

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID GARCIA Y QUITORIO, ACCUSED-APPELLANT.

G.R. No. 120093. November 06, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant David Garcia was found guilty beyond reasonable doubt of having raped herein complainant Jackielyn Ong,[1] a minor, one hundred eighty-three (183) times during the period from November, 1990 up to July 21, 1994, and was correspondingly sentenced to suffer one hundred eighty-three (183) penalties of reclusion perpetua and to indemnify complainant in the amount of P50,000.00 as moral damages.

In an information dated July 25, 1994, appellant Garcia was charged with the crime of multiple rape allegedly committed as follows:

“That from November 1990 up to July 21, 1994, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have multiple carnal knowledge of one Jackielyn Ong, a minor about twelve (12) years old, to the damage and prejudice of the latter.”

Complainant Jackielyn Ong and her younger brother, Darwin, had been abandoned by their mother since birth and when their father Danilo Ong died, the latter’s sister, Elizabeth Ong, took them under her care and custody. Jackielyn, who was born on June 3, 1982, was only eight years old when she, together with Darwin and a stepbrother, Allan, were left to the care of herein appellant Garcia, who was then the live-in partner of the victim’s aforesaid aunt, when the latter left for the United States sometime in November, 1990. Appellant Garcia stayed with the children in the house of Elizabeth Ong at Fontaine Street, East Bajac-Bajac, Olongapo City.[2]

On that fateful day of November 1990, after Elizabeth Garcia had left for the airport, complainant, who was then playing with Darwin outside the house, was called by appellant Garcia who told her to go upstairs. Once there, Garcia ordered her to remove her shirt and panty and, when she refused, the former was the one who removed them. He made her lie on the bed and he then removed his pants and brief. Thereafter, he climbed into the bed with her, spread her legs apart and inserted his private organ into hers. She felt pain when he forced himself upon her and he was moving up and down. Jackielyn narrated that Garcia pulled out his organ when a whitish substance was discharged therefrom. Then he ordered her to put back her shirt and panty. Later, complainant went back to play with her brother.

According to Jackielyn, from November, 1990 up to July 21, 1994, appellant Garcia raped her almost weekly.[3] These incidents happened in all the three places where they lived, that is, at Fontaine Street, East Bajac-Bajac, at 12th Street, Pag-asa, and at #40 14th Street, East Tapinac, all in Olongapo City.[4] On July 21, 1994, Jacqueline was sleeping in bed beside her brother, Darwin, when appellant woke her up, asked her to lie down beside him on the cushion inside the same room where he slept, and had intercourse with her.

Prosecution witness Angelito Ong testified that sometime in May, 1994, his sister Elizabeth Ong called to inform

him that their brother in the States met an accident, and he was requested to support and take care of the children because she would not be able to send them money in the meantime. Thenceforth, the children would go to Angelito Ong's house for their food and other needs.

In the evening of July 22, 1994, Angelito was already becoming apprehensive because the children had not yet arrived to get their food. He decided to go to the house where the children were staying but he only saw the children's bags there. The door of the house was locked, and he found Jackielyn and Darwin at a nearby store. When he asked them why they did not get their food, they answered that the house was locked and the key was with appellant Garcia. They likewise told him that Garcia scolded them and would not allow them to go out of the house without the former's permission. Angelito told the children that just because they were getting their food from him, appellant had no right to be angry at them.

Thereafter, Angelito asked Jackielyn if she was having an affair with appellant or if she had been abused by him. When Jackielyn refused to answer and merely kept silent, Angelito took it as an admission that what he was asking her was true, so he brought Jackielyn to the Perpetual Help Clinic for checkup.

It appears that Angelito had already harbored suspicions because sometime in June, 1994, Darwin told him that several times in the past, although Jackielyn slept beside Darwin at night, the latter would wake up in the morning and see her sleeping beside appellant Garcia. At that time, Angelito merely warned Jackielyn that it was not proper for her to be sleeping beside appellant because she was already a big girl. He did not bother to confront appellant about it then because he did not want to appear invidious. Yet even before that, Angelito already thought it odd and suspicious why appellant would not allow the children's relatives to go to their house.

Since the doctor at the Perpetual Help Clinic was not available, Angelito decided to bring the children home. Along the way, Angelito kept on asking Jackielyn if she had been raped by appellant Garcia. At first, Jackielyn refused to answer, but due to Angelito's persistence and after threatening her that he would eventually know once she is examined by a doctor, she finally admitted that she had been raped several times by appellant. He then brought her to the Olongapo City General Hospital where Jackielyn was examined by Dr. Laila Patricio who thereafter issued a medicolegal certificate.[5]

According to Dr. Patricio, the hymen of Jackielyn was no longer intact and, considering that there was no laceration, it was possible that there had been sexual contact for more than five times. She discounted the probability that there had been only one or two contacts, or that the loss of virginity was caused by biking, because otherwise there should have been a laceration. She likewise conducted a "spermatozoa determination" to see if there had been sexual intercourse during the past 24 hours, but the result was negative, although she clarified that the sperm normally stays in the vagina for 24 hours unless the woman washes herself very well. Jackielyn told her, during the medical examination, that she had been raped by the husband of her aunt who was in the States.

