

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.LEO ECHEGARAY Y PILO, ACCUSED-APPELLANT.

G.R. No. 117472. February 07, 1997

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PER CURIAM:

On June 25, 1996, we rendered our decision in the instant case affirming the conviction of the accused-appellant for the crime of raping his ten-year old daughter. The crime having been committed sometime in April, 1994, during which time Republic Act (R.A.) No. 7659, commonly known as the Death Penalty Law, was already in effect, accused-appellant was inevitably meted out the supreme penalty of death.

On July 9, 1996, the accused-appellant timely filed a Motion for Reconsideration which focused on the sinister motive of the victim's grandmother that precipitated the filing of the alleged false accusation of rape against the accused. We find no substantial arguments on the said motion that can disturb our verdict.

On August 6, 1996, accused-appellant discharged the defense counsel, Atty. Julian R. Vitug, and retained the services of the Anti-Death Penalty Task Force of the Free Legal Assistance Group of the Philippines (FLAG).

On August 23, 1996, we received the Supplemental Motion for Reconsideration prepared by the FLAG on behalf of accused-appellant. The motion raises the following grounds for the reversal of the death sentence:

"[1] Accused-appellant should not have been prosecuted since the pardon by the offended party and her mother before the filing of the complaint acted as a bar to his criminal prosecution.

[2] The lack of a definite allegation of the date of the commission of the offense in the Complaint and throughout trial prevented the accused-appellant from preparing an adequate defense.

[3] The guilt of the accused was not proved beyond a reasonable doubt.

[4] The Honorable Court erred in finding that the accused-appellant was the father or stepfather of the complainant and in affirming the sentence of death against him on this basis.

[5] The trial court denied the accused-appellant of due process and manifested bias in the conduct of the trial.

[6] The accused-appellant was denied his constitutional right to effective assistance of counsel and to due process, due to the incompetence of counsel.

[7] R.A. [No.] 7659, reimposing the death penalty is unconstitutional per se:

a. For crimes where no death results from the offense, the death penalty is a severe and excessive penalty in violation of Article III, Sec. 19 (I) of the 1987 Constitution.

b. The death penalty is cruel and unusual punishment in violation of Article III, Sec. 11 of the 1987 Constitution."

In sum, the Supplemental Motion for Reconsideration raises three (3) main issues: (1) mixed factual and legal matters relating to the trial proceedings and findings; (2) alleged incompetence of accused-appellant's former

counsel; and (3) purely legal question of the constitutionality of R.A. No. 7659.

I.

It is a rudimentary principle of law that matters neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal before the Supreme Court. Moreover, as we have stated in our Resolution in *Manila Bay Club Corporation v. Court of Appeals*:^[1]

"If well-recognized jurisprudence precludes raising an issue only for the first time on appeal proper, with more reason should such issue be disallowed or disregarded when initially raised only in a motion for reconsideration of the decision of the appellate court."

It is to be remembered that during the proceedings of the rape case against the accused-appellant before the sala of then presiding Judge xxx, the defense attempted to prove that:

- a) the rape case was motivated by greed, hence, a mere concoction of the alleged victim's maternal grandmother;
- b) the accused is not the real father of the complainant;
- c) the size of the penis of the accused cannot have possibly penetrated the alleged victim's private part; and
- d) the accused was in xxx during the time of the alleged rape.

In his Brief before us when the rape case was elevated for automatic review, the accused-appellant reiterated as grounds for exculpation:

- a) the ill-motive of the victim's maternal grandmother in prompting her grandchild to file the rape case;
- b) the defense of denial relative to the size of his penis which could not have caused the healed hymenal lacerations of the victim; and
- c) the defense of alibi.

Thus, a second hard look at the issues raised by the new counsel of the accused-appellant reveals that in their messianic appeal for a reversal of our judgment of conviction, we are asked to consider for the first time, by way of a Supplemental Motion for Reconsideration, the following matters:

- a) the affidavit of desistance written by the victim which acted as a bar to the criminal prosecution for rape against the accused-appellant;
- b) the vagueness attributed to the date of the commission of the offense in the Complaint which deprived the accused-appellant from adequately defending himself;
- c) the failure of this Court to clearly establish the qualifying circumstance that placed the accused-appellant within the coverage of the Death Penalty Law;
- d) the denial of due process and the manifest bias exhibited by the trial court during the trial of the rape case.

Apparently, after a careful scrutiny of the foregoing points for reconsideration, the only legitimate issue that We can tackle relates to the Affidavit of Desistance which touches on the lack of jurisdiction of the trial court to have proceeded with the prosecution of the accused-appellant considering that the issue of jurisdiction over the subject matter may be raised at any time, even during appeal.^[2]

It must be stressed that during the trial proceedings of the rape case against the accused-appellant, it appeared that despite the admission made by the victim herself in open court that she had signed an Affidavit of Desistance, she,

nevertheless, "strongly pointed out that she is not withdrawing the charge against the accused because the latter might do the same sexual assaults to other women." [3] Thus, this is one occasion where an affidavit of desistance must be regarded with disfavor inasmuch as the victim, in her tender age, manifested in court that she was pursuing the rape charges against the accused-appellant.

We have explained in the case of *People v. Gerry Ballabare*, [4] that:

"As pointed out in *People v. Lim* (24 190 SCRA 706 [1990], which is also cited by the accused-appellant, an affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge." [5]

In the case at bar, all that the accused-appellant offered as defenses mainly consisted of denial and alibi which cannot outweigh the positive identification and convincing testimonies given by the prosecution. Hence, the affidavit of desistance, which the victim herself intended to disregard as earlier discussed, must have no bearing on the criminal prosecution against the accused-appellant, particularly on the trial court's jurisdiction over the case.

II

The settled rule is that the client is bound by the negligence or mistakes of his counsel. [6] One of the recognized exceptions to this rule is gross incompetency in a way that the defendant is highly prejudiced and prevented, in effect, from having his day in court to defend himself. [7]

In the instant case, we believe that the former counsel of the accused-appellant to whom the FLAG lawyers now impute incompetency had amply exercised the required ordinary diligence or that reasonable degree of care and skill expected of him relative to his client's defense. As the rape case was being tried on the merits, Atty. Vitug, from the time he was assigned to handle the case, dutifully attended the hearings thereof. Moreover, he had seasonably submitted the Accused-Appellant's Brief and the Motion for Reconsideration of our June 25, 1996 Decision with extensive discussion in support of his line of defense. There is no indication of gross incompetency that could have resulted from a failure to present any argument or any witness to defend his client. Neither has he acted haphazardly in the preparation of his case against the prosecution evidence. The main reason for his failure to exculpate his client, the accused-appellant, is the overwhelming evidence of the prosecution. The alleged errors committed by the previous counsel as enumerated by the new counsel could not have overturned the judgment of conviction against the accused-appellant.

III

Although its origins seem lost in obscurity, the imposition of death as punishment for violation of law or custom, religious or secular, is an ancient practice. We do know that our forefathers killed to avenge themselves and their kin and that initially, the criminal law was used to compensate for a wrong done to a private party or his family, not to punish in the name of the state.

The dawning of civilization brought with it both the increasing sensitization throughout the later generations against past barbarity and the institutionalization of state power under the rule of law. Today every man or woman is both an individual person with inherent human rights recognized and protected by the state and a citizen with the duty to serve the common weal and defend and preserve society.

One of the indispensable powers of the state is the power to secure society against threatened and actual evil.

Pursuant to this, the legislative arm of government enacts criminal laws that define and punish illegal acts that may be committed by its own subjects, the executive agencies enforce these laws, and the judiciary tries and sentences the criminals in accordance with these laws.

Although penologists, throughout history, have not stopped debating on the causes of criminal behavior and the purposes of criminal punishment, our criminal laws have been perceived as relatively stable and functional since the enforcement of the Revised Penal Code on January 1, 1932, this notwithstanding occasional opposition to the death penalty provisions therein. The Revised Penal Code, as it was originally promulgated, provided for the death penalty in specified crimes under specific circumstances. As early as 1886, though, capital punishment had entered our legal system through the old Penal Code, which was a modified version of the Spanish Penal Code of 1870.

