

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO EXCIJA, ACCUSED-APPELLANT.*G.R. No. 119069. July 05, 1996*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-119069/>**DAVIDE, JR., J.:**

Accused-appellant Danilo Excija (hereinafter Excija) seeks the reversal of the 14 July 1994 decision^[1] of the Regional Trial Court (RTC) of Legazpi City, Branch 8, in Criminal Case No. 6641, which found him guilty beyond reasonable doubt of the crime of Rape under paragraph 1, Article 335 of the Revised Penal Code. The trial court, finding that Section 21 of R.A. No. 7659 had amended Article 27 of the Revised Penal Code to make reclusion perpetua a divisible penalty, then applying the Indeterminate Sentence Law, sentenced Excija to suffer a prison term of 16 years, 15 months, and 11 days of reclusion temporal in its medium period, as minimum, to 26 years, 8 months, and 1 day of reclusion perpetua in its medium period, as maximum, with all the accessory penalties thereof, to indemnify the private offended party in the amount of P50,000.00, and to pay the costs.

The prosecution for rape in the aforementioned Criminal Case No. 6641 was commenced with the filing of a sworn complaint for rape, seduction, and abduction against Excija in the Office of the City Prosecutor of Legazpi City by the offended party, Jocelyn B. Baylon, a 17-year old lass, assisted by her father Domingo Baylon. In her sworn complaint, she alleged that on 29 December 1993, Excija raped her in a room in his house in Imperial Subdivision, Legazpi City. After which, he told her not to worry because he would marry her. Then on 12 January 1994, after Excija had made her drink beer initially at his house, then later at the VIP Palace, she felt dizzy, slept, and was brought to the nearby Xandra Hotel where he raped her again. At about 4:00 a.m. the following day, 13 January 1994, they returned to his house where he reassured her once more that he would marry her. At 3:00 p.m. that day, he took her somewhere near a beach in Sorsogon where they passed the night, during which time he had sex with her twice. On 14 January 1994, Excija brought her back to his house where he made her write her parents and tell them not to worry as he would marry her. One Reynante Melecio, who used to run errands for Excija, saw them and informed her that her parents had been looking for her.

In the meantime, at 6:30 p.m. of 14 January 1994, her parents sought the help of Amparo Bergado of DZGB in retrieving their daughter. With the assistance of SPO1 Esquivel and another policeman, and upon the information gathered from Melecio, Bergado went to Excija's house and talked to him. After which, Excija allowed Jocelyn to leave.^[2]

In his defense, Excija submitted his counter-affidavit and those of Nonito Manoriña and Reynante Melecio.^[3] In his counter-affidavit, Excija merely stated: "I deny the allegations of Jocelyn Baylon for being pure and simple lies. I did [sic] not rape, abduct or seduce her."^[4]

After conducting the appropriate preliminary investigation, Assistant City Prosecutor Fidel Sarmiento, Jr. handed down a resolution^[5] finding the existence of prima facie evidence that Excija was probably guilty of the offenses charged. He thus recommended the filing of "informations for Rape on three (3) counts," two under the first

paragraph of Article 335 of the Revised Penal Code for the rapes committed on 29 December 1993 and 14 January 1994 in Legazpi City, while the third under the second paragraph of the said Article for the rape committed on 13 January 1994 at the Xandra Hotel in Legazpi City.

All the informations were dated 11 March 1994 and were filed with the RTC of Legazpi City on 16 March 1994. The information for the alleged 14 January 1994 rape[6] was docketed as Criminal Case No. 6640 and assigned to Branch 1 of the said Court, while that for the alleged 29 December 1993 rape[7] was docketed as Criminal Case No. 6641 and assigned to Branch 8, and that of 13 January 1993[8] was docketed as Criminal Case No. 6642 and assigned to Branch 9.

The accusatory portion of the information pertinent to this appeal, i.e., Criminal Case No. 6641, reads as follows:

That on or about the 29th day of December, 1993, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was then armed with a hand gun, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one JOCELYN B. BAYLON, a 17 year-old woman, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.[9]

No bail was recommended in each of the three cases for Excija's temporary liberty.