From the hospital, Angelito and Jackielyn proceeded to the police station where they filed a complaint for rape[6] against Garcia and later executed their sworn statements.[7] On the strength thereof, Garcia was apprehended in his house at 32 Jones Street, Olongapo City. At the time of his arrest, no formal complaint had as yet been filed in court nor had a warrant of arrest been issued.[8]

Appellant Garcia could only offer bare denials to the inculpatory testimonies of the victim and the prosecution witnesses that he raped Jackielyn. He contends, however, that probably the reason why he was being falsely charged was because Elizabeth Ong's family was not satisfied with the way he managed the house entrusted to him and the money being sent by Elizabeth for the support of the children. He rationalizes that as the supposed guardian of the children and with the trust reposed in him by Elizabeth, he could not and would never do such a

thing to Jackielyn.

In his cross-examination, however, appellant Garcia admitted having sent a letter addressed to Elizabeth Ong and several others, dated August 24, 1994,[9] wherein he disclosed that he and Jackielyn were having a relationship and that he was asking for forgiveness from Elizabeth for what happened between him and Jackielyn.

The conviction of herein appellant is now being controverted and assailed essentially on two grounds, namely, that the information is defective and that the trial court erred in relying on the credibility of the testimony of the victim.[10]

I. Appellant avers that the information for multiple rape filed against him is defective for failure to state the exact dates and time when the alleged acts of rape were committed since it was merely stated therein that the offense was committed “from November 1990 up to July 21, 1994.” He asserts that each sexual act is a separate crime and, hence, must be proven to have been committed on a precise date and time.

The defense, in support of this argument, relies mainly on Section 11, Rule 110 of the Rules of Court, as revised, which provides:

“Sec. 11. Time of the commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.”

It invokes the early case of *U.S. vs. Dichao*[11] wherein an order sustaining a demurrer to an information for failure to conform to the subscribed form was upheld by the Court, in effect authorizing the outright dismissal of the case, on the ground that:

“x x x The allegations of an information should, if possible, be sufficiently explicit and certain as to time to inform the defendant of the date on which the criminal act is alleged to have been committed. Unless the accused is informed of the day, or about the day, he may be, to an extent, deprived of the opportunity to defend himself.

While Section 7 of the Code of Criminal Procedure provides that “except when time is a material ingredient of an offense, the precise time of commission need not be stated in a complaint or information, but the act may be alleged to have been committed at any time before the filing thereof,” this does not mean that the prosecuting officer may be careless about fixing the date of the alleged crime, or that he may omit the date altogether, or that he may make the allegation so indefinite as to amount to the same thing. Where the exact date cannot be fixed, or where the prosecuting officer is not thoroughly satisfied that he can prove a precise date, he should allege in the information that the crime was committed on or about a date named. Under such an allegation he is not required to prove any precise date but may prove any date which is not so remote as to surprise and prejudice the defendant. In case of surprise the court may allow an amendment of the information as to time and an adjournment to the accused, if necessary, to meet the amendment.

In the case before us the statement of the time when the crime is alleged to have been committed is so indefinite and uncertain that it does not give the accused the information required by law. To allege in an information that the accused committed rape on a certain girl between October 1910 and August 1912, is too indefinite to give the accused an opportunity to prepare his defense x x x. Section 7 of the Code of Criminal Procedure does not warrant such pleading. Its purpose is to permit the allegation of a date of the commission of the crime as near to the actual date as the information of the prosecuting officer will permit, and when that has been done any date may be proved which does not surprise and substantially prejudice the defense. It does not authorize the total omission of a date or such an indefinite allegation with reference thereto as amounts to the same thing.”

Assuming that this is still good case law, reliance cannot be placed thereon by appellant since the dicta are not squarely applicable to the present case due to factual differences. Taking into consideration the circumstances obtaining herein vis-a-vis the Dichao case, the distinguishing factor which is immediately apparent is the existence of a motion to quash in that case as pointed out in the aforequoted decision. There is no such motion in the case at bar, and this spells the big differences.

The rule is that at any time before entering his plea, the accused may move to quash the information^[12] on the ground that it does not conform substantially to the prescribed form.^[13] The failure of the accused to assert any ground for a motion to quash before he pleads to the information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds for a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and jeopardy.^[14]

Perforce, a formal defect in the information not being one of the exceptions to the rule, appellant's failure to invoke the same through a motion to quash is deemed to be a waiver of such objection and he cannot now be heard to seek affirmative relief on that ground. Moreover, objections as to matters of form or substance in the information cannot be made for the first time on appeal.^[15]

At any rate, even laying aside procedural technicalities and assuming *arguendo* that appellant Garcia could validly raise this legal question before us, we are still not inclined to apply the ruling in Dichao to the case now before us.