The opposition to the death penalty uniformly took the form of a constitutional question of whether or not the death penalty is a cruel, unjust, excessive or unusual punishment in violation of the constitutional proscription against cruel and unusual punishments. We unchangingly answered this question in the negative in the cases of *Harden v. Director of Prison*,^[8] *People v. Limaco*,^[9] *People v. Camano*,^[10] *People v. Puda*^[11] and *People v. Marcos*,^[12] In *Harden*, we ruled:

"The penalty complained of is neither cruel, unjust nor excessive. In *Ex-parte Kemmler*, 136 U.S., 436, the United States Supreme Court said that 'punishments are cruel when they involve torture or a lingering death, but the punishment of death is not cruel, within the meaning of that word as used in the constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life.'"^[13]

Consequently, we have time and again emphasized that our courts are not the fora for a protracted debate on the morality or propriety of the death sentence where the law itself provides therefor in specific and well-defined criminal acts. Thus we had ruled in the 1951 case of *Limaco* that:

"x x x there are quite a number of people who honestly believe that the supreme penalty is either morally wrong or unwise or ineffective. However, as long as that penalty remains in the statute books, and as long as our criminal law provides for its imposition in certain cases, it is the duty of judicial officers to respect and apply the law regardless of their private opinions,"^[14]

and this we have reiterated in the 1995 case of *People v. Veneracion*.^[15]

Under the Revised Penal Code, death is the penalty for the crimes of treason, correspondence with the enemy during times of war, qualified piracy, parricide, murder, infanticide, kidnapping, rape with homicide or with the use of deadly weapon or by two or more persons resulting in insanity, robbery with homicide, and arson resulting in death. The list of capital offenses lengthened as the legislature responded to the emergencies of the times. In 1941, Commonwealth Act (C.A.) No. 616 added espionage to the list. In the 1950s, at the height of the Huk rebellion, the government enacted Republic Act (R.A.) No. 1700, otherwise known as the Anti-Subversion Law, which carried the death penalty for leaders of the rebellion. From 1971 to 1972, more capital offenses were created by more laws, among them, the Anti-Hijacking Law, the Dangerous Drugs Act, and the Anti-Carnapping Law. During martial law, Presidential Decree (P.D.) No. 1866 was enacted penalizing with death, among others, crimes involving homicide committed with an unlicensed firearm.

In the aftermath of the 1986 revolution that dismantled the Marcos regime and led to the nullification of the 1973 Constitution, a Constitutional Commission was convened following appointments thereto by Corazon Aquino who was catapulted to power by the people.

Tasked with formulating a charter that echoes the new found freedom of a rejuvenated people, the Constitutional Commissioners grouped themselves into working committees among which is the Bill of Rights Committee with Jose B. Laurel, Jr. As Chairman and Father Joaquin G. Bernas, S.J., as Vice-Chairman.

On July 17, 1986, Father Bernas presented the committee draft of the proposed bill of rights to the rest of the commission. What is now Article III, Section 19 (1) of the 1987 Constitution was first denominated as Section 22 and was originally worded as follows:

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted. Death penalty already imposed shall be commuted to reclusion perpetua."

Father Bernas explained that the foregoing provision was the result of a consensus among the members of the Bill of Rights Committee that the death penalty should be abolished. Having agreed to abolish the death penalty, they proceeded to deliberate on how the abolition was to be done -- whether the abolition should be done by the Constitution or by the legislature -- and the majority voted for a constitutional abolition of the death penalty. Father Bernas explained:

"x x x [T]here was a division in the Committee not on whether the death penalty should be abolished or not, but rather on whether the abolition should be done by the Constitution -- in which case it cannot be restored by the legislature -- or left to the legislature. The majority voted for the constitutional abolition of the death penalty. And the reason is that capital punishment is inhuman for the convict and his family who are traumatized by the waiting, even if it is never carried out. There is no evidence that the death penalty deterred deadly criminals, hence, life should not be destroyed just in the hope that other lives might be saved. Assuming mastery over the life of another man is just too presumptuous for any man. The fact that the death penalty as an institution has been there from time immemorial should not deter us from reviewing it. Human life is more valuable than an institution intended precisely to serve human life. So, basically, this is the summary of the reasons which were presented in support of the constitutional abolition of the death penalty".[16]

The original wording of Article III, Section 19 (1), however, did not survive the debate that it instigated. Commissioner Napoleon G. Rama first pointed out that "never in our history has there been a higher incidence of crime" and that "criminality was at its zenith during the last decade".[17] Ultimately, the dissent defined itself to an unwillingness to absolutely excise the death penalty from our legal system and leave society helpless in the face of a future upsurge of crimes or other similar emergencies. As Commissioner Rustico F. de los Reyes, Jr. suggested, "although we abolish the death penalty in the Constitution, we should afford some amount of flexibility to future legislation,"[18] and his concern was amplified by the interpellatory remarks of Commissioner Lugum L. Commissioner and now Associate Justice Florenz Regalado, Commissioner Crispino M. de Castro, Commissioner Ambrosio B. Padilla, Commissioner Christian Monsod, Commissioner Francisco A. Rodrigo, and Commissioner Ricardo Romulo. Commissioner Padilla put it succinctly in the following exchange with Commissioner Teodoro C. Bacani:

"BISHOP BACANI. x x x At present, they explicitly make it clear that the church has never condemned the right of the state to inflict capital punishment.

MR. PADILLA. x x x So it is granted that the state is not deprived of the right even from a moral standpoint of imposing or prescribing capital punishment.

BISHOP BACANI. Yes. What I am saying is that from the Catholic point of view, that right of the state is not forbidden.

MR. PADILLA. In fact x x x we have to accept that the state has the delegated authority from the Creator to impose the death penalty under certain circumstances.

BISHOP BACANI. The state has the delegation from God for it to do what is needed for the sake of the common good, but the issue at stake is whether or not under the present circumstances that will be for the common good.

MR. PADILLA. But the delegated power of the state cannot be denied.

BISHOP BACANI. Yes, the state can be delegated by God at a particular stage in history, but it is not clear whether or not that delegation is forever under all circumstances

MR. PADILLA. So this matter should be left to the legislature to determine, under certain specified conditions or circumstances, whether the retention of the death penalty or its abolition would be for the common good. I do not believe this Commission can a priori, and as was remarked within a few days or even a month, determine a positive provision in the Constitution that would prohibit even the legislature to prescribe the death penalty for the most heinous crimes, the most grievous offenses attended by many qualifying and aggravating circumstances."^[19]

What followed, thus, were proposed amendments to the beleaguered provision. The move to add the phrase, "unless for compelling reasons involving heinous crimes, the national assembly provides for the death penalty," came from Commissioners Monsod, Jose E. Suarez and de los Reyes. Commissioner Rodrigo, however, expressed reservations even as regards the proposed amendment. He said:

"x x x [T]he issue here is whether or not we should provide this matter in the Constitution or leave it to the discretion of our legislature. Arguments pro and con have been given x x x. But my stand is, we should leave this to the discretion of the legislature.

The proposed amendment is halfhearted. It is awkward because we will, in effect, repeal by our Constitution a piece of legislation and after repealing this piece of legislation, tell the legislature that we have repealed the law and that the legislature can go ahead and enact it again. I think this is not worthy of a constitutional body like ours. If we will leave the matter of the death penalty to the legislature, let us leave it completely to the discretion of the legislature, but let us not have this half-baked provision. We have many provisions in the Revised Penal Code imposing the death penalty. We will now revoke or repeal these pieces of legislation by means of the Constitution, but at the same time say that it is up to the legislature to impose this again.

x x x The temper and condition of the times change x x x and so we, I think we should leave this matter to the legislature to enact statutes depending on the changing needs of the times. Let us entrust this completely to the legislature composed of representatives elected by the people.

I do not say that we are not competent. But we have to admit the fact that we are not elected by the people and if we are going to entrust this to the legislature, let us not be half-baked nor half-hearted about it. Let us entrust it to the legislature 100 percent."^[20]

Nonetheless, the proposed amendment was approved with twenty-three (23) commissioners voting in favor of the amendment and twelve (12) voting against it, followed by more revisions, hence the present wording of Article III, Section 19 (1) of the 1987 Constitution in the following tenor:

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

The implications of the foregoing provision on the effectivity of the death penalty provisions in the Revised Penal Code and certain special criminal laws and the state of the scale of penalties thereunder, were tremendous.

The immediate problem pertained to the applicable penalty for what used to be capital crimes. In *People v. Gavarra*,^[21] we stated that "in view of the abolition of the death penalty under Section 19, Article III of the 1987 Constitution, the penalty that may be imposed for murder is reclusion temporal in its maximum period to reclusion perpetua"^[22] thereby eliminating death as the original maximum period. The constitutional abolition of the death penalty, it seemed, limited the penalty for murder to only the remaining periods, to wit, the minimum and the

medium, which we then, in *People v. Masangkay*,^[23] *People v. Atencio*^[24] and *People v. Intino*^[25] divided into three new periods, to wit, the lower half of reclusion temporal maximum as the minimum; the upper half of reclusion temporal maximum as the medium; and reclusion perpetua as the maximum, in keeping with the three-grade scheme under the Revised Penal Code. In *People v. Munoz*,^[26] however, we reconsidered these aforecited cases and after extended discussion, we concluded that the doctrine announced therein did not reflect the intention of the framers. The crux of the issue was whether or not Article III, Section 19 (1) absolutely abolished the death penalty, for if it did, then, the aforementioned new three-grade penalty should replace the old one where the death penalty constituted the maximum period. But if no total abolition can be read from said constitutional provision and the death penalty is only suspended, it cannot as yet be negated by the institution of a new three-grade penalty premised on the total inexistence of the death penalty in our statute books. We thus ruled in *Munoz*:

"The advocates of the *Masangkay* ruling argue that the Constitution abolished the death penalty and thereby limited the penalty for murder to the remaining periods, to wit, the minimum and the medium. These should now be divided into three new periods in keeping with the three-grade scheme intended by the legislature. Those who disagree feel that Article III, Section 19 (1) merely prohibits the imposition of the death penalty and has not, by reducing it to reclusion perpetua, also correspondingly reduced the remaining penalties. These should be maintained intact.