Pursuant to the warrant of arrest issued in Criminal Case No. 6641, Excija was arrested on 27 March 1994.[10]

The three criminal cases were not consolidated. Although it appears that on 18 April 1994, Excija moved, in Criminal Case No. 6640 (Branch 1), for its consolidation and joint trial with Criminal Case No. 6642 (Branch 9), this was denied by the Executive Judge.[11]

Upon his arraignment in Criminal Case No. 6641 on 19 April 1994, Excija entered a plea of not guilty.[12] At the hearing on 17 May 1994, Excija waived pre-trial,[13] and trial on the merits forthwith commenced with the prosecution presenting the offended party, Jocelyn B. Baylon, as its first witness.

Jocelyn, 17 years old -- having been born on 24 July 1976 -- single, and a student,[14] testified as follows:

She knew Excija as he used to pass by her house which was about 100 meters from where he lived, and would buy beer, cigarettes and vegetables from her family's store. Ronald Periña was her boyfriend and Excija's office mate at the "naval office." [15] She would see Ronald at Excija's house, and during the five times, more or less, that they were there, Excija would be present with his girlfriend, Leny Samaupan.[16]

On 29 December 1993, at around 4:00 p.m., Excija went to her house and relayed the message that Ronald wanted to see her at Excija's house. Jocelyn asked Vilma Logronio to accompany her to Excija's house, but upon reaching there, Logronio went home. Jocelyn entered Excija's house and the latter requested her to wait as Ronald would be late.[17]

While standing by the window and looking outside waiting for Ronald to arrive, Excija held both her hands behind her back and pulled her. He brought her to a room, which was approximately three meters away, and locked the door. She shouted, but Excija covered her mouth with his left hand, and pulled out a black gun -- about eight to ten inches long -- from his waist and poked it at the left side of her neck. He then pushed her onto the bed, but since she was able to sit-up, he told her to lie down, and in so doing, she hit her head. She tried to fight him off and stand, but was unable to as he slapped her on her left cheek. He then undressed her and mounted her. Again, she tried to stand but he pinned her down on both her hands and slapped her once more. He then inserted his penis into her sexual organ, at which time, she felt an indescribable pain.[18]

After Excija had consummated the sexual act, he told her not to worry because he would marry her, but warned her, however, that if she told anyone about what happened, he would kill her and her "whole family." He then told her to go home. She did, but was unable to sleep that night as she felt uneasy. When asked to quantify her anger and sleepless nights, she responded: "Fifty thousand pesos." [19]

On cross-examination, she declared that no one else was in Excija's house that afternoon. When the latter pulled her hands backwards, she shouted "Tabang!" (Help!), but was unable to ask him to stop as he threatened her with the gun he pulled from his waist. When they were already inside the bedroom, he placed the gun on top of the table then undressed her. Moreover, she was unable to resist his advances as he was, "so strong." She admitted that every time she went to Excija's house to meet Ronald, the latter would not come out but merely wait for her inside the house; and although she always had a companion every time she went to Excija's house, her companion would always leave upon reaching the house. She further admitted that after the incident, she returned to Excija's house once when Samaupan requested her to, as there was some sort of trouble between Excija and Samaupan. Although she was afraid to, she thought Excija would not touch her as Samaupan was present. She likewise admitted that even after the 29 December 1993 incident, she went with Excija to the VIP Palace and had sexual intercourse with him on three separate occasions. [20]

The second and last witness for the prosecution was Dr. Cesar Chua, City Health Officer II of Legazpi City, who testified on the physical examination he conducted on Jocelyn on 17 January 1994 upon the request of the police, and on the medico-legal report [21] which he prepared, where the following pertinent portions appear:

NOI: Rape

POI: Imperial Court Subd., Legazpi City

DOI: January 12-14, 1994

TOI:

POE/DOE: City Health Office

Legazpi City

January 17, 1994

11:40 a.m.

