the original and amended complaint were based on the same set of facts.[5]

In addition to the allegations in its original complaint, TBSS alleged in its *Amended and Supplemental Complaint* that ARBC illegally deducted from the payroll the amounts of ₱15,500.00 and ₱2,800.00 representing the value of one (11) unit concrete vibrator and cassette recorder, respectively. It further argued

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[3] Records, pp. 18-19.

[4] *Rollo*, pp. 58-59.

[5] *Id.*, pp. 72-74.

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that ARBC withheld additional amounts from its payroll as payment for the parts of the grader that were stolen.[6] TBSS maintained that ARBC had an outstanding obligation of ₱472,080.46. Corollarily, TBSS prayed for moral damages of ₱500,000.00, exemplary damages of ₱200.000.00 and attorney's fees of ₱50,000.00.

On 2 May 1994 the trial court issued a temporary restraining order but due to the exigency of the situation TBSS decided to withdraw its security contingent from ARBC's premises on 13 May 1994.

ARBC opposed the *Motion for Leave to File Amended and Supplemental Complaint*[7] contending that the cause of action had been substantially altered.

On 9 September 1994 the RTC of Makati, Br. 59, granted the motion of TBSS to file the *Amended and Supplemental Complaint* rationalizing thus —

> Should the court find the allegations in the pleadings to be inadequate, the Court should allow the party to file proper amendments in accordance with the mandate of the Rules of Court that amendments to pleadings are favored and should be liberally allowed, particularly in the early stages of the law suit, so that the actual merit of the controversy may be speedily determined without regard to technicalities and in the most expeditious and inexpensive manner x x x[8]

ARBC filed a *Motion for Reconsideration* but on 3 November 1994 the motion was denied.

Meanwhile, Mark Molina filed a *Motion to Dismiss*[9] the *Amended and Supplemental Complaint* on the ground that it did not state a cause of action insofar as he was concerned. But on 9 December 1994 the trial court denied the motion to dismiss

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[6] *Id.*, p. 67.

[7] *Id.*, p. 75.

[8] *Id.*, p. 86.

[9] *Id.*, p. 90.

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and directed Molina instead to file his answer within ten (10) days from receipt of the order.

On 30 January 1995 ARBC filed a *Petition*[10] with the Court of Appeals alleging that the trial court committed grave abuse of discretion in issuing the Orders of 9 September 1994 and 3 November 1994. On 15 February 1995 Molina likewise filed a *Petition* before the Court of Appeals similarly attributing grave abuse of discretion to the trial court in issuing the order of 9 December 1994.

Parenthetically, upon motion of TBSS, the petition of Mark Molina in CA-G.R. SP No. 36484 was consolidated with the petition of ARBC in CA-G.R. SP No. 36330.

On 16 August 1996 the Court of Appeals rendered a Decision[11] denying both petitions of ARBC and Molina. On 3 October 1996 petitioners' *Motion for Reconsideration*[12] was denied. Hence, this petition.

In their consolidated *Petition* before this Court, petitioners first submit that THE COURT OF APPEALS ERRED IN HOLDING THAT PRIVATE RESPONDENT HAD THE RIGHT TO CHANGE ITS CAUSE OF ACTION IN VIEW OF A CHANGE IN THE SITUATION OF THE PARTIES AFTER THE FILING OF THE ORIGINAL COMPLAINT.[13] In support of this assigned error petitioners insist that —

> x x x (T)here was not only a substantial change in private respondent's cause of action but there was even an alteration in the theory of the case x x x (W)hile in the original complaint the only thing alleged and is being prayed for is for petitioner ARB (ARBC) to be enjoined from replacing the security guards of private respondent x x x and for the two contracts x x x to be enforced until August 15,

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[10] *Id.*, p. 104.

[11] Penned by Associate Justice Eduardo C. Montenegro, concurred in by Associate Justices Emeterio C. Cui and Jose C. de la Rama; *id.*, pp. 142-155.

[12] *Rollo*, p. 162.

[13] *Id.*, p. 14.

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1994 and for petitioner ARB (ARBC) to be ordered to pay x x x attorney's fees, what is alleged and is being prayed for in the amended and supplemental complaint is for both petitioners to be ordered to pay ₱171,853.80 (for unpaid services) x x x and ₱300,226.66 (for lost income) x x x plus moral and exemplary damages and attorney's fees.