A reading of Section 19 (1) of Article III will readily show that there is really nothing therein which expressly declares the abolition of the death penalty. The provision merely says that the death penalty shall not be imposed unless for compelling reasons involving heinous crimes the Congress hereafter provides for it and, if already imposed, shall be reduced to reclusion perpetua. The language, while rather awkward, is still plain enough".^[27]

Nothing is more defining of the true content of Article III, Section 19 (1) of the 1987 Constitution than the form in which the legislature took the initiative in re-imposing the death penalty.

The Senate never doubted its power as vested in it by the constitution, to enact legislation re-imposing the death penalty for compelling reasons involving heinous crimes. Pursuant to this constitutional mandate, the Senate proceeded to a two-step process consisting of: first, the decision, as a matter of policy, to re-impose the death penalty or not; and second, the vote to pass on the third reading the bill re-imposing the death penalty for compelling reasons involving heinous crimes.

On February 15, 1993, after a fierce and fiery exchange of arguments for and against capital punishment, the Members of the Senate voted on the policy issue of death penalty. The vote was explained, thus:

"SUSPENSION OF THE RULES

Upon motion of Senator Romulo, there being no objection, the Body suspended the Rules of the Senate.

Thereafter, upon motion of Senator Romulo, there being no objection, the Chair directed that a nominal voting be conducted on the policy issue of death penalty.

INQUIRY OF SENATOR TOLENTINO

Asked by Senator Tolentino on how the Members of the Senate would vote on this policy question, Senator Romulo stated that a vote of Yes would mean a vote in favor of death as a penalty to be reincorporated in the scale of penalties as provided in the Revised Penal Code, and a vote of No would be a vote against the reincorporation of death penalty in the scale of penalties in the Revised Penal Code.

INQUIRY OF SENATOR ALVAREZ

x x x

The Chair explained that it was agreed upon that the Body would first decide the question whether or not death penalty should be reimposed, and thereafter, a seven-man committee would be formed to draft the compromise bill in accordance with the result of the voting. If the Body decides in favor of the death penalty, the Chair said that the committee would specify the crimes on which death penalty would be imposed. It affirmed that a vote of Yes in the nominal voting would mean a vote in favor of death penalty on at least one crime, and that certain refinements on how the penalty would be imposed would be left to the discretion of the seven-man committee.

x x x

INQUIRY OF SENATOR TAÑADA

In reply to Senator Tañada's query, the Chair affirmed that even if a senator would vote 'yes' on the basic policy issue, he could still vote 'no' on the imposition of the death penalty on a particular crime.

REMARKS OF SENATOR TOLENTINO

Senator Tolentino observed that the Body would be voting on the basic policy issue of whether or not the death penalty would be included in the scale of penalties found in Article 27 of the Revised Penal Code, so that if it is voted down, the Body would discontinue discussing Senate Bill No. 891 pursuant to the Rules, but if approved, a special committee, as agreed upon in the caucus, is going to be appointed and whatever course it will take will depend upon the mandate given to it by the Body later on.

The Chair affirmed Senator Tolentino's observations.

REMARKS OF SENATOR ROCO

Senator Roco stated that the Body would vote whether or not death as a penalty will be reincorporated in the scale of penalties provided by the Revised Penal Code. However, he pointed out that if the Body decides in favor of death penalty, the Body would still have to address two issues: 1) Is the crime for which the death penalty is supposed to be imposed heinous pursuant to the constitutional mandate? 2) And, if so, is there a compelling reason to impose the death penalty for it? The death penalty, he stressed, cannot be imposed simply because the crime is heinous."^[28]

With seventeen (17) affirmative votes and seven (7) negative votes and no abstention, the Chair declared that the Senate has voted to re-incorporate death as a penalty in the scale of penalties as provided in the Revised Penal Code. A nine-person committee was subsequently created to draft the compromise bill pursuant to said vote. The mandate of the committee was to retain the death penalty, while the main debate in the committee would be the determination of the crimes to be considered heinous.

On March 17, 1993, Senator Arturo Tolentino, Chairman of the Special Committee on the Death Penalty, delivered his Sponsorship Speech. He began with an explanation as to why the Senate Bill No. 891 re-imposes the death penalty by amending the Revised Penal Code and other special penal laws and includes provisions that do not define or punish crimes but serve purposes allied to the reimposition of the death penalty. Senator Tolentino stated:

“x x x [W]hen the Senate approved the policy of reimposing the death penalty on heinous crimes and delegated to the Special Committee the work of drafting a bill, a compromise bill that would be the subject for future deliberations of this Body, the Committee had to consider that the death penalty was imposed originally in the Revised Penal Code.

So, when the Constitution was approved in order to do away with the death penalty, unless Congress should, for compelling reasons reimpose that penalty on heinous crimes, it was obvious that it was the Revised Penal

Code that was affected by that provision of the Constitution. The death penalty, as provided in the Revised Penal Code, would be considered as having been repealed -- all provisions on the death penalty would be considered as having been repealed by the Constitution, until Congress should, for compelling reasons, reimpose such penalty on heinous crimes. Therefore, it was not only one article but many articles of the Revised Penal Code that were actually affected by the Constitution.

And it is in consideration of this consequence of the constitutional provision that our Special Committee had to consider the Revised Penal Code itself in making this compromise bill or text of the bill. That is why, in the proposed draft now under consideration which we are sponsoring, the specific provisions of the Revised Penal Code are actually either reenacted or amended or both. Because by the effect of the Constitution, some provisions were totally repealed, and they had to be reenacted so that the provisions could be retained. And some of them had to be amended because the Committee thought that amendments were proper."^[29]

In response to a query by Senator Gloria Macapagal-Arroyo as to whether or not it would have been better if the Senate were to enact a special law which merely defined and imposed the death penalty for heinous crimes, Senator Tolentino explicated, thus:

"x x x [T]hat may be a way presenting the bill. But we must bear in mind that the death penalty is imposed in the Revised Penal Code. Therefore, when the Constitution abolished the death penalty, it actually was amending the Revised Penal Code to such an extent that the Constitution provides that where the death penalty has already been imposed but not yet carried out, then the penalty shall be reclusion perpetua, that is the penalty in the Revised Penal Code. So we thought that it would be best to just amend the provisions of the Revised Penal Code, restoring the death penalty for some crimes that may be considered as heinous. That is why the bill is in this form amending the provisions of the Revised Penal Code.

Of course, if some people want to present a special bill . . . the whole trouble is, when a special bill is presented and we want to punish in the special bill the case of murder, for instance, we will have to reproduce the provisions of the Revised Penal Code on murder in order to define the crime for which the death penalty shall be imposed. Or if we want to impose the death penalty in the case of kidnapping which is punished in the Revised Penal Code, we will do the same -- merely reproduce. Why will we do that? So we just followed the simpler method of keeping the definition of the crime as the same and merely adding some aggravating circumstances and reimposing the death penalty in these offenses originally punished in the Revised Penal Code."^[30]

From March 17, 1993, when the death penalty bill was presented for discussion until August 16, 1993, the Members of the Senate debated on its provisions.