Findings:

Hymenal Laceration, healed at 3:00; 6:00 and 9:00 area Bloody menstrual materials noted at the vaginal Os. [22]

Dr. Chua declared that the "healed" lacerations were more than seven days old, and possibly more than two weeks old. The cause of the lacerations could have been anything inserted into the vagina, including the male penile organ. [23] On cross-examination, Dr. Chua declared that according to the information volunteered by Jocelyn, the rape was allegedly committed from 12 January to 14 January 1994, hence his entry: "DOI: January 12-14, 1994." [24] Jocelyn mentioned no other date concerning the alleged rape. [25] The witnesses for the defense were Excija himself, Nonito Manoriña, and Reynante Melecio.

Excija, 27 years old, single, and a civilian employee of the NISG III, declared that he and Jocelyn resided in the same barangay, and that he was a regular customer of her family's store. Jocelyn regularly came to his house with Leny Samaupan and Vilma Logronio. He and Jocelyn would talk there, and in the first week of November 1993, Jocelyn became his sweetheart. After this, she regularly came to his house and asked him out on dates. On one such occasion, they watched a movie at the Roselle theater and then went to his house where they had sexual intercourse thrice. They arrived at his house at 6:00 p.m., and she left at 9:00 p.m. Subsequently, and even before 29 December 1993, they regularly had sexual intercourse. [26]

On 29 December 1993, at around 3:00 p.m., while he was supervising carpentry work at his house,[27] Jocelyn and Logronio arrived, and Jocelyn even helped him prepare the meals for the workers. Thereafter, she talked to him in private and asked him to go out with her, but he refused as he was quite busy that day. Then on 3 January 1994, Jocelyn came to his house and they had carnal knowledge of each other. They saw each other again on 10 January 1994; and also on 12 January 1994. On the latter date, they had a drinking spree at his house and thereafter, upon Jocelyn's invitation, they went to the VIP Palace with Samaupan and Melecio.[28]

On cross-examination, Excija denied knowing that Jocelyn and Ronald were sweethearts. He explained that he (Excija) and she did not write letters to each other as they lived near each other, but he remembered having given her a t-shirt and a pair of shorts as gifts. His first sexual contact with Jocelyn was in November 1993; and on that occasion alone they had intercourse thrice. Their next sexual congresses were on 3, 10 and 12 December 1993.[29] On re-cross, he declared that after the incident he saw the parents of Jocelyn, who then asked him if he was willing to marry her and capable of assuming the responsibilities of marriage. He answered in the affirmative and they asked him to fetch his parents and boss so they could discuss the matter. He denied that he subsequently came to Jocelyn's house and pointed a gun at her mother and brother, but admitted the existence of a pending case against him for grave threats.[30]

Nonito Manoriña declared that on 29 December 1993, at about 1:00 p.m., he was doing carpentry work in Excija's house. At that time, Excija and a group of men were having a drinking session, and he was invited by Excija to join them. At 3:00 p.m., Jocelyn and Logronio arrived and the former helped in preparing food for merienda. After the group had eaten, Jocelyn and Logronio left. The men continued drinking until 7:00 p.m. when they slept. He did not see Jocelyn nor Logronio return to Excija's house.[31]

Reynante Melecio corroborated Nonito's testimony as to the events which transpired at the safehouse in the afternoon of 29 December 1993.[32]

The prosecution then recalled Jocelyn Baylon to the witness stand as a rebuttal witness. She denied that Excija was her sweetheart and that she had sexual relations with him prior to 29 December 1993. According to her, Ronald Periña was her boyfriend, while Leny Samaupan was Excija's girlfriend.[33]

On 14 July 1994, the trial court promulgated its challenged decision.[34] It gave full faith and credit to the story of Jocelyn Baylon, a "frail-looking girl, slim and four feet eleven inches in height," which it found to be "clothe[d] with credibility . . . clear and straightforward and convincing." In so doing, it rejected that of Excija, who was "well-built and [stood] about five feet and seven inches tall," because his tale "flow[ed] out of human behavior"; besides, he offered to marry Jocelyn, which was an admission of guilt. The trial court ratiocinated as follows:

To the mind of this court, for a 17-year old girl and a neighbor of the accused and one who knows that the accused is the boyfriend of her close friend, Leny Samaupan, to ask the accused to go out with her is absurd, if not entirely improbable. The relationship of the private offended party with Ronald Periña, being sweethearts, is known to the accused. There is no reason actually to believe that Jocelyn would ask the accused to go out and have sex with her. It is not the usual norm of conduct of a Filipina. There is no showing in the evidence that the complainant is of loose morals for her to ask a man to have sex with her. The negative assertion or denial of the accused . . . must necessarily yield to the positive assertion of the prosecution. . . . [T]he claim of the accused that the offended party is his girlfriend and submitted to his carnal desire voluntarily even prior to December 29, 1993 must fall. The private offended party is indeed familiar with the accused . . . but "familiarity does not create an inference that the complainant and the accused in a rape case are sweethearts." (People vs. Manalo, 145 SCRA 9)

The testimony of the private offended party is clothe[d] with credibility. It is clear and straight-forward and convincing . . . In this particular case, it would indeed be hard to believe that a seventeen year old girl would

concoct a story that she has been raped by the accused and allow the examination of her private parts, then subject herself to the humiliation during the trial . . . No decent Filipina would publicly admit that she had been raped unless that is, the truth. (People vs. Santiago, 197 SCRA 556). The Supreme Court said "decent Filipina," as if making a qualification of the Filipino woman, and the offended party, Jocelyn Baylon, belongs to this classification of a decent Filipino woman.

The testimony of a rape victim as to who abused her is credible where she has no motive to testify against the accused (People vs. Villamayor, 199 SCRA 472). The defense has never proved any motive on the part of the private offended party to testify against the accused nor has shown any cause why Jocelyn Baylon would file a case so serious as rape as against the accused. The contention of the accused that the private offended party is his girlfriend and has submitted voluntarily to his sexual desires. . . before December 29, 1993 for several times in a day never impressed this court, for as stated somewhere in this decision, said contention flows out of normal human behavior. The accused himself admitted that he offered to marry the offended party, but such offer was made after this case has been filed. This is an admission of guilt . . .

The prosecution . . . aptly proved . . . that the accused had carnal knowledge of the private offended party against her will and through force and intimidation and with the use of firearm. In rape cases, the force used need not be irresistible. It need but be present and so long as it brings about the desired result, all consideration of whether it was more irresistible is beside the point (People vs. Corro, 197 SCRA 121). The physical built[sic] of the accused, together with his use of the gun to threaten the victim to submit to his bestial acts is [a] sufficient degree of force to compel the victim to submission.

On 27 July 1994, Excija filed a Motion for Reconsideration,[35] which the trial court denied in its order of 24 August 1994.[36]

On 25 August 1994, Excija filed a Motion for New Trial[37] on the ground of new and material evidence which Excija, being a detention prisoner, could not, even with the exercise of reasonable diligence, have discovered and produced at the trial. Such newly discovered evidence consisted of the testimony of Ampy Bergado who testified in Criminal Case No. 6640 before Branch 1 of the RTC of Legazpi City, and the testimony of Jocelyn therein where her credibility had been allegedly "greatly tarnished."

On 27 September 1994, Excija filed a Supplemental Motion for New Trial[38] alleging therein the discovery of a letter of Jocelyn to Excija to prove their intimate relationship.

On 30 September 1994, the trial court denied the motion for new trial on the ground that the evidence sought to be introduced was not newly discovered since such was available at the time of the trial of the case.[39] Later that day, Excija filed a Proffer of Excluded Evidence[40] and a Notice of Appeal to the Court of Appeals.[41]

In the meantime, on 14 September 1994, Excija filed a Motion to Dismiss (Demurrer to Evidence) in Criminal Case No. 6640, while on 7 November 1994, he filed a Demurrer to Evidence in Criminal Case No. 6642. Both were granted, on 9 January 1995 and 22 November 1994, respectively.[42]

On 11 October 1994, the trial court "GRANTED" the Notice of Appeal in Criminal Case No. 6641 and ordered the elevation of the records to the Court of Appeals.[43]

On 25 January 1995, the Court of Appeals transmitted to us the records of this case in view of the penalty imposed and we accepted the appeal on 5 June 1995.