It may readily be inferred from the decision in Dichao that where there is such an indefinite allegation in the information as to the time of the commission of the offense which would substantially prejudice the defense, a motion to quash the information may be granted and the case dismissed without the benefit of an amendment. On the other hand, where there is a variance between the date of the commission of the crime alleged in the information and that proved at the trial, and it is shown to the trial court that the accused is surprised thereby, and that by reason thereof, he is unable to properly defend himself, the court may, in the exercise of sound discretion based on all the circumstances, order the information amended so as to set forth the correct date. It may further grant an adjournment for such a length of time as will enable the accused to prepare himself to meet the variance in date which was the cause of his surprise.

Apparently, that distinction was premised on the theory that the question on whether the allegations of the information are sufficiently definite as to time, and the question which arises from a variance between the particulars of the indictment and the proof, are different in nature and legal effect, and are decided on different principles.

It would then result that, on the basis of the foregoing disquisition in Dichao, an amendment will not be allowed, and the motion to quash should instead be granted, where the information is, on its face, defective for failure to state with certainty when the offense was committed, and such ambiguity is so gross as to deprive the accused of the opportunity to defend himself. For all intents and purposes, however, a strict adherence thereto would no longer be a sound procedural practice, especially in criminal proceedings which bears the mandate on speedy trial and wherein the availability of bills of particulars have over time been adopted and recognized.

We believe that the principle laid down in the more recent case of *Rocaberte vs. People, et al.*^[16] involving exactly the same issue, presents the more logical and realistic interpretation of the rules. While the Court there adverted to the Dichao case, it nevertheless resorted to a less restrictive application of the rules by disposing of the case in this wise:

“A defect in the averment as to the time of the commission of the crime charged is not, however, a ground for a motion to quash under Rule 116 of the Rules of Court. Even if it were, a motion for quashal on that account

will be denied since the defect is one that can be cured by amendment; instead, the court shall order the amendment to be made by stating the time with particularity.

The remedy against an indictment that fails to allege the time of the commission of the offense with sufficient definiteness is a motion for a bill of particulars, provided for in Section 6, Rule 116 of the Rules of Court of 1964.

x x x

From all that has been said, the conclusion should be clear. The information against petitioner Rocaberte is indeed seriously defective. It places on him and his co-accused the unfair and unreasonable burden of having to recall their activities over a span of more than 2,500 days. It is a burden nobody should be made to bear. The public prosecutor must make more definite and particular the time of the commission of the crime of theft attributed to Rocaberte and his co-defendants. If he cannot, the prosecution cannot be maintained, the case must be dismissed.

WHEREFORE, the petition is GRANTED, and the writ of certiorari prayed for is ISSUED ANNULING AND SETTING ASIDE the challenged Orders of respondent Judge x x x, and DIRECTING the amendment of the information in said case by the prosecution within such time as the respondent Judge may deem proper, failing which the criminal prosecution against the petitioner and his co-defendants shall be dismissed” (Italics supplied).

Conformably thereto, where the allegation in the information as to the date or time of the commission of the offense is so uncertain, indefinite or ambiguous as to constitute a violation of the right of the accused to be informed of the nature and cause of the accusation against him, the proper disposition where a motion to quash is filed on that ground, is for the trial court to overrule the motion and order the prosecution to amend the information by stating the date or time with particularity, within such period as the trial court may deem proper under the circumstances.

This rule finds support in Section 4 of Rule 117 which provides that “if the motion to quash is based on an alleged defect in the complaint or information which can be cured by amendment, the court shall order the amendment to be made.” Corollarily, Section 14 of Rule 110 states that “the information or complaint may be amended, in substance or form, without leave of court, at any time before the accused pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused.”

In the event that the public prosecutor still fails to make the necessary amendment within the time allowed therefor by the court, only then may the court order the dismissal of the case. Hence, if herein appellant Garcia had filed a motion to quash, the case would not require an outright dismissal.

Furthermore, it bears stressing that Section 11 of Rule 110 does not require that the precise time when the offense was committed be stated in the information, except when time is a material ingredient of the offense. In rape cases, the date or time is not an essential element of the crime and, therefore, need not be accurately stated.[17]

II. The second issue hinges on the credibility of complainant’s testimony. Appellant contends that the prosecution failed to prove multiple rape and that the trial court erred in accepting in full complainant’s testimony that she was raped every week during the period earlier stated. It is averred that while complainant remembered the details of the first and last acts of rape, she failed to narrate with similar clarity the other acts that allegedly transpired in the interim.

We are strongly convinced that, based on the testimonies of complainant and the prosecution witnesses, appellant Garcia is guilty as charged. Absolute certainty of guilt is not demanded by the law for conviction of any criminal

charge; only moral certainty is required as to every proposition of proof requisite to constitute the offense.[18] Such requirement has been complied with in the case at bar with respect to the criminal acts hereinafter specified. Besides, a prima facie case affords sufficient basis for conviction if not overcome by the evidence of the accused.[19]

We have thoroughly examined the testimony of complainant Jackielyn Ong and we cannot but conclude that complainant, in spite of her youth at the time she testified, was very candid, spontaneous and consistent in her testimony in court, both in the direct and cross-examination. Her testimony is forthright, clear and free from serious contradictions. It is a basic rule, founded on reason and experience, that when the victim testifies that she has been raped, she says in effect all that is necessary to show that rape was committed.[20] Thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. On this aspect, it is an accepted precept that testimonies of rape victims who are young and of tender age are credible. Hence, the revelation of an innocent child whose chastity was abused deserves full credence.[21]