The stiffest opposition thereto was bannered by Senator Lina who kept prodding the sponsors of the bill to state the compelling reason for each and every crime for which the supreme penalty of death was sought. Zeroing in on the statement in the preamble of the death penalty bill that the same is warranted in the face of "the alarming upsurge of [heinous] crimes", Senator Lina demanded for solid statistics showing that in the case of each and every crime in the death penalty bill, there was a significantly higher incidence of each crime after the suspension of the death penalty on February 2, 1987 when the 1987 Constitution was ratified by the majority of the Filipino people, than before such ratification.^[31] Inasmuch as the re-impositionists could not satisfy the abolitionists with sufficient statistical data for the latter to accept the alarming upsurge of heinous crimes as a compelling reason justifying the reimposition of the death penalty, Senator Lina concluded that there were, in fact, no compelling reasons therefor. In the alternative, Senator Lina argued that the compelling reason required by the constitution was that "the State has done everything in its command so that it can be justified to use an inhuman punishment called death penalty".^[32] The problem, Senator Lina emphasized, was that even the re-impositionists admit that there were still numerous reforms in the criminal justice system that may and must be put in place, and so clearly,

the recourse to the enactment of a death penalty bill was not in the nature of a last resort, hence, unconstitutional in the absence of compelling reasons. As an initial reaction to Senator Lina's contentions, Senator Tolentino explained that the statement in the preamble is a general one and refers to all the crimes covered by the bill and not to specific crimes. He added that one crime may not have the same degree of increase in incidence as the other crimes and that the public demand to impose the death penalty is enough compelling reason.[33]

Equally fit to the task was Senator Wigberto Tañada to whom the battle lines were clearly drawn. He put to issue two things: first, the definition of "heinous crimes" as provided for in the death penalty bill; and second, the statement of compelling reasons for each and every capital crime. His interpellation of Senator Tolentino clearly showed his objections to the bill:

"Senator Tañada. x x x But what would make crimes heinous, Mr. President? Are crimes heinous by their nature or elements as they are described in the bill or are crimes heinous because they are punished by death, as bribery and malversation are proposed to be punished in the bill?

Senator Tolentino. They are heinous by their nature, Mr. President, but that is not supposed to be the exclusive criterion. The nature of the offense is the most important element in considering it heinous but, at the same time, we should consider the relation of the offense to society in order to have a complete idea of the heinous nature of these offenses.

In the case of malversation or bribery, for instance, these offenses by themselves connected with the effect upon society and the government have made them fall under the classification of heinous crimes. The compelling reason for imposing the death penalty is when the offenses of malversation and bribery becomes so grave and so serious as indicated in the substitute bill itself, then there is a compelling reason for the death penalty.

Senator Tañada. With respect to the compelling reasons, Mr. President, does the Gentleman believe that these compelling reasons, which would call for the reimposition of the death penalty, should be separately, distinctly and clearly stated for each crime so that it will be very clear to one and all that not only are these crimes heinous but also one can see the compelling reasons for the reimposition of the death penalty therefor?

Senator Tolentino. Mr. President, that matter was actually considered by the Committee. But the decision of the Committee was to avoid stating the compelling reason for each and every offense that is included in the substitute measure. That is why in the preamble, general statements were made to show these compelling reasons. And that, we believe, included in the bill, when converted into law, would be sufficient notice as to what were considered compelling reasons by the Congress, in providing the death penalty for these different offenses.

If a matter like this is questioned before the Supreme Court, I would suppose that with the preamble already in general terms, the Supreme Court would feel that it was the sense of Congress that this preamble would be applicable to each and every offense described or punishable in the measure.

So we felt that it was not necessary to repeat these compelling reasons for each and every offense.

Senator Tañada. Mr. President, I am thinking about the constitutional limitations upon the power of Congress to enact criminal legislation, especially the provisions on the Bill of Rights, particularly the one which says that no person shall be held to answer for a criminal offense without due process of law.

Can we not say that under this provision, it is required that the compelling reasons be so stated in the bill so that the bill, when it becomes a law, will clearly define the acts and the omissions punished as crimes?

Senator Tolentino. Mr. President, I believe that in itself, as substantive law, this is sufficient. The question of whether there is due process will more or less be a matter of procedure in the compliance with the

requirements of the Constitution with respect to due process itself which is a separate matter from the substantive law as to the definition and penalty for crimes.

Senator Tañada. Under the Constitution, Mr. President, it appears that the reimposition of the death penalty is subject to three conditions and these are:

- Congress should so provide such reimposition of the death penalty;
- There are compelling reasons; and
- These involve heinous crimes.

Under these provision of the Constitution, paragraph 1, Section 13, does the distinguished Gentleman not feel that Congress is bound to state clearly the compelling reasons for the reimposition of the death penalty for each crime, as well as the elements that make each of the crimes heinous included in the bill?

Senator Tolentino. Mr. President, that is a matter of opinion already. I believe that whether we state the compelling reasons or not, whether we state why a certain offense is heinous, is not very important. If the question is raised in the Supreme Court, it is not what we say in the bill that will be controlling but what the Supreme Court will feel as a sufficient compelling reason or as to the heinous nature whether the crime is heinous or not. The accused can certainly raise the matter of constitutionality but it will not go into the matter of due process. It will go into the very power of Congress to enact a bill imposing the death penalty. So that would be entirely separate from the matter of due process." [34]

Senator Francisco Tatad, on his part, pointed out that the death penalty bill violated our international commitment in support of the worldwide abolition of capital punishment, the Philippines being a signatory to the International Covenant on Civil and Political Rights and its Second Optional Protocol. Senator Ernesto Herrera clarified, however, that in the United Nations, subject matters are submitted to the different committees which vote on them for consideration in the plenary session. He stressed that unless approved in the plenary session, a declaration would have no binding effect on signatory countries. In this respect, the Philippines cannot be deemed irrevocably bound by said covenant and protocol considering that these agreements have reached only the committee level.[35]

After the protracted debate, the Members of the Senate voted on Senate Bill No. 891 on third reading. With seventeen (17) affirmative votes, four (4) negative votes, and one abstention, the death penalty bill was approved on third reading on August 16, 1993.

The Senate's vote to pass Senate Bill No. 891 on third reading on August 16, 1993 was a vindication of, the House of Representatives. The House had, in the Eight Congress, earlier approved on third reading House Bill No. 295 on the restoration of the death penalty for certain heinous crimes. The House was in effect rebuffed by the Senate when the Senate killed House Bill No. 295 along with other bills coming from the House. House Bill No. 295 was resurrected during the Ninth Congress in the form of House Bill No. 62 which was introduced by twenty one (21) Members of the House of Representatives on October 27, 1992. House Bill No. 62 was a merger of House Bill Nos. 125, 187, 411, 764, 506, 781, 955, 1565, 1586, 2206, 3238, 3576 and 3632 authored by various Members of the Lower House.

In his Sponsorship Speech, Representative Manuel R. Sanchez of Rizal ably essayed the constitutional vesting in Congress of the power to re-impose the death penalty for compelling reasons invoking heinous crimes as well as the nature of this constitutional pre-requisite to the exercise of such power.

"Mr. Speaker, in Article III, Section 19(1) of Constitution reads, a I quote:

'Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress

shall thereafter provide for it . . .'

The phrase 'unless, for compelling reasons involving heinous crimes, the Congress shall thereafter provide for it was introduced as an amendment by then Comm. Christian Monsod.

The import of this amendment is unmistakable. By this amendment, the death penalty was not completely abolished by the 1987 Constitution. Rather, it merely suspended the death penalty and gave Congress the discretion to review it at the propitious time.

Arguing for the inclusion of said amendment in the fine provision, Comm. Ricardo Romulo said, and I quote:

""The people should have the final say on the subject, because, at some future time, the people might want to restore death penalty through initiative and referendum.

Commissioner Monsod further argued, and I quote:

We cannot presume to have the wisdom of the ages. Therefore, it is entirely possible in the future that circumstances may arise which we should not preclude today.

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I believe that [there] are enough compelling reasons that merit the reimposition of the capital punishment. The violent manner and the viciousness in which crimes are now committed with alarming regularity, show very clearly a patent disregard of the law and a mockery of public peace and order.

In the public gallery section today are the relatives of the victims of heinous crimes — the Hultmans, the Maguans, the Vizcondes, the Castanoses, and many more, and they are all crying for justice. We ought to listen to them because their lives, their hopes, their dreams, their future have fallen asunder by the cruel and vicious criminality of a few who put their selfish interest above that of society.

Heinous crime is an act or series of acts which, by the flagrantly violent manner in which the same was committed or by the reason of its inherent viciousness, shows a patent disregard and mockery of the law, public peace and order, or public morals. It is an offense whose essential and inherent viciousness and atrocity are repugnant and outrageous to a civilized society and hence, shock the moral self of a people.

Of late, we are witness to such kind of barbaric crimes.

The Vizconde massacre that took the lives of a mother and her two lovely daughters, will stand in the people's memory for many long years as the epitome of viciousness and atrocity that are repugnant to civilized society.

The senseless murder of Eldon Maguan, and up-and-coming young business executive, was and still is an outrage that shocks the moral self of our people.

The mind-boggling death of Maureen Hultmann, a comely 16 year-old high school student who dreamt of becoming a commercial model someday, at the hands of a crazed man was so repulsive, so brutal that it offends the sensibilities of Christians and non-Christians alike

The cold-blooded double murder of Cochise Bernabe and Beebom Castanos, the lovely and promising couple from the University of the Philippines, is eternally lodged in the recesses of our minds and still makes our stomach turn in utter disgust.