In his Appellant's Brief, Excija submits the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE

INCREDIBLE TESTIMONY OF THE ALLEGED VICTIM.

II

THE COURT A QUO GRAVELY ABUSED ITS DISCRETION IN DENYING THE ACCUSED'S MOTION FOR NEW TRIAL.

On 6 February 1996, the Office of the Solicitor General, after the grant of eight motions for extensions of time, filed a Manifestation and Motion In Lieu of Appellee's Brief, wherein it joined cause with Excija by agreeing with his second assigned error and recommending his acquittal.[44]

We take up these assigned errors in the order they are presented.

I.

Anent the first assigned error, Excija assails the finding of the trial court that Jocelyn's testimony is credible because:

(a) Although the defense did not introduce evidence to show motive on Jocelyn's part to testify against him, nevertheless, it is not uncommon for Filipino parents to compel their daughters to do so against the man who caused their family embarrassment and social humiliation, as was done in this case, where the report of the Office of the Prosecutor was at the instance of Jocelyn's parents.

(b) Jocelyn did not disclose to Dr. Chua that she was raped on 29 December 1993; what she told him concerned the incidents on 12 January and 14 January 1994, which he indicated in his medico-legal report.

(c) The trial court failed to consider the circumstances subsequent to the alleged rape of 29 December 1993 which could have led it to arrive at the same conclusion as that reached by the trial judges in Criminal Case No. 6640 and Criminal Case No. 6642. Excija quotes extensively the findings of the trial judges therein in their orders granting the demurrers to evidence.

(d) There is no factual basis for the trial court's finding that Excija testified that Jocelyn asked him to go out with her and have sex, and that he offered to marry her after the filing of the case.

The Office of the Solicitor General also maintains that:

(a) There is no factual basis for the trial court's finding that Excija testified that Jocelyn asked him to go out with her and have sex. All that he declared was:

Q What happened next after they have prepared the meal?

A After preparing the meal for the workers, Jocelyn talked to me in private and asked me to go out with her, but I refused her and told her that I should be given a chance next time because I was busy that day.[45]

(b) The trial court turned "a blind eye to the telltale signs which show that contrary to what it would like to believe, Jocelyn is not quite the conservative and virtuous Filipina that she is made out to be." For one, it was normal for her to go to Excija's house whenever her boyfriend, Ronald Periña, was there and would send word for her to meet him there. A conservative Filipina would insist that her boyfriend visit her at her house rather than agree to a clandestine arrangement. Then, "what completely blows the mind is the undisputed fact that shortly after having been allegedly raped by appellant on December 29, 1993, she still returned to appellant's place and went out with him, albeit in the company of a friend." Worse, "she subsequently had sexual intercourse with appellant on three other occasions . . . It is highly unnatural for one who supposedly just went through the harrowing experience of rape to go back to her rapist on the flimsy reason that her friend asked her to accompany

her to her rapist's house.

(c) If indeed Jocelyn was raped on 29 December 1993, then she would not have failed to report the fact to Dr. Chua.

Considering the severity of the penalties prescribed for the offense of rape, courts have been enjoined to take extreme care in weighing the evidence to avoid doing injustice to the accused. We have thus set three guiding principles in reviewing rape cases, viz., (1) an accusation for rape can be made with facility; it is difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[46]

The assessment of the credibility of the complainant in a rape case falls primarily within the province of the trial judge. He is in a better position to determine if she is telling the truth or merely narrating a concocted tale, and to weigh conflicting testimonies because he heard the witnesses themselves, observed their deportment and manner of testifying and had full access to vital aids: e.g., the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[47] Unless therefore the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.[48]