Nor have we chosen to merely rely on such doctrinal rules. Our conclusion further resulted from a painstaking analysis of the evidence on record. The alleged inconsistency pointed out by appellant, to the effect that complainant remembered the details of the first and last acts of rape but failed to expound on the other violations committed against her, is not sufficient to render her testimony doubtful. Such failure does not necessarily detract from her credibility nor negate the commission of the rape. The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[22]

Rape, as a harrowing experience, is usually not remembered in detail. For, such an offense is not something which enhances one's life experience as to be worth recalling or reliving but, rather, something which causes deep psychological wounds and casts a stigma upon the victim for the rest of her life, which her conscious or subconscious mind would prefer to forget. Thus, a rape victim is not and cannot be expected to keep an accurate account of her traumatic experience.[23] With more reason must we have greater compassionate understanding of herein complainant's plight who, at a very tender age, was mercilessly corrupted by a conscienceless human being with bestial desires.

The failure of complainant to immediately disclose the violations committed against her, and the fact that she went on to play with her brother after the first rape incident, cannot be considered as absolutely unnatural and contrary to normal human behavior. It must be remembered that the subject of appellant's lust is an innocent, naive and frail little girl of eight years, extremely ignorant of the ways of the world and of men. One cannot and should not expect such a wisp of a girl to act like an adult or like a mature and experienced woman who would know what to do under such difficult circumstances.[24] In fact, her subsequent action is confirmatory of the unreasoning innocence of childhood which in this case was mercilessly betrayed.

The alleged absence of resistance cannot likewise alter the condemnatory verdict against appellant. This Court has consistently held that rape is committed when intimidation is used on the victim and this includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other.[25] It can be addressed to the mind as well.[26] Moreover, the intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear -- fear that if the victim does not yield to the lustful demands of the accused, something would happen to her at the moment or thereafter.[27]

In the instant case, a clear situation bespeaking abuse of transient authority is established by the records. There can be no doubt that appellant Garcia had a sort of moral dominance and influence over Jackielyn such that he could easily intimidate and force her to submit to his satyric desires, considering that she was very young at that

time and under his custody.[28] Jackielyn was only eight years old when Garcia started molesting her sexually. Appellant himself admitted that he was expected to take care of complainant and her brother, and to give them guidance and advice. Hence, the victim could hardly be expected to use any discretion and discernment as to how she could resist the coercive power of appellant.[29]

Jackielyn disclosed during her direct examination that she was afraid of appellant because sometimes he would get mad at her and beat her.[30] On cross-examination, she declared that she never confided to her older brother about the rape incidents because she feared that if she did so, appellant might get angry and beat her.[31] Her fear of appellant is vividly illustrated by the testimony of her uncle, Angelito Ong, about that incident when the victim and her younger brother failed to get their food from his house and he found them in a nearby store because they were locked out of the house by appellant.[32] So great was the fear instilled by appellant in the victim's mind that she would rather go hungry, which is an ordeal for young children, than incur his ire.

In sum, complainant's tender age and appellant's custodial control and domination over her, had rendered her so meek and subservient to his needs and desires, thus becoming an easy prey to appellant's lecherous advances.[33] This psychological predicament, in the mind of the Court, explains why the offended girl did not give any outcry or offer any resistance when she was being raped,[34] especially when she became inured to the outrage repeatedly committed over a period of time and which sexual assaults were corroborated by medicolegal evidence.

Perhaps, though, the most convincing evidence that appellant Garcia committed the acts charged is his very own admission of having had repeated carnal knowledge of the victim in a letter which he sent on August 24, 1994 from his place of detention to Elizabeth Ong, his live-in partner and aunt of the victim, wherein he pleaded that he be given another chance and promised to change for the better.[35] The following excerpts therefrom, to quote just a few, are indeed revealing and revolting:

"x x x OO, tutuong may ng yari sa amin ni Jacklyn. Yon ay alam niya. Kayo mismo ang kumausap. Nitong May at June hanggang July 16, 1994. Yan ay inaamin ko pero hindi ko siya tinakot at ni rape. Alam ni Jacklyn yon. x x x Una halikan lang muna siya panga ang nag-umpisa. Ng umabot ng June bago magpasukan nitong 1994 lang kami lumag-pas sa hindi dapat. At siya pa nga ang nagsabi sa akin dinadatan na siya kaya mag-ingat kami at baka raw mabuntis ko siya. Di kako bahala ka ikaw ang babae. Mga 7 o 8 beses kami naulit. Mula May, June, July 16, 1994. Tapos kako nga pa sa kanya bakit gustong-gusto mo na ginaganoon ko siya at anong dahilan. Ang sabi niya ay wala. Kako hindi mo ba alam maraming magagalit at masasaktan. At saka kako hindi ka papayag ipaubaya ang pinakamahalagang bagay na iniingatan ng babae. Bakit kako mahal mo ba ako sabi naman OO. x x x Humihingi ako sa inyo ng isang pagkakataon na ibalato na lang ninyo ang buhay ko kay Jacklyn x x x at Beth kung talagang mahal mo rin ako ay pabayaan mo na ang kalayaan ko at sarili kay Jacklyn. x x x Kaya humihingi ako sa inyong lima ng isa pang pagkakataon na panagutan si Jacklyn. x x x At yong ng yari samin ni Jacklyn ay kapwa namin kagustuhan. x x x At hindi kunaman talaga ni rape. x x x Handa kunaman panagutan. x x x Kayo ang pag-asa ko para sa kaligtasan ng buhay ko dahil sa paratang nayan. x x x Kaya nakikiusap ako at humihingi ng awa ninyo at isang pag-kakataon. x x x."