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The seriousness of the situation is such that if no radical action is taken by this body in restoring death penalty as

a positive response to the overwhelming clamor of the people, then, as Professor Esteban Bautista of the Philippine Law Center said, and I quote:

'When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they deserve, there are sown the seeds of anarchy — of self-help, of vigilante justice and lynch law. The people will take the law upon their hands and exact vengeance in the nature of personal vendetta.'

It is for this reason, Mr. Speaker, that I stand here and support House Bill No. 62.

As duly elected Representatives of our people, collectively, we ought to listen to our constituents and heed their plea — a plea for life, liberty and pursuit of their happiness under a regime of justice and democracy, and without threat that their loves ones will be kidnapped, raped or butchered.

But if such a misfortune befalls them, there is the law they could rely on for justice. A law that will exact retribution for the victims. A law that will deter future animalistic behavior of the criminal who take their selfish interest over and above that of society. A law that will deal a deathblow upon all heinous crimes.

Mr. Speaker, my distinguished colleagues, for the preservation of all that we hold dear and sacred, let us restore the death penalty." [36]

A studious comparison of the legislative proceedings in the Senate and in the House of Representatives reveals that, while both Chambers were not wanting of oppositors to the death penalty, the Lower House seemed less quarrelsome about the form of the death penalty bill as a special law specifying certain heinous crimes without regard to the provisions of the Revised Penal Code and more unified in the perception of what crimes are heinous and that the fact of their very heinousness involves the compulsion and the imperative to suppress, if not completely eradicate, their occurrence. Be it the foregoing general statement of Representative Sanchez or the following details of the nature of the heinous crimes enumerated in House Bill No. 62 by Representative Miguel L. Romero of Negros Oriental, there was clearly, among the hundred or so re-impositionists in the Lower House, no doubt as to their cause:

"My friends, this bill provides for the imposition of the death penalty not only for the importation, manufacture and sale of dangerous drugs, but also for other heinous crimes such as reason; parricide; murder; kidnapping; robbery; rape as defined by the Revised Penal Code with or without additionally defined circumstances; plunder, as defined in R.A. 7080; piracy, as defined under Section 2 of PD 532; carnapping, as defined in Section 2 of RA 6539, when the owner, driver or occupant is killed; hijacking, as defined in xxx RA 6235; and arson resulting in the death of any occupants.

All these crimes have a common denominator which qualifies them to the level of heinous crimes. A heinous crime is one which, by reason of its inherent or manifest wickedness, viciousness, atrocity or perversity, is repugnant and outrageous to the common standards of decency and morality in a just and civilized society.

For instance, the crime of treason is defined as a breach of allegiance to a government, committed by a person who owes allegiance to it (U.S. v. Abad 1 Phil. 437). By the 'allegiance' is meant the obligation of fidelity and obedience which individuals owe to the government under which they live or to their sovereign in return for the protection which they receive (52 Am Jur 797).

In kidnapping, the thought alone of one's loved one being held against his or her own will in some unidentified xxx house by a group of scoundrels who are strangers is enough terrify and send shivers of fear through the spine of any person, even scoundrels themselves.

In robbery accompanied by rape, intentional mutilation or arson, what is being punished by death is the fact that the perpetrator, at the time of the commission of the crime, thinks nothing of the other crime he commits and sees it merely as a form of self-amusement. When a homicide is committed by reason of the robbery, the

culprits are perceived as willing to take human life in exchange for money or other personal property.

In the crime of rape, not only do we speak of the pain and agony of the parents over the personal shock and suffering of their child but the stigma of the traumatic and degrading incident which has shattered the victim's life and permanently destroyed her reputation, not to mention the ordeal of having to undergo the shameful experience of police interrogation and court hearings.

Piracy, which is merely a higher form of robbery, is punished for the universal hostility of the perpetrators against their victims who are passengers and complement of the vessel, and because of the fact that, in the high seas, no one may be expected to be able to come to the rescue of the helpless victims. For the same reason, Mr. Speaker, the crime of air piracy is punished due to the evil motive of the hijackers in making unreasonable demands upon the sovereignty of an entire nation or nations, coupled with the attendant circumstance of subjecting the passengers to terrorism." [37]

The debate on House Bill No. 62 lasted from October 27, 1992 to February 11, 1993. On February 11, 1993, the Members of the House of Representatives overwhelmingly approved the death penalty bill on second reading.

On February 23, 1993, after explaining their votes, the Members of the House of Representatives cast their vote on House Bill No. 62 when it was up for consideration on third reading. [38] The results were 123 votes in favor, 26 votes against, and 2 abstentions

After the approval on third reading of House Bill No. 62 on February 23, 1993 and of Senate Bill No. 891 on August 16, 1993, the Bicameral Conference Committee convened to incorporate and consolidate them.

On December 31, 1993, Republic Act (R.A.) No. 7659, entitled, "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes," took effect.[39]

Between December 31, 1993, when R.A. No. 7659 took effect, and the present time, criminal offenders have been prosecuted under said law, and one of them, herein accused-appellant, has been, pursuant to said law, meted out the supreme penalty of death for raping his ten-year old daughter. Upon his conviction, his case was elevated to us on automatic review. On June 25, 1996, we affirmed his conviction and the death sentence.

Now, accused-appellant comes to us in the heels of this court's affirmation of his death sentence and raises for the first time the issue of the constitutionality of R.A. 7659. His thesis is two-fold: (1) that the death penalty law is unconstitutional per se for having been enacted in the absence of compelling reasons therefor; and (2) that the death penalty for rape is a cruel, excessive and inhuman punishment in violation of the constitutional proscription against punishment of such nature.

We reject accused-appellant's proposition.

Three justices interposed their dissent hereto, agreeing with accused-appellant's view that Congress enacted R.A. No. 7659 without complying with the twin requirements of compelling reasons and heinous crimes.

At this juncture, the detailed events leading to the enactment of R.A. No. 7659 as unfurled in the beginning of this disquisition, necessarily provide the context for the following analysis.

Article III, Section 19 (1) of the 1987 Constitution plainly vests in Congress the power to re-impose the death penalty "for compelling reasons involving heinous crimes". This power is not subsumed in the plenary legislative power of Congress, for it is subject to a clear showing of "compelling reasons involving heinous crimes."

The constitutional exercise of this limited power to re-impose the death penalty entails (1) that Congress define or describe what is meant by heinous crimes; (2) that Congress specify and penalize by death, only crimes that

qualify as heinous in accordance with the definition or description set in the death penalty bill and/or designate crimes punishable by reclusion perpetua to death in which latter case, death can only be imposed upon the attendance of circumstances duly proven in court that characterize the crime to be heinous in accordance with the definition or description set in the death penalty bill; and (3) that Congress, in enacting this death penalty bill be singularly motivated by "compelling reasons involving heinous crimes."

In the second whereas clause of the preamble of R.A. No. 7659, we find the definition or description of heinous crimes. Said clause provides that

"x x x the crimes punishable by death under this Act are heinous for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society."

Justice Santiago Kapunan, in his dissenting opinion in *People v. Alicando*, [40] traced the etymological root of the word "heinous" to the Early Spartans' word, "haineus", meaning, hateful and abominable, which, in turn, was from the Greek prefix "haton", denoting acts so hatefully or shockingly evil.

We find the foregoing definition or description to be a sufficient criterion of what is to be considered a heinous crime. This criterion is deliberately undetailed as to the circumstances of the victim, the accused, place, time, the manner of commission of crime, its proximate consequences and effects on the victim as well as on society, to afford the sentencing authority sufficient leeway to exercise his discretion in imposing the appropriate penalty in cases where R.A. No. 7659 imposes not a mandatory penalty of death but the more flexible penalty of reclusion perpetua to death.

During the debates on the proposed death penalty bill, Senators Lina and Tañada grilled the sponsors of the bill as regards what they perceived as a mere enumeration of capital crimes without a specification of the elements that make them heinous. They were oblivious to the fact that there were two types of crimes in the death penalty bill: first, there were crimes penalized by reclusion perpetua to death; and second, there were crimes penalized by mandatory capital punishment upon the attendance of certain specified qualifying circumstances.