Obviously, petitioner ARB (ARBC) is being required to answer for a liability or legal obligation under the amended and supplemental complaint wholly different from that stated in the original complaint such as but not limited to the amount of ₱171,852.80 which was never mentioned in the original contract. Under these circumstances, a different cause of action was introduced by the amendment.

Also, there was a change in the theory of the case. Whereas in the original contract what is sought for by private respondent is the enforcement of the two (2) contracts which is what is known in legal parlance as specific performance, in the amended and supplemental complaint what is sought for is x x x a rescission of the contracts with damages x x x[14]

We cannot subscribe to the contention of petitioners that the *Amended and Supplemental Complaint* substantially changed TBSS' cause of action nor was there any alteration in the theory of the case. As correctly observed by the Court of Appeals, "the amendatory allegations are mere amplifications of the cause of action for damages x x x An amendment will not be considered as stating a new cause of action if the facts alleged in the amended complaint show substantially the same wrong with respect to the same transaction, or if what are alleged refer to the same matter but are more fully and differently stated, or where averments which were implied are made in expressed terms, and the subject of the controversy or the liability sought to be enforced remains the same."[15]

The original as well as amended and supplemental complaints readily disclose that the averments contained therein are almost identical. In the original complaint, TBSS prays, among others, that the two (2) Service Contracts be declared as subsisting

[14] *Id.*, pp. 18-19.

[15] *Id.*, pp. 149-155.

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until 15 August 1994 and that petitioners be made to pay ₱50,000.00 as attorney's fees.[16] Significantly, in its penultimate paragraph, TBSS prays "for such other reliefs that are considered just and equitable under the premises."[17] This is a "catch-all" phrase which definitely covers the amplifications and additional averments contained in the *Amended and Supplemental Complaint*. Due to events supervening after the filing of the original complaint, it became incumbent upon TBSS to amend its original complaint. One of the supervening events was the withholding by petitioner ARBC of some amounts intended for the payroll of TBSS due to pilferage or losses which allegedly occurred due to the negligence and inefficiency of TBSS' security guards. Plainly, this withholding of the payroll was only an offshoot of the pretermination of the two (2) Service Contracts on the part of ARBC.

Significantly, the pretermination of the Service Contracts was already alleged in the original complaint. In fact it was one, if not the most basic, issue discussed therein. Since the withholding of the payroll was only an offshoot of the issue on the pretermination of the contract, we can safely conclude that the allegation on the withholding of the payroll in the *Amended and Supplemental Complaint* was only an amplification of an issue that was already included and discussed in the original complaint. It was therefore error on the part of petitioners to conclude that private respondent changed its cause of action in the *Amended and Supplemental Complaint*. Neither could they say that they were being made to answer for a liability or legal obligation that was wholly different from that stated in the original complaint.

Grave abuse of discretion therefore could not be imputed to the trial court for admitting the *Amended and Supplemental Complaint* of private respondent TBSS. It also follows that the appellate court could not be faulted for putting its stamp of approval on the order of the trial court admitting the same.

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[16] See Note 3.

[17] *Rollo*, p. 38.

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Petitioners also argue, as their second assigned error, that THE COURT OF APPEALS ERRED IN HOLDING THAT THE ALLEGATIONS IN THE AMENDED AND SUPPLEMENTAL COMPLAINT WERE SUFFICIENT TO HOLD PETITIONER MOLINA LIABLE TO PRIVATE RESPONDENT IN HIS PERSONAL CAPACITY. In support of their contention petitioners submit —

> x x x (W)hen x x x Molina allegedly applied ₱171,853.80 payable to private respondent to the losses suffered by petitioner ARB (ARBC) due to the negligence and indifference of the private respondent's security guards and when petitioner Molina replaced the said security guards x x x Molina was not acting in his personal capacity but x x x as officer of petitioner ARB (ARBC).
>
> Since petitioner Molina did not so act in his personal capacity but only in his official capacity as officer of petitioner ARB (ARBC) then petitioner Molina cannot be held personally liable for the alleged liability of petitioner ARB (ARBC) x x x[18]

In affirming the order of the trial court denying petitioner Molina's *Motion to Dismiss*, the appellate court ruled —

> Similarly, We find no error committed by respondent Judge in denying the motion to dismiss.
>
> In paragraphs 5, 17, 18 of the amended and supplemental complaint, it is alleged:
>
> > 5. But fate would have it that defendant ARBC would subsequently breach the aforesaid contracts by surreptitiously preterminating the same and as precursor thereto, defendant ARBC, through defendant Mark Molina, would impute against plaintiff pretended and fabricated violations and baselessly blame plaintiff for alleged losses of company properties by just deducting the values thereof from plaintiff's billings without even complying with the procedure agreed upon in the contracts x x x.
> >
> > It may be pertinent to state that all these accusations and imputations, albeit false and concocted, were made by defendant Mark P. Molina x x x.