If what appellant claims in his letter that he and Jackielyn were lovers is true, it is paradoxical that he never mentioned that in his testimony nor did he present any evidence to prove such supposed relationship. His silence on the matter becomes highly suspect, considering that such a defense was undeniably intended to possibly save the day for him. An elementary knowledge of human nature would expose his pretensions as merely an afterthought on the part of appellant, in a desperate and vain attempt to exculpate himself from his shameless and heinous acts.

Besides, it is the height of incredibility that, as appellant would want to suggest in his aforestated letter, the initiative came from the victim herself, this despite her age and the inbred modesty of a provincial lass. That

would be stretching the imagination too far and insulting to the intelligence and credulity of even an ordinary layman. It has never been shown, nor has an insinuation been made, that Jackielyn was a girl of loose morals with the capacity to lure a much older man into such indiscretions over an incredible period of time.

In contrast, the defense relied solely on the testimony of appellant which, as earlier observed, leaves very much to be desired as it consists mainly of bare and pharisaical denials. Time and again we have said that denial, like alibi, is a weak defense which becomes even weaker in the face of the positive identification of the accused by prosecution witnesses. Appellant's denial constituted self-serving negative evidence which can hardly be considered as overcoming a straightforward and creditworthy eyewitness account. As between positive and categorical testimony which has the ring of truth on one hand, and a bare denial on the other, the former is generally held to prevail,[36] especially given the facts obtaining in this case.

III. Be that as it may, however, on the bases of the evidence adduced by the prosecution, appellant can be convicted only of the two rapes committed in November, 1990 and on July 21, 1994 as testified to by complainant, and for the eight counts of rape committed in May and June and on July 16, 1994 as admitted in appellants aforementioned letter of August 24, 1994. We cannot agree with the trial court that appellant is guilty of 183 counts of rape because, as correctly asserted by the defense, each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. On that score alone, the indefinite testimonial evidence that complainant was raped every week is decidedly inadequate and grossly insufficient to establish the guilt of appellant therefor with the required quantum of evidence. So much of such indefinite imputations of rape, which are uncorroborated by any other evidence, fall within this category.

We are fully convinced, however, that appellant is guilty of statutory rape for the sexual act committed in November, 1990 when Jackielyn was only eight years old. Sexual congress with a girl under twelve years of age is always rape although there might have been consent to the sexual act. Being of such tender age, she is presumed not to have a will of her own. The law does not consider any kind of consent given by her as voluntary.[37]

It has likewise been sufficiently established beyond reasonable doubt that Jackielyn was raped by appellant on July 21, 1994. The evidence is well-nigh conclusive that she was intimidated into submitting to appellant's libidinous craving and loathsome assault by reason of his authority and predominance over her. Jackielyn may well have been over twelve years of age at that time, but what is the difference in mental fitness and attitude between a twelve-year old girl and one who is twelve years and one month old?[38]

Finally, appellant's admission in his letter of August 24, 1994 that "it happened 7 or 8 times in May, June until July 16, 1994," which was never explained away nor successfully refuted by the defense, should definitely be taken into consideration. It is said that although written admissions have sometimes been treated as competent evidence under the head of one of the exceptions to hearsay evidence, yet they are open to but few of the objections which may be urged against hearsay testimony. They are, it is true, declarations made out of court and without sanction of an oath, yet they are statements, not of third persons, but of a party to the litigation; and, where they are offered against him, it is only fair to presume, until the contrary is shown, that they are correct. Whatever a party voluntarily admits to be true, though the admission be contrary to his interest, may reasonably be taken for the truth.[39]

No compelling reason exists in the case at bar to warrant the exclusion or disregard of these admissions of appellant. These are admissions against his own interest which no sane or reasonable man would make if they were not true. He voluntarily and intelligently made and even put them down in single-spaced handwriting on four full pages of legal size ruled pad. On top of that, he identified the same and testified thereon, without any

repudiation, in open court on January 13, 1995, thus converting such extrajudicial admissions into judicial admissions.

One might ask why, having been burned the first time, the offended girl did not thereafter stay away from appellant, thereby giving him other opportunities to inflict his lust on her. The obvious explanation is that we are dealing here not with a worldly-wise woman but with a young and innocent child of tender age whose acts were dominated more by fear than by reason.[40] This is especially understandable in this case where the victim is practically an orphan abandoned in the care of a stranger masquerading in the guise of a guardian, and who never felt a sense of belonging except to such a stranger whom she wrongly believed had a familial concern for her, but whom she realized too late was devilishly unworthy of her trust and respect.