Under R.A. No. 7659, the following crimes are penalized by reclusion perpetua to death:

- (1) Treason (Sec. 2);
- (2) Qualified piracy (Sec. 3);
- (3) Parricide (Sec. 5);
- (4) Murder (Sec. 6);
- (5) Infanticide (Sec. 7);
- (6) Kidnapping and serious illegal detention if attended by any of the following four circumstances: (a) the victim was detained for more than three days; (b) it was committed simulating public authority; (c) serious physical injuries were inflicted on the victim or threats to kill him were made; and (d) if the victim is a minor, except when the accused is any of the parents, female or a public officer (Sec. 8);
- (7) Robbery with homicide, rape or intentional mutilation (Sec. 9);
- (8) Destructive arson if what is burned is (a) one or more buildings or edifice; (b) a building where people usually gather; (c) a train, ship or airplane for public use; (d) a building or factory in the service of public utilities; (e) a building for the purpose of concealing or destroying evidence Or a crime; (f) an arsenal, fireworks factory, or government museum; and (g) a storehouse or factory of explosive materials located in an

inhabited place; or regardless of what is burned, if the arson is perpetrated by two or more persons (Sec. 10);

(9) Rape attended by any of the following circumstances: (a) the rape is committed with a deadly weapon; (b) the rape is committed by two or more persons; and (c) the rape is attempted or frustrated and committed with homicide (Sec. 11);

(10) Plunder involving at least P50 million (Sec. 12);

(11) Importation of prohibited drugs (Sec. 13);

(12) Sale, administration, delivery, distribution, and transportation of prohibited drugs (id.);

(13) Maintenance of den, dive or resort for users of prohibited drugs (id.);

(14) Manufacture of prohibited drugs (id.);

(15) Possession or use of prohibited drugs in certain specified amounts (id.);

(16) Cultivation of plants which are sources of prohibited drugs (id.)

(17) Importation of regulated drugs (Sec. 14);

(18) Manufacture of regulated drugs (id.);

(19) Sale, administration, dispensation, delivery, transportation, and distribution of regulated drugs (id.);

(20) Maintenance of den, dive, or resort for users of regulated drugs (Sec. 15);

(21) Possession or use of regulated drugs in specified amounts (Sec. 16);

(22) Misappropriation, misapplication or failure to account dangerous drugs confiscated by the arresting officer (Sec. 17);

(23) Planting evidence of dangerous drugs in person or immediate vicinity of another to implicate the latter (Sec. 19); and

(24) Carnapping where the owner, driver or occupant of the carnapped motor vehicle is killed or raped (Sec. 20).

All the foregoing crimes are not capital crimes per se, the uniform penalty for all of them being not mandatory death but the flexible penalty of reclusion perpetua to death. In other words, it is premature to demand for a specification of the heinous elements in each of foregoing crimes because they are not anyway mandatorily penalized with death. The elements that call for the imposition of the supreme penalty of death in these crimes, would only be relevant when the trial court, given the prerogative to impose reclusion perpetua, instead actually imposes the death penalty because it has, in appreciating the evidence proffered before it, found the attendance of certain circumstances in the manner by which the crime was committed, or in the person of the accused on his own or in relation to the victim, or in any other matter of significance to the commission of the crime or its effects on the victim or on society, which circumstances characterize the criminal acts as grievous, odious, or hateful, or inherently or manifestly wicked, vicious, atrocious or perverse as to be repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society.

On the other hand, under R.A. No. 7659, the mandatory penalty of death is imposed in the following crimes:

(1) Qualified bribery

"If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death in consideration of any

offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted.

If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death." (Sec. 4)

(2) Kidnapping and serious illegal detention for ransom resulting in the death of the victim or the victim is raped, tortured or subjected to dehumanizing acts

"The penalty shall be death where the kidnapping or detention was committed for the purpose of ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subject to torture or dehumanizing acts, the maximum penalty [of death] shall be imposed." (Sec. 8)

(3) Destructive arson resulting in death

"If as a consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed." (Sec. 10)

(4) Rape with the victim becoming insane, rape with homicide and qualified

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

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When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent or the victim.

2. when the victim is under the custody of the police or military authorities.

3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

4. when the victim is a religious or a child below seven (7) years old

5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation." (Sec. 11)

(5) Sale, administration, delivery, distribution and transportation of prohibited drugs where the victim is a minor or the victim dies

"Notwithstanding the provision of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of victim thereof, the maximum penalty [of death] herein provided shall be imposed." (Sec. 13)

(6) Maintenance of den, dive, or resort for users of prohibited drugs where the victim is a minor or the victim

dies

"Notwithstanding the provisions of Section 20 of this Act to the contrary, the maximum of the penalty [of death] shall be imposed in every case where a prohibited drug is administered, delivered or sold to a minor who is allowed to use the same in such place.

Should a prohibited drug be the proximate cause of the death of a person using the same in such den, dive or resort, the maximum penalty herein provided shall be imposed on the maintainer notwithstanding the provisions of Section 20 of this Act to the contrary." (Sec. 13)

(7) Sale, administration, dispensation, delivery, distribution and transportation of regulated drugs where the victim is a minor or the victim dies

"Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty [of death] herein provided shall be imposed." (Sec. 14)

(8) Maintenance of den, dive, or resort for users of regulated drugs where the victim is a minor or the victim dies

"Notwithstanding the provisions of Section 20 of this Act to the contrary, the maximum penalty [of death] herein provided shall be imposed in every case where a regulated drug is administered, delivered or sold to a minor who is allowed to use the same in such place.

Should a regulated drug be the proximate cause of death of a person using the same in such den, dive or resort, the maximum penalty herein provided shall be imposed on the maintainer notwithstanding the provisions of Section 20 of this Act to the contrary." (Sec. 15)

(9) Drug offenses if convicted are government officials, employees or officers including members of police agencies and armed forces

"The maximum penalties [of death] provided for in Section 3, 4 (1), 5(1), 6, 7, 8, 9, 11,12 and 13 of Article II and Sections 14, 14-A, 14(1), 15A (1), 16, and 19 of Article III [of the Dangerous Drugs Act of 1972] shall be imposed, if those found guilty of any of the same offenses are government officials, employees or officers including members of police agencies and the armed forces." (Sec. 19)

(10) Planting of dangerous drugs as evidence in drug offenses with the mandatory death penalty if convicted are government officials, employees or officers

"Any such above government official, employee or officer who is found guilty of 'planting' any dangerous drugs punished in Sections 3, 4, 7, 8, 9 and 13 of Article II and Sections 14, 14-A, 15, and 16 of Article III (of the Dangerous Drugs Act of 1972) in the person or in the immediate vicinity of another as evidence to implicate the latter, shall suffer the same penalty as therein provided." (Sec. 19)

(11) In all the crimes in RA. No. 7659 in their qualified form

"When in the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposed shall be in its maximum [of death] regardless of mitigating circumstances.

The maximum penalty [of death] shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.

An organized/syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime." (Sec. 23)

It is specifically against the foregoing capital crimes that the test of heinousness must be squarely applied.

The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because life was callously taken or the victim is treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being. The right of a person is not only to live but to live a quality life, and this means that the rest of society is obligated to respect his or her individual personality, the integrity and the sanctity of his or her own physical body, and the value he or she puts in his or her own spiritual, psychological, material and social preferences and needs. Seen in this light, the capital crimes of kidnapping and serious illegal detention for ransom resulting in the death of the victim or the victim is raped, tortured, or subjected to dehumanizing acts; destructive arson resulting in death, and drug offenses involving minors or resulting in the death of the victim in the case of other crimes; as well as murder, rape, parricide, infanticide, kidnapping and serious illegal detention where the victim is detained for more than three days or serious physical injuries were inflicted on the victim or threats to kill him were made or the victim is a minor, robbery with homicide, rape or intentional mutilation, destructive arson, and carjacking where the owner, driver or occupant of the carjacked vehicle is killed or raped, which are penalized by reclusion perpetua to death, are clearly heinous by their very nature.

There are crimes, however, in which the abomination lies in the significance and implications of the subject criminal acts in the scheme of the larger socio-political and economic context in which the state finds itself to be struggling to develop and provide for its poor and underprivileged masses. Reeling from decades of corrupt tyrannical rule that bankrupted the government and impoverished the population, the Philippine Government must muster the political will to dismantle the culture of corruption, dishonesty, greed and syndicated criminality that so deeply entrenched itself in the structures of society and psyche of the populace. Terribly lacking the money to provide even the most basic services to its people, any form of misappropriation or misapplication of government funds translates to an actual threat to the very existence of government, and in turn, the very survival of the people it governs over. Viewed in this context, no less heinous are the effects and repercussions of crimes like qualified bribery, destructive arson resulting in death, and drug offenses involving government officials, employees or officers, that their perpetrators must not be allowed to cause further destruction and damage to society.

We have no doubt, therefore, that insofar as the element of heinousness is concerned, R.A. No. 7659 has correctly identified crimes warranting the mandatory penalty of death. As to the other crimes in R.A. No. 7659 punished by reclusion perpetua to death, they are admittedly no less abominable than those mandatorily penalized by death. The proper time to determine their heinousness in contemplation of law, is when on automatic review, we are called to pass on a death sentence involving crimes punishable by reclusion perpetua to death under R.A. No. 7659, with the trial court meting out the death sentence in exercise of judicial discretion. This is not to say, however, that the aggravating circumstances under the Revised Penal Code need be additionally alleged as establishing the heinousness of the crime for the trial court to validly impose the death penalty in the crimes under R.A. No. 7659 which are punished with the flexible penalty of reclusion perpetua to death.