The trial court found that Jocelyn testified in a "clear, straightforward and convincing" manner and no ill-motive on her part had been shown to have prompted her to testify falsely against Excija. Our examination of her testimony only affirms this. The unaffected, concise, and candid manner by which she narrated her ordeal that afternoon of 29 December 1993 in Excija's house, and the directness of her answers even on cross-examination, attest to the truthfulness of her story of defloration. In fact, the cross-examination merely provided Jocelyn an opportunity to strengthen her cause as Excija's counsel failed to extract any testimony that could remotely suggest any ulterior motive on her part. Neither did Excija present any evidence to show ulterior motive. On this score, it is settled that where there is no indication that the principal witness for the prosecution was actuated by improper motive, the presumption that the witness was not so actuated stands and the testimony thus given is entitled to full faith and credit.[49]

While, Excija admits his failure to prove any ulterior motive in his Appellant's Brief,[50] he belatedly suggests that Jocelyn was compelled by her parents to falsely testify against him -- as established by the fact that "the report made to the Office of the Prosecutor of Albay was at the instance of her parents as declared by the trial court in Criminal Case No. 6640 (p. 13 of Appendix "G")." The suggestion is unacceptable. The finding and conclusion in Criminal Case No. 6640 is not binding in Criminal Case No. 6641, the subject of this appeal, and reliance thereon is a crude attempt to mislead us. Besides, that the complaint was filed by her parents does not, by itself, prove that Jocelyn was compelled by her parents to fabricate a false accusation. Since Jocelyn is a minor, her parents could have validly initiated the filing of the complaint.[51] Then too, it is inconceivable that her parents would go as far as to compel Jocelyn to submit her private parts to a medical and physical examination and undergo the ordeal of a public trial, with the attendant embarrassment and humiliation the narration of the gory details of the sexual assault and the rigorous cross-examination would bring, and for Jocelyn to meekly submit to such parental importuning if the charge of rape were untrue.

Her trysts with her boyfriend Ronald Periña in Excija's house, instead of visits at her house, may indeed have been a violation of social etiquette or a deviation from the traditional conservatism of the Filipina. However, they do

not, per se, evince a degree of moral looseness or perversion on her part, nor did such make her a cheap woman. In this instance, we rule that they were insufficient to cast doubt on her charge of rape. Moreover, it has been held that even a prostitute may be a victim of rape.[52] Plainly then, Jocelyn's poor judgment provided Excija no license to sexually assault her.

Excija's "sweetheart" theory does not persuade. This was denied by Jocelyn, who insisted until the end that her sweetheart was not Excija, but Ronald Perina. That Perina was Excija's close friend was self-evident as the latter even permitted him and Jocelyn to make his house their refuge for their trysts. If Ronald were not Jocelyn's sweetheart, Excija could have presented him as a witness to denounce the falsity of Jocelyn's claim.

We are not likewise convinced that Jocelyn's return to Excija's house sometime after the 29 December 1993 incident, and their subsequent sexual congresses on three different occasions, negate her assertion of the use of force and intimidation during the sexual assault on 29 December 1993; neither could such be indicia of her voluntary submission to Excija on 29 December 1993. She may have been too indiscreet in this regard, but the fact remains that Excija promised to marry her after he consummated the act on 29 December 1993. This Excija has not denied. With her emotional confusion, desolation, hopelessness, and shame making her unable to face the world, her parents and her boyfriend she may have thought that Excija's promise of marriage meant redemption for the dishonor to which the rape had consigned her. If she then subsequently stuck to him and gave up her flesh for him to devour, it could have been intended as pressure to exact fulfillment of the promise. This reaction of Jocelyn may appear to many to be unusual, if not downright bizarre. Indeed, others similarly exposed may have reacted differently or may have simply sealed their lips forever to conceal the dishonor. But people react differently. Considering her tender years, Jocelyn could not be expected to behave rationally, with circumspection and wisdom under the circumstances.

It must be stressed that Jocelyn described in minute detail how Excija raped her on 29 December 1993. While standing by the window waiting for her boyfriend, Excija suddenly held both her hands behind her back and pulled her. He brought her to a room, locked the door, and when she shouted he covered her mouth with his left hand. He then pulled out a gun from his waist and poked it at the left side of her neck. He pushed her onto the bed and forced her to lie down by slapping her left cheek. He undressed her and mounted her, and when she tried to stand, he pinned her down on both her hands and slapped her once more. He then inserted his penis into her vagina to consummate the act. After he had satisfied his lust, he told her not to worry because he would marry her. He warned her, however, not to tell anyone about what happened, or she and her whole family would be killed.