IV. We now proceed to consider the proper imposable penalty on appellant in light of his proven criminal misdeeds consisting of ten acts of rape. Having been charged with the simple crime of rape, each of which warrants the imposition of the penalty of reclusion perpetua, both the trial court and the People's Tribune agree on that penalty to be imposed for each crime, although both contend that such penalty should be imposed on 183 acts of rape. We have already explained that appellant can be convicted of only ten crimes of rape, but we have not answered the unspoken question, since both the trial court and the Solicitor General have passed sub silentio thereover, on whether the ten convictions we sustain should be for simple rape or for its qualified form under the circumstances stated in Republic Act No. 7659 which amended Article 335 of the Revised Penal Code.

It is true that the appellant has been charged with simple rape, that the court below found him guilty only of simple rape as charged, and that no issue over the effect of the amendatory law has been raised. However, it is a long-settled rule in criminal procedure, which is now enshrined in the Rules of Court,[41] that an appeal throws the criminal case open for review by the appellate court which may thereafter reverse the decision a quo, or modify the same by reducing or increasing the penalty upon a concomitant modification of the findings on the nature of the crime committed or the computation of the penalty therefor. Here, we are further confronted by the situation wherein the first crime of rape in 1990 of which we find appellant guilty is covered by the original provisions of the Revised Penal Code, while the other nine crimes of rape committed in 1994 are governed by the amendatory provisions of Republic Act No. 7659, with circumstances necessitating higher penalties, and which took effect on December 31, 1993.[42]

Section 11 of Republic Act No. 7659 provides that where the victim of the crime of rape is under eighteen years of age and the offender is, inter alia, a guardian of the victim, the death penalty shall be imposed. The inevitable query, since the fact is mentioned in passing in the records, is whether or not appellant is a guardian in the contemplation of this amendment to the law on rape such that, the victim being a minor, he should be punished with the higher penalty of death for the nine crimes of rape committed by him in May and June, 1994 and on July 16 and July 21, 1994.

In the law on rape, the role of a guardian is provided for in Article 344 of the Revised Penal Code, specifically as one who, aside from the offended party, her parents or grandparents, is authorized to file the sworn written complaint to commence the prosecution for that crime. In *People vs. De la Cruz*,[43] it was held that the guardian referred to in the law is either a legal or judicial guardian as understood in the rules on civil procedure.

That holding was rationalized as follows:

“Article 344 of the Revised Penal Code, paragraph 3, is as follows:

‘Tampoco puede procederse por causa de estupro, rapto, violación o abusos deshonestos, sino en virtud de denuncia de la parte agraviada, o de sus padres, o abuelos o tutor, ni después de haberse otorgado al ofensor, perdón expreso por dichas partes, segun los casos.’ Without passing at this time on the question whether the

tutor (legal guardian) may file a complaint in the temporary absence of the parents or grandparents of the offended party, it suffices to say that we cannot accept the view of the Government that an aunt who has the temporary custody of a minor in the absence of her father occupies the position of a tutor (legal guardian). The word 'tutor' (guardian) appearing in article 344, supra, must be given the same meaning as in section 551 of the Code of Civil Procedure, that is to say, a guardian legally appointed in accordance with the provisions of Chapter XXVII of the Code of Civil Procedure."

It would not be logical to say that the word "guardian" in the third paragraph of Article 344 which is mentioned together with parents and grandparents of the offended party would have a concept different from the "guardian" in the recent amendments of Article 335 where he is also mentioned in the company of parents and ascendants of the victim. In Article 344, the inclusion of the guardian is only to invest him with the power to sign a sworn written complaint to initiate the prosecution of four crimes against chastity, while his inclusion in the enumeration of the offenders in Article 335 is to authorize the imposition of the death penalty on him. With much more reason, therefore, should the restrictive concept announced in *De la Cruz*, that is, that he be a legal or judicial guardian, be required in the latter article.

The Court notes from the transcripts of the proceedings in Congress on this particular point^[44] that the formulators were not definitive on the concept of "guardian" as it now appears in the attendant circumstances added to the original provisions of Article 335 of the Code. They took note of the status of a guardian as contemplated in the law on rape but, apparently on pragmatic considerations to be determined by the courts on an ad hoc basis, they agreed to just state "guardian" without the qualification that he should be a legal or judicial guardian. It was assumed, however, that he should at the very least be a de facto guardian. Indeed, they must have been aware of jurisprudence that the guardian envisaged in Article 335 of the Code, even after its amendment by Republic Act No. 4111, would either be a natural guardian, sometimes referred to as a legal or statutory guardian, or a judicial guardian appointed by the court over the person of the ward.