In the first place, the 1987 Constitution did not amend or repeal the provisions of the Revised Penal Code relating to aggravating circumstances. Secondly, R.A. No. 7659, while it specifies circumstances that generally qualify a crime provided therein to be punished by the maximum penalty of death, neither amends nor repeals the aggravating circumstances under the Revised Penal Code. Thus, construing R.A. No. 7659 in parimateria with the Revised Penal Code, death may be imposed when (1) aggravating circumstances attend the commission of the crime as to make operative the provision of the Revised Penal Code regarding the imposition of the maximum penalty; and (2) other circumstances attend the commission of the crime which indubitably characterize the same as heinous in contemplation of R.A. No. 7659 that justify the imposition of the death, albeit the imposable penalty is reclusion perpetua to death. Without difficulty, we understand the rationale for the guided discretion granted in the trial court to cognize circumstances that characterize the commission of the crime as heinous. Certainly there

is an infinity of circumstances that may attend the commission of a crime to the same extent that there is no telling the evil that man is capable of. The legislature cannot and need not foresee and inscribe in law each and every loathsome act man is capable of. It is sufficient thus that R.A. 7659 provides the test and yardstick for the determination of the legal situation warranting the imposition of the supreme penalty of death. Needless to say, we are not unaware of the ever existing danger of abuse of discretion on the part of the trial court in meting out the death sentence. Precisely to reduce to nil the possibility of executing an innocent man or one criminal but not heinously criminal, R.A. 7659 is replete with both procedural and substantive safeguards that ensure only the correct application of the mandate of R.A. No. 7659.

In the course of the congressional debates on the constitutional requirement that the death penalty be re-imposed for compelling reasons involving heinous crimes, we note that the main objection to the death penalty bill revolved around the persistent demand of the abolitionists for a statement of the reason in each and every heinous crime and statistical proof the such compelling reason actually exists.

We believe, however, that the elements of heinousness and compulsion are inseparable and are, in fact, interspersed with each other. Because the subject crimes are either so revolting and debasing as to violate the most minimum of the human standards of decency or its effects, repercussions, implications and consequences so destructive, destabilizing, debilitating, or aggravating in the context of our socio-political and economic agenda as a developing nation, these crimes must be frustrated, curtailed and altogether eradicated. There can be no ifs or buts in the face of evil, and we cannot afford to wait until we rub elbows with it before grasping it by the ears and thrashing it to its demission.

The abolitionists in congress insisted that all criminal reforms first be pursued and implemented before the death penalty be re-imposed in case such reforms prove unsuccessful. They claimed that the only compelling reason contemplated of by the constitution is that nothing else but the death penalty is left for the government to resort to that could check the chaos and the destruction that is being caused by unbridled criminality. Three of our colleagues, are of the opinion that the compelling reason required by the constitution is that there occurred a dramatic and significant change in the socio-cultural milieu after the suspension of the death penalty on February 2, 1987 such as an unprecedented rise in the incidence of criminality. Such are, however, interpretations only of the phrase "compelling reasons" but not of the conjunctive phrase "compelling reasons involving heinous crimes". The imposition of the requirement that there be a rise in the incidence of criminality because of the suspension of the death penalty, moreover, is an unfair and misplaced demand, for what it amounts to, in fact, is a requirement that the death penalty first proves itself to be a truly deterrent factor in criminal behavior. If there was a dramatically higher incidence of criminality during the time that the death penalty was suspended, that would have proven that the death penalty was indeed a deterrent during the years before its suspension. Suffice it to say that the constitution in the first place did not require that the death penalty be first proven to be a deterrent; what it requires is that there be compelling reasons involving heinous crimes.

Article III, Section 19 (1) of the 1987 Constitution simply states that congress, for compelling reasons involving heinous crimes, may re-impose the death penalty. Nothing in the said provision imposes a requirement that for a death penalty bill to be valid, a positive manifestation in the form of a higher incidence of crime should first be perceived and statistically proven following the suspension of the death penalty. Neither does the said provision require that the death penalty be resorted to as a last recourse when all other criminal reforms have failed to abate criminality in society. It is immaterial and irrelevant that R.A. No. 7659 cites that there has been an "alarming upsurge of such crimes", for the same was never intended by said law to be the yardstick to determine the existence of compelling reasons involving heinous crimes. Fittingly, thus, what R.A. No. 7659 states is that "the Congress, in the interest of justice, public order and rule of law, and the need to rationalize and harmonize the

penal sanctions for heinous crimes, finds compelling reasons to impose the death penalty for said crimes."

We now proceed to answer accused-appellant's other ground for attacking the constitutionality of R.A. No. 7659, i.e., that the death penalty imposed in rape is violative of the constitutional proscription against cruel, degrading or inhuman punishment.

Accused-appellant first claims that the death penalty is per se a cruel, degrading or inhuman punishment as ruled by the United States (U.S.) Supreme Court in *Furman v. Georgia*.^[41] To state, however, that the U.S. Supreme Court, in *Furman*, categorically ruled that the death penalty is a cruel, degrading or inhuman punishment, is misleading and inaccurate.

The issue in *Furman* was not so much death penalty itself but the arbitrariness pervading the procedures by which the death penalty was imposed on the accused by the sentencing jury. Thus, the defense theory in *Furman* centered not so much on the nature of the death penalty as a criminal sanction but on the discrimination against the black accused who is meted out the death penalty by a white jury that is given the unconditional discretion to determine whether or not to impose the death penalty. In fact, the long road of the American abolitionist movement leading to the landmark case of *Furman* was trekked by American civil rights advocates zealously fighting against racial discrimination. Thus, the U.S. Supreme Court stated in *Furman*:

"We cannot say from facts disclosed in these records that these defendants were sentenced to death because they were black. Yet our task is not restricted to an effort to divine what motives impelled these death penalties. Rather, we deal with a system of law and of justice that leaves to the uncontrolled discretion of judges or juries the determination whether defendants committing these crimes should die x x x.

x x x

In a Nation committed to equal protection of the laws there is no permissible 'caste' aspect of law enforcement. Yet we know that the discretion of judges and juries in imposing the death penalty enables the penalty to be selectively applied, feeding prejudices against the accused if he is poor and despised x x x.

x x x

Thus, these discretionary statutes are unconstitutional in their operation. They are pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments."

Furman, thus, did not outlaw the death penalty because it was cruel and unusual per se. While the U.S. Supreme Court nullified all discretionary death penalty statutes in *Furman*, it did so because the discretion which these statutes vested in the trial judges and sentencing juries was uncontrolled and without any parameters, guidelines, or standards intended to lessen, if not altogether eliminate, the intervention of personal biases, prejudices and discriminatory acts on the part of the trial judges and sentencing juries.

Consequently, in the aftermath of *Furman*, when most of the states re-enacted their death penalty statutes now bearing the procedural checks that were required by the U.S. Supreme Court, said court affirmed the constitutionality of the new death penalty statutes in the cases of *Gregg v. Georgia*,^[42] *Jurek v. Texas*,^[43] and *Profitt v. Florida*.^[44]

Next, accused-appellant asseverates that the death penalty is a cruel, inhuman or degrading punishment for the crime of rape mainly because the latter, unlike murder, does not involve the taking of life. In support of his contention, accused-appellant largely relies on the ruling of the U.S. Supreme Court in *Coker v. Georgia*.^[45]

In *Coker*, the U.S. Supreme Court ruled as follows:

"x x x It is now settled that the death penalty is not invariably cruel and unusual punishment within the meaning of the Eighth Amendment; it is not inherently barbaric or an unacceptable mode of punishment for crime; neither is it always disproportionate to the crime for which it is imposed. It is also established that imposing capital punishment, at least for murder, in accordance with the procedures provided under the Georgia statutes saves the sentence from the infirmities which led the Court to invalidate the prior Georgia capital punishment statute in *Furman v. Georgia* x x x.

x x x

In *Gregg v. Georgia* x x x the Court's judgment was that the death penalty for deliberate murder was neither the purposeless imposition of severe punishment nor a punishment grossly disproportionate to the crime. But the Court reserved the question of the constitutionality of the death penalty when imposed for other crimes. x x x

That question, with respect to rape of an adult woman, is now before us.

x x x

x x x [T]he public judgment with respect to rape, as reflected in the statutes providing the punishment for that crime, has been dramatically different. In reviving death penalty laws to satisfy *Furman's* mandate, none of the States that had not previously authorized death for rape chose to include rape among capital felonies. Of the 16 States in which rape had been a capital offense, only three provided the death penalty for rape of an adult woman in their revised statutes -- Georgia, North Carolina, and Louisiana. In the latter two States, the death penalty was mandatory for those found guilty, and those laws were invalidated by *Woodson* and *Roberts*. When Louisiana and North Carolina, respondent to those decisions, again revised their capital punishment laws, they reenacted the death penalty for murder but not for rape; none of the seven other legislatures that to our knowledge have amended or replaced their death penalty statutes since July 2, 1976, including four States (in addition to Louisiana and North Carolina) that had authorized the death sentence for rape prior to 1972 and had reacted to *Furman* with mandatory statutes, included rape among the crimes for which death was an authorized punishment.

x x x

It should be noted that Florida, Mississippi, and Tennessee also authorized the death penalty in some rape cases, but only where the victim was a child, and the rapist an adult, the Tennessee statute has since been invalidated because the death sentence was mandatory. x x x The upshot is that Georgia is the sole jurisdiction in the United States at the present time that authorizes a sentence of death when the rape victim is an adult woman, and only two other jurisdictions provide capital punishment when the victim is a child

The current judgment with respect to the death penalty for rape is not wholly unanimous among state legislatures, but it obviously weighs very heavily on the side of rejecting capital punishment as a suitable penalty for raping an adult woman.

x x x [T]he legislative rejection of capital punishment for rape strongly confirms our own judgment, which is that death is indeed a disproportionate penalty for the crime of raping an adult woman.