Yet, all Excija could offer was that he had no sexual intercourse with Jocelyn on 29 December 1993 because he was quite busy that day.

The second assigned error is equally without merit.

The law on new trial in criminal cases is found in Section 2, Rule 121 of the Rules of Court, which provides:

SEC. 2. Grounds for new trial. -- The court shall grant a new trial on any of the following grounds:

- (a) That errors of law or irregularities have been committed during the trial prejudicial to the substantial right of the accused;
- (b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment.

Excija's motion for new trial is based on the second ground. Accordingly, he must prove the existence of the following requisites: (a) that the evidence was discovered after the trial; (b) that such evidence could not have

been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) that it is material, not merely corroborative or impeaching; and of such weight that it could probably change the judgment if admitted.[53] Additionally, the motion must have been filed at any time before a judgment of conviction becomes final, i.e., within fifteen days from its promulgation or notice.[54]

The alleged evidence which Excija claimed he discovered after the trial consists of: (a) the transcripts of the stenographic notes of the testimony of Dr. Cesar Chua and Jocelyn in Criminal Case No. 6640 in Branch 1 of the RTC of Legazpi City, to prove that the latter did not mention to Dr. Chua that she was raped on 29 December 1993 and that during the cross-examination her credibility was tarnished and put to doubt; (b) the alleged letters of Jocelyn to her parents and to her sister-in-law which would prove that Jocelyn had intimate relations with Excija, hence no rape was committed, which were supposedly coursed through Reynante Melecio to be given to the addressees; and (c) the testimony of Ampy Bergado.

We agree with the trial court that the evidence sought to be introduced was not newly discovered. Both Dr. Chua and Jocelyn testified in Criminal Case No. 6641 and were extensively cross-examined by Excija's counsel. Reynante Melecio was Excija's star witness in the said case, and indeed he was the party requested by Jocelyn to deliver the alleged letters to her parents and sister-in-law. He could not have failed to disclose this to Excija, especially in light of the fact that Reynante did not, as admitted in his affidavit,[55] actually deliver the letter allegedly intended for Jocelyn's sister-in-law. In short, Reynante kept it in his possession. Besides, the existence of Jocelyn's letter to her parents had been known to Excija as early as the preliminary investigation of the complaint for rape, abduction, and seduction against him in the Office of the City Prosecutor of Legazpi City. Jocelyn stated in her sworn statement that on 14 January 1994 she was brought back to Excija's house "where she was made [by him] to write a letter to her parents." [56] As early as then too, Excija already knew of the possibility that Ampy Bergado would be a witness for Jocelyn since, as also revealed in Jocelyn's sworn statement, Ampy's assistance was solicited by the former's parents.

We thus affirm the trial court's judgment of conviction, but the penalty imposed must be modified.

Since Excija used a deadly weapon, the penalty prescribed by law is reclusion perpetua to death.[57] No modifying circumstances having been proven, the lesser penalty -- reclusion perpetua -- should be imposed.[58] Contrary to the finding of the trial court, reclusion perpetua was not made a divisible penalty by R.A. No. 7659. In our Resolution of 9 January 1995 in *People vs. Conrado Lucas*, [59] we ruled that although Section 17 of R.A. No. 7659 has fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain an indivisible penalty.

WHEREFORE, the instant appeal is DISMISSED, and the challenged decision dated 14 July 1994 of Branch 8 of the Regional Trial Court of Legazpi City in Criminal Case No. 6641 is AFFIRMED, subject to the modification as to the imprisonment penalty. As modified, accused-appellant **DANILO EXCIJA** is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman) Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Records (OR) 101-106; Rollo, 17-22, 57-62. Per Judge Salvador D. Silerio.