They did agree, however, that the additional attendant circumstances introduced by Republic Act No. 7659 should be considered as special qualifying circumstances specifically applicable to the crime of rape and, accordingly, cannot be offset by mitigating circumstances. The obvious ratiocination is that, just like the effect of the attendant circumstances theretofore added by Republic Act No. 4111, although the crime is still denominated as rape such circumstances have changed the nature of simple rape by producing a qualified form thereof punishable by the higher penalty of death.^[45]

Coming back to the categorization of the functions of appellant in relation to private complainant and her brother, we are not prepared to say that, under the particular and peculiar facts obtaining in this case, the former sustained the relation of guardian to the latter, whether as a natural or legal, or even de facto and, much less, judicial guardian. He cannot be a legal or natural guardian as that refers to parents, nor even a guardian de son tort (sometimes referred to as a quasi-guardian or guardian by estoppel) since he did not on his own assume to act as a guardian of, say, a foundling.^[46] The fact is that he is not related to and he did not even support the children as it was Elizabeth Ong, then later her brother who provided the food, other necessities and instructions for the care of the children, and they have been living in Elizabeth's house wherein appellant was in that respect merely a hanger-on and a freeloader. He was merely expected to carry out Elizabeth's directions, and Elizabeth continued to be the guardian de facto of the children.

Appellant has not been proven to have exercised any valid act of patria potestas over complainant and her brother, unless we consider beating and abusing them as within that concept. In fine, at the very most, appellant was only an unwilling custodian and caretaker, not unlike a domestic majordomo or steward of the house and the children, and for which services he obtained free board and lodging. Ironically, that amorphous role that he played in the

lives of the children, and which enabled him to abuse them, offers him salvation from the death penalty which he deserves. This is because the Court proceeds only under the dictates of the law and never under errant emotionalism or maudlin sentimentality.

The law requires a legal or judicial guardian since it is the consanguineous relation or the solemnity of judicial appointment which impresses upon the guardian the lofty purpose of his office and normally deters him from violating its objectives. Such considerations do not obtain in appellant's case or, for that matter, any person similarly circumstanced as a mere custodian of a ward or another's property. The fiduciary powers granted to a real guardian warrant the exacting sanctions should he betray the trust.

It results, therefore, that appellant cannot be considered as the guardian falling within the ambit of the amendatory provision introduced by Republic Act No. 7659. He would not fall either in the category of the "common-law spouse of the parent of the victim" in the same enumeration, since his liaison is with respect to the aunt of Jackielyn. Since both logic and fact conjointly demonstrate that he is actually only a custodian, that is, a mere caretaker of the children over whom he exercises a limited degree of authority for a temporary period, we cannot impose the death penalty contemplated for a real guardian under the amendments introduced by Republic Act No. 7659, since he does not fit into that category.

One further observation. Article 335 originally provided only for simple rape punishable by reclusion perpetua, but Republic Act No. 4111 introduced amendments thereto by providing for qualified forms of rape carrying the death penalty, that is, when committed with the use of a deadly weapon or by two or more persons, when by reason or on the occasion of the rape the victim becomes insane, or, under the same circumstances, a homicide is committed. The homicide in the last two instances in effect created a special complex crime of rape with homicide. The first two attendant circumstances are considered as equivalent to qualifying circumstances since they increase the penalties by degrees, and not merely as aggravating circumstances which affect only the period of the penalty but do not increase it to a higher degree. The original provisions of Article 335 and the amendments of Republic Act No. 4111 are still maintained.

As earlier observed, Republic Act No. 7659 thereafter introduced seven more attendant circumstances the presence of any of which takes the case out of the purview of simple rape, and effectively qualifies the same by increasing the penalty one degree higher through the imposition of the death penalty. All these new attendant circumstances, just like those introduced by Republic Act No. 4111, partake of the nature of qualifying circumstances, and not merely aggravating circumstances, on the same rationale already explained.

Now, it has long been the rule that qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances,[47] since the latter admit of proof even if not pleaded.[48] Indeed, it would be a denial of the right of the accused to be informed of the charges against him and, consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form punishable with death, although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment on which he was arraigned.

Recapitulating, the information filed against appellant charged only the felony of simple rape and no attendant qualifying circumstance, specifically that of his being supposedly a guardian of the victim, was alleged. On this additional consideration, he cannot, therefore, be punished with the penalty of death even assuming *arguendo* that he is such a guardian. Neither can that fact be considered to aggravate his liability as the penalty for simple rape is the single indivisible penalty of reclusion perpetua.[49]

The end result, therefore, is that for the ten crimes of rape of which we declare him guilty, only the penalty of reclusion perpetua can be imposed. He must, however, be further held liable for the corresponding indemnity to

the victim, as well as exemplary damages for each count of rape.[50]

WHEREFORE, the challenged judgment of the court a quo is MODIFIED. Accused-appellant David Garcia y Quitorio is hereby declared guilty of ten (10) felonies of simple rape and ordered to serve the penalty of reclusion perpetua for each felony, subject to the provisions of Article 70 of the Revised Penal Code. He is further ordered to indemnify Jackielyn Ong in the sum of P50,000.00 for each of the ten (10) felonies of rape, to pay her exemplary damages of P25,000.00 likewise for each of the ten (10) felonies of rape, and to pay the costs in all instances of this criminal proceeding.