We do not discount the seriousness of rape as a crime. It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's privilege of choosing those with whom intimate relationships are to be established. Short of homicide, it is the 'ultimate violation of self.' It is also a violent crime because it normally involves force, or the threat of force or intimidation, to overcome the will and the capacity of the victim to resist. Rape is very often accompanied by physical injury to the female and can also inflict mental and psychological damage. Because it undermines the community's sense of security, there is public injury as well.

Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life. Although it may be accompanied by another crime, rape by definition does not include the death of or even the serious injury to another person. The murderer kills; the rapist, if no more than that, does not. Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair. We have the abiding conviction that the death penalty, which 'is unique in its severity and irrevocability' x x x is an excessive penalty for the rapist who, as such, does not take human life."

The U.S. Supreme Court based its foregoing ruling on two grounds: first, that the public has manifested its rejection of the death penalty as a proper punishment for the crime of rape through the willful omission by the state legislatures to include rape in their new death penalty statutes in the aftermath of Furman; and second, that rape, while concededly a dastardly contemptuous violation of a woman's spiritual integrity, physical privacy, and psychological balance, does not involve the taking of life.

Anent the first ground, we fail to see how this could have any bearing on the Philippine experience and in the context of our own culture.

Anent the second ground, we disagree with the court's predicate that the gauge of whether or not a crime warrants the death penalty or not, is the attendance of the circumstance of death on the part of the victim. Such a premise is in fact an ennobling of the biblical notion of retributive justice of "an eye for an eye, a tooth for a tooth". We have already demonstrated earlier in our discussion of heinous crimes that the forfeiture of life simply because life was taken, never was a defining essence of the death penalty in the context of our legal history and cultural experience; rather, the death penalty is imposed in heinous crimes because the perpetrators thereof have committed unforgivably execrable acts that have so deeply dehumanized a person or criminal acts with severely destructive effects on the national efforts to lift the masses from abject poverty through organized governmental strategies based on a disciplined and honest citizenry, and because they have so caused irreparable and substantial injury to both their victim and the society and a repetition of their acts would pose actual threat to the safety of individuals and the survival of government, they must be permanently prevented from doing so. At any rate, this court has no doubts as to the innate heinousness of the crime of rape, as we have held in the case of *People v. Cristobal*: [46]

"Rape is the forcible violation of the sexual intimacy of another person. It does injury to justice and charity. Rape deeply wounds the respect, freedom, and physical and moral integrity to which every person has a right. It causes grave damage that can mark the victim for life. It is always an intrinsically evil act xxx an outrage upon decency and dignity that hurts not only the victim but the society itself."

We are not unaware that for all the legal posturings we have so essayed here, at the heart of the issue of capital punishment is the wistful, sentimental life-and-death question to which all of us, without thinking, would answer, "life, of course, over death". But dealing with the fundamental question of death provides a context for struggling with even more basic questions, for to grapple with the meaning of death is, in an indirect way, to ask the meaning of life. Otherwise put, to ask what the rights are of the dying is to ask what the rights are of the living.

"Capital punishment ought not to be abolished solely because it is substantially repulsive, if infinitely less repulsive than the acts which invoke it. Yet the mounting zeal for its abolition seems to arise from a sentimentalized hyperfastidiousness that seeks to expunge from the society all that appears harsh and suppressive. If we are to preserve the humane society we will have to retain sufficient strength of character and will to do the unpleasant in order that tranquillity and civility may rule comprehensively. It seems very likely that capital punishment is a x x x necessary, if limited factor in that maintenance of social tranquillity and ought to be retained on this ground. To do otherwise is to indulge in the luxury of permitting a sense of false

delicacy to reign over the necessity of social survival." [47]

WHEREFORE, in view of all the foregoing, the Motion for Reconsideration and the Supplemental Motion for Reconsideration are hereby DENIED[48] for LACK OF MERIT.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] 249 SCRA 303, 307-308.

[2] See *Amigo v. Court of Appeals*, 253 SCRA 382, 390 [1996]; *De Leon v. Court of Appeals*, 245 SCRA 166, 172 [1995].

[3] RTC Decision, p. 3; Rollo, p. 19.

[4] G.R. No. 108871 promulgated on November 19, 1996.

[5] *People v. Pimentel*, 118 SCRA 695 [1982]; citing *People v. Manigbas*, 109 Phil. 469 [1960].

[6] *Greenhills Airconditioning and Services, Inc. v. National Labor Relations Commission*, 245 SCRA 384, 389 [1995]; *Arambulo v. Court of Appeals*, 226 SCRA 589, 601 [1993]; *Que v. Court of Appeals*, 101 SCRA 13 [1980].

[7] *Suarez v. Court of Appeals*, 220 SCRA 274, 279-280 [1993].

[8] 81 Phil. 741 [1948].

[9] 88 Phil. 36 [1951].

[10] 115 SCRA 688 [1982].

[11] 133 SCRA 1 [1984].

[12] 147 SCRA 204 [1987].

[13] 81 Phil. 741, 747 [1948].

[14] 88 Phil. 36, 43 [1951].

[15] 249 SCRA 246, 253 [1995].

[16] Record, CONCOM, July 17, 1986, Vol. I, p.676.

[17] *Id.*, p. 678.

[18] *Id.*, p. 680.

[19] Record, CONCOM, July 17, 1986, Vol. I, p.712.

[20] *Id.*, p. 744.

[21] 155 SCRA 327 [1987].

[22] Id., p. 335.

[23] 155 SCRA 113 [1987].

[24] 156 SCRA 242 [1987].

[25] 165 SCRA 637 [1988].

[26] 170 SCRA 107 [1989].

[27] Id., p. 121.

[28] Journal, Senate, February 15, 1993, Vol. 2, p. 1246.

[29] Record, Senate, March 17, 1993, Vol. IV, p. 77.

[30] Id., May 18, 1993, Vol. IV, p. 596.

[31] Record, Senate, March 18, 1993, Vol. IV, pp. 106-112.

[32] Journal, February 10 & 11, 1993, Vol. II, p.1223.

[33] Journal, Senate, March 22, 1993, Vol. II, pp.1574-1575.

[34] Record, Senate, May 11, 1993, Vol. IV, pp. 500-501.

[35] Journal, Senate, February 2, 1993, Vol. II, p. 1161.

[36] Record, House of Representatives, Vol. III, November 9, 1992, pp.417-418.

[37] Record, House of Representatives, Vol. III, November 9, 1992, pp.419-20.

[38] Record, House of Representatives, Vol. V, February 23, 1993, p. 98.

[39] *People v. Simon*, 234 SCRA 555 [1994]; *People v. Timple*, 237 SCRA 52 [1994].

[40] 251 SCRA 293 [1995].

[41] 408 US 238, 33 L Ed 2d 346, 92 S Ct. 2726.

[42] 428 US 153 49 L Ed 2d 859, 96 S Ct 2909.

[43] 428 US 262, 49 L Ed 2d 929, 96 S Ct 2950.

[44] 428 US 242, 49 L Ed 2d 913, 96 S Ct 2960.

[45] 433 US 584, 53 L Ed 2d 982, 97 S Ct 286.

[46] G.R. No. 116279, promulgated on January 29, 1996.

[47] Donald Atwell Zoll, "A Wistful Goodbye to Capital Punishment," *National Review*, December 3, 1971, pp.1351-1354.

[48] Three members of the Court voted to declare RA. 7659 unconstitutional insofar as it reimposes the death penalty. Two of them wrote Separate Opinions, which are attached as annexes hereto, without indicating the

names of the authors consistent with the Court's policy that, in death cases, ponentes of opinions — whether majority or minority — are not to be indicated.

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