[2] Resolution of the investigating prosecutor, 1-2; OR, 4-5.

[3] OR, 24-29.

[4] Id., 29.

[5] Id., 4-15.

[6] Id., 491-492.

[7] Id., 1-2; Rollo, 8-9.

[8] Id., 495-496.

[9] OR, 1; Rollo, 8.

[10] OR, 31.

[11] See Appendix "G" of Brief for the Appellant; Rollo, 89.

[12] OR, 38-40.

[13] TSN., 17 May 1994, 2.

[14] TSN., 17 May 1994, 2-3.

[15] Naval Intelligence and Security Group III (NISG III) of the Philippines Navy, based in Legazpi City.

[16] TSN., 17 May 1994, 5.

[17] id., 6-7.

[18] TSN., 17 May 1994, 7-1.

[19] Id., 11.

[20] TSN., 17 May 1994, 19-24.

[21] Exhibit "A"; OR, 71.

[22] Id., 16, 71.

[23] TSN., 19 May 1994, 7.

[24] TSN., 19 May 1994, 8.

[25] Id., 9.

[26] TSN., 30 May 1994, 2-5.

[27] Which also served as the safehouse of the NISG III (TSN., 30 May 1994, 3-4).

[28] TSN., 30 May 1994, 6.

[29] Id., 10-12.

[30] Id., 13-14.

[31] TSN., 31 May 1994, 3-4.

[32] TSN., 21 June 1994, 2-10.

[33] TSN., 22 June 1994, 2-5.

[34] Supra note 1.

[35] OR, 111-118.

[36] Id., 126.

[37] Id., 130-133.

[38] Id., 134-135.

[39] Id., 136.

[40] OR, 137-139.

[41] Id., 513. The appeal was to the Court of Appeals.

[42] Rollo, 88-113.

[43] OR, 514.

[44] Rollo, 155-179.

[45] TSN., 30 May 1994, 5.

[46] People vs. Tismo, 204 SCRA 535, 552 [1991]; People vs. Casinillo, 213 SCRA 777, 788-789 [1992]; People vs. Matrimonio, 215 SCRA 613, 627 [1992]; People vs. Lucas, 232 SCRA 537, 546 [1994].

[47] People vs. Delovino, 247 SCRA 637, 647 [1995], citing Creamer vs. Bivert, 214 MO 473, 474 [1908] cited in M. FRANCIS MCNAMARA 2000 Famous Legal Quotations [1967], 548.

[48] People vs. Tismo, supra note 46.

[49] People vs. Simon, 209 SCRA 148, 159 [1992]; People vs. Rostata, 218 SCRA 657, 673-674 [1993]; People vs. Alib, 222 SCRA 517, 527-528 [1993].

[50] Rollo, 43.

[51] Article 344 (3), Revised Penal Code, Section 5, Rule 110, Rules of Court.

[52] U.S. vs. Suan, 27 Phil. 12, 17 [1914]; People vs. Cañete, 43 SCRA 14, 24 [1972]; People vs. Raptus, 198 SCRA 425, 433 [1991]; People vs. Feralino, 221 SCRA 604, 610 [1993]; People vs. Rivera, 242 SCRA 26, 37 [1995].

[53] People vs. de la Cruz, 207 SCRA 632, 641 [1992]; People vs. Ducay, 225 SCRA 1, 18 [1993]; People vs. David, 230 SCRA 541, 547 [1994].

[54] Section 1, Rule 121, in relation to Section 6, Rule 122, Rules of Court.

[55] Annex "J" to Excija's Profer of Excluded Evidence; OR, 498.

[56] Id., 5 (a part of the summary of the sworn statement contained in the Resolution of the investigating prosecutor).

[57] Article 335(3), Revised Penal Code.

[58] Article 63, Id. Even if an aggravating circumstances was present, the graver penalty cannot be imposed in view of the constitutional prohibition against the imposition of the death penalty (Section 19 [1], Article III, Constitution). The crime was committed before the effectivity of R.A. No. 7659, which imposed the death penalty on certain heinous crimes.

[59] 240 SCRA 66 [1995].

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