[18] *Id.*, p. 25.

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17. Such unsalutary breach of contract by defendant ARBC through defendant Mark Molina has resulted to plaintiff's damage and prejudice by way of lost income consisting of the unexpired portion of the contract, *i.e.*, up to August 15, 1994, entailing a total amount of ₱300,266.66 x x x.

The above allegations, particularly the subparagraph, "It may be pertinent to state that all these accusations and imputations, albeit false and concocted, were made by defendant Mark P. Molina," are sufficient statement of a cause of action against petitioner Mark Molina in his personal capacity.[19]

In this regard, we agree with petitioners. It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. As a general rule, a corporation may not be made to answer for acts or liabilities of its stockholders or those of the legal entities to which it may be connected and vice versa. However, the veil of corporate fiction may be pierced when it is used as a shield to further an end subversive of justice; or for purposes that could not have been intended by the law that created it; or to defeat public convenience, justify wrong, protect fraud, or defend crime; or to perpetuate deception; or as an alter ego, adjunct or business conduit for the sole benefit of the stockholders.[20]

Prescinding from the foregoing, the general rule is that officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority.[21] Article 31 of the Corporation Code is in point —

Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any

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[19] *Id.*, pp. 151-153.

[20] *Palay, Inc. v. Clave*, G.R. No. 56076, 21 September 1983, 124 SCRA 640.

[21] *Nicario v. National Labor Relations Commission*, G.R. No. 125340, 17 September 1998, 295 SCRA 621.

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personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons x x x.

On the basis hereof, petitioner Molina could not be held jointly and severally liable for any obligation which petitioner ARBC may be held accountable for, absent any proof of bad faith or malice on his part. Corollarily, it is also incorrect on the part of the Court of Appeals to conclude that there was a sufficient cause of action against Molina as to make him personally liable for his actuations as Vice President for Operations of ARBC. A cursory reading of the records of the instant case would reveal that Molina did not summarily withhold certain amounts from the payroll of TBSS. Instead, he enumerated instances[22] which in his view were enough bases to do so.

Finally, petitioners contend that THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT DID NOT GRAVELY ABUSE ITS DISCRETION IN GRANTING PRIVATE RESPONDENT'S MOTION FOR LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT AND IN DENYING PETITIONER MOLINA'S MOTION TO DISMISS. In support hereof, petitioners submit that —

x x x (T)he trial court admitted the amended and supplemental complaint which substantially changed the cause of action and theory of the case of the private respondent. Therefore, there is (*sic*) abuse of discretion on the part of the trial court contrary to the ruling of the Court of Appeals that there is none.[23]

As already discussed, the *Amended and Supplemental Complaint* did not substantially alter the cause of action and theory of the case. Consequently, the trial court and the appellate court could not be charged with grave abuse of discretion in admitting the same.

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[22] See Note 4.

[23] *Id.*, p. 29.

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WHEREFORE, the PETITION is PARTIALLY *GRANTED*. The assailed *Decision* of the Court of Appeals in CA-G.R. SP No. 36489 affirming the 9 December 1994 *Order* of the Regional Trial Court-Br. 59, Makati City, which denied the Motion to Dismiss of petitioner Mark Molina is *REVERSED* and *SET ASIDE*.

However, the assailed Decision of the appellate court in CA-G.R. SP No. 36330 affirming the 9 September 1994 *Order* of the Regional Trial Court-Br. 59, Makati City, granting TBS Security and Investigation Agency's *Motion for Leave to File Amended and Supplemental Complaint* is likewise *AFFIRMED*. The case is remanded to the trial court for further proceedings. No costs.

SO ORDERED

Mendoza and *Buena, JJ .,* concur.

Quisumbing and *De Leon, Jr., JJ .,* are on leave.

EN BANC

[G.R. Nos. 127026-27. May 31, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO ALICANTE *y* DAVID,** *accused-appellant.*

SYNOPSIS

Appellant was convicted for seven (7) counts of rape of his minor daughter and was sentenced to death.

On appeal, appellant assails the trial court's reliance on the testimony of private complainant on two grounds: the prosecution failed to formally offer it in evidence in accord with Rule 132,