SO ORDERED.

Puno, and Mendoza, JJ., concur.

[1] Variantly spelled in the records and exhibits as “Jacquiline,” “Jacqueline,” “Jacquielyn,” or “Jackylyn.”

[2] TSN, October 14, 1994, 2; January 13, 1995, 18.

[3] TSN, September 30, 1994, 8.

[4] Exhibits C, D, E and G; Original Record, 55, 57, 58, 60.

[5] Exhibit B; Original Record, 8.

[6] Exhibit D; Original Record, 57.

[7] Exhibits C and G; Ibid., 55, 60.

[8] TSN, October 14, 1994, 12.

[9] TSN, January 13, 1995, 22.

[10] Appellant’s Brief, 39-40; Rollo, 36-59.

[11] 27 Phil. 421 (1914).

[12] Section 1, Rule 117, Rules of Court.

[13] Section 3(d), id., id.

[14] Section 8, id., id.

[15] Francisco, Criminal Procedure, 1969, Second ed., 610.

[16] G.R. No. 72994, January 23, 1991, 193 SCRA 152.

[17] People vs. Hortillano, G.R. No. 71116, September 19, 1989, 177 SCRA 729.

[18] People vs. Felipe, L-40432, July 19, 1982, 115 SCRA 88.

[19] People vs. Lat, G.R. No. 50086, August 21, 1980, 99 SCRA 297.

[20] People vs. Bernal, et al., L-30483, July 31, 1984, 131 SCRA 1; People vs. Soterol, G.R. No. 53498, December 16, 1985, 140 SCRA 400.

[21] People vs. Gagto, G.R. No. 113345, February 9, 1996, 253 SCRA 455.

[22] People vs. Natan, G.R. No. 88640, January 25, 1991, 193 SCRA 355.

- [23] *People vs. Atuel*, G.R. No. 106962, September 3, 1996, 261 SCRA 339.
- [24] *People vs. Sonico*, G.R. No. 70308, December 14, 1987, 156 SCRA 419.
- [25] *People vs. Talaboc*, G.R. No. 103290, April 23, 1996, 256 SCRA 441.
- [26] *People vs. Poculan*, G.R. Nos. 70565-67, November 9, 1988, 167 SCRA 176.
- [27] *People vs. Cañada*, G.R. No. 112176, February 6, 1996, 253 SCRA 277.
- [28] TSN, January 13, 1995, 14-17.
- [29] *People vs. Santos*, L-41525, October 23, 1978, 85 SCRA 705.
- [30] TSN, September 30, 1994, 11.
- [31] *Ibid.*, October 14, 1994, 8.
- [32] *Ibid.*, November 9, 1994, 6.
- [33] *People vs. Alcid*, G.R. Nos. 66387-88, February 28, 1985, 135 SCRA 280.
- [34] *People vs. Erardo*, L-32861, January 31, 1984, 127 SCRA 250.
- [35] Exhibit I; Original Record, 71-72.
- [36] *People vs. Tuvilla, et al.*, G.R. No. 88822, July 15, 1996, 259 SCRA 1.
- [37] *People vs. Morales*, L-35413, November 7, 1979, 94 SCRA 191.
- [38] See *People vs. Salazar*, G.R. Nos. 98121-22, July 5, 1996, 258 SCRA 55.
- [39] 1 Jones on Evidence, 4th ed., Sec. 269, 504-506.
- [40] *People vs. Baao*, G.R. No. 68574, July 7, 1986, 142 SCRA 476.
- [41] See Section 11, Rule 124.
- [42] *People vs. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555.
- [43] 59 Phil. 531 (1934).
- [44] Bicameral Conference Meeting on Death Penalty Bills, L. Sapida, II-2, November 24, 1993, 1-3.
- [45] Bicameral Conference Committee on Death Penalty, Alavazo III-1, September 6, 1993, 1-5. This is similar to the provisions on theft and robbery where if, for instance, the subject matter is mail matter taken under the modes of theft, the crime is definitely called qualified theft and a penalty two degrees higher is imposed (Article 308). However, if mail matter is taken under circumstances of robbery, the crime is still denominated only as robbery but the penalty is one degree higher (Article 302) because it is in the nature of a qualified form of robbery.
- [46] *Rear vs. Olson*, 219 Wis. 322, 263 N.W. 357.
- [47] *People vs. Collado*, 60 Phil. 610 (1934); *People vs. Jovellano, et. al.*, L-32421, March 27, 1974, 56 SCRA 156; *People vs. Fuertes*, G.R. No. 104067, January 17, 1994, 229 SCRA 289; *People vs. Rodico, et. al.*, G.R. No. 107101, October 16, 1995, 249 SCRA 309.
- [48] *U.S. vs. Campo*, 23 Phil. 368 (1912); *People vs. Domondon*, 60 Phil. 729 (1934); *People vs. De Guzman*, G.R. No. 73464, August 9, 1988, 164 SCRA 215.

[49] Article 63, Revised Penal Code.

[50] People vs. Villanueva, G.R. Nos. 112164-65, February 28, 1996, 254 SCRA 202.

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