

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RONETO DEGAMO ALIAS “ROY”, APPELLANT.

G.R. No. 121211. April 30, 2003

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PER CURIAM:

Before us for automatic review is a decision rendered by the Regional Trial Court (Branch 12) of Ormoc City imposing the supreme penalty of death on appellant Roneto Degamo alias “Roy” for the crime of rape with the use of a deadly weapon and the aggravating circumstances of dwelling and nighttime.

On October 4, 1994, a complaint was filed before the trial court charging appellant with the crime of rape to which, upon arraignment, pleaded not guilty.

On January 17, 1995, before the start of the trial proper, the court a quo allowed the complaint to be amended to include the allegation that by reason of the incident of rape, the victim has become insane[1], to wit:

The undersigned Prosecutor accuses RONETO DEGAMO alias Roy of the crime of RAPE committed as follows:

That on or about the 1[st] day of October 1994 at around 1:00 o’clock in the early morning, in Brgy. Punta, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused RONETO DEGAMO alias Roy, being then armed with a bladed weapon, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant herein ELLEN VERTUDAZO, against her will and in her own house.

All contrary to law and with the aggravating circumstances that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for the offense; and that by reason of the incident of rape, the victim become insane.

In violation of Article 335, Revised Penal Code.

Upon re-arraignment, appellant pleaded not guilty to the charge.[2]

Trial ensued.

As borne out by its evidence, the following is the version of the prosecution:

Complainant Ellen Vertudazo and her children were living in a rented apartment at Barangay Punta, Ormoc City. She and her family just moved into the neighborhood on July 15, 1994.[3] She was not personally acquainted with appellant although she knew him to be one of their neighbors. On August 2, 1994, her brother-in-law, Venancio, came from the province for a visit and stayed in her house. It was during this time that appellant became acquainted with Venancio. On September 30, 1994, appellant invited Venancio for a night out. Venancio left complainant’s house immediately after supper, telling her that he would return to the house. Later that night, or on October 1, 1994, at around 1:00 in the morning, complainant heard someone calling her name. She unwittingly opened the door thinking that Venancio had returned.[4] Thereupon, appellant forced his way inside the house and poked a knife at complainant’s neck. She tried to move away from appellant but he grabbed her and told her that

he would kill her if she will not accede to his demands. Appellant then told her to put off the light, strip off her clothes and not make any noise. Overwhelmed with fear, complainant meekly followed the orders of appellant who proceeded to kiss her lips, breasts and all parts of her body. He laid her on the concrete floor and succeeded in having carnal knowledge of her. Appellant was holding the knife while having sexual intercourse with complainant. He warned her not to tell anyone about the incident, then he left. Complainant went upstairs and just cried. In the morning of the same day, complainant reported the incident to the Barangay Captain and to the police. She submitted herself for medical examination at the health center on October 3, 1994. Upon learning of the incident, her husband, who was working in Saudi Arabia, immediately came home.[5]

Due to her traumatic experience at the hands of appellant, complainant underwent psychiatric treatment in Tacloban City.[6] She was first brought to Dr. Gemelina Cerro-Go[7] for treatment on November 8, 1994. Dr. Go found her case of psychosis already acute and chronic. Complainant was talking to herself and each time Dr. Go would ask her a question, she repeatedly said, “Gi padlock ang akong hunahuna.” Dr. Go also observed that complainant talked irrelevantly, had lost association and had severe destructive inclinations. She did not listen to anybody and just kept staring outside the window. Dr. Go concluded that complainant was suffering from psychosis, a form of mental disorder, induced by an overwhelming trauma secondary to rape. Complainant visited Dr. Go again on December 15, 1994 and on January 3, 1995. Dr. Go prescribed anti-psychotic drugs to complainant who, after three weeks of treatment, showed signs of improvement. Complainant could already sleep although she has not yet regained her normal or regular sleeping pattern. Her delusions and hallucinations were not as serious anymore, but she was still out of contact. She could not function normally as a wife and as a mother. Since complainant still suffered from psychosis, Dr. Go administered to her a dose of low acting tranquilizer injections, anti-depressants and short acting oral tablets.[8]

Dr. Go clarified that psychosis is usually the technical term for insanity.[9] She declared that complainant has not fully recovered from psychosis and that without continuous treatment, complainant would regress and she would completely lose all aspects of functioning.[10]

Appellant’s version is based on his lone testimony. He admits that he and complainant were neighbors but claims that they were lovers. He further testified that he met complainant for the first time during the last week of August 1994 at a neighborhood store. Complainant readily agreed when he asked her if it would be possible for them to get to know each other better. Later, at around 8:00 o’clock in the evening, he and complainant had a conversation in front of the gate of her apartment. He learned from her that her husband was working abroad. When he told the complainant that he wanted to court her, complainant said, “It’s up to you.” Encouraged by complainant’s reply, he returned at midnight and knocked at the gate of her apartment. Complainant peeped through the jalousies and went down to the first floor. She opened the gate and let him in. Upon having entered the house, he sat at the sofa, placed his hands on the shoulder of complainant, who by then had already sat beside him, and touched her ears. She did nothing to repel appellant’s advances but just looked up. When asked to remove her shirt, complainant willingly obliged. He proceeded to kiss complainant all over. She removed her short pants when appellant asked her to do so. He then removed his shirt and continued to kiss complainant’s breasts, chest and thighs. He wanted that they move upstairs but she demurred saying that her children were upstairs. Complainant instead suggested that they move to the cement floor since the sofa was noisy. He got aroused after transferring to the floor, so he removed his short pants and briefs. Complainant likewise removed her underwear. They had sexual intercourse without him having to use force on complainant. Thereafter, they dressed up. He left the place at 1:00 in the morning. They repeated the same act on four more occasions usually at 12:00 midnight. He did not have to use force, much less threaten complainant with a knife when they had sexual intercourse on October 1, 1994.[11]

On May 22, 1995, the trial court rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, decision is hereby rendered finding the accused RONETO DEGAMO, a. k. a. Roy, guilty beyond reasonable doubt of rape defined and penalized under paragraphs 2 and 3 of Article 335 of the Revised Penal Code, as amended by Republic Act 7659. Appreciating the aggravating circumstances of dwelling and nighttime with no mitigating circumstance to offset any of the two and pursuant to Article 63 of the Revised Penal Code, this court imposes upon the same Roneto Degamo, a.k.a. Roy, the extreme penalty of DEATH. Further, the same Roneto Degamo, a. k. a. Roy, is directed to indemnify Ellen Vertudazo the sum of THIRTY THOUSAND PESOS (P30,000.00) and to pay the costs.

As the sentence imposed is death, the jail warden of Ormoc City is directed to immediately commit the person of Roneto Degamo, a. k. a. Roy, to the National Bilibid Prisons at Muntinlupa, Metro Manila while awaiting the review of this decision by the Supreme Court.

SO ORDERED.[12]

Hence, this automatic review.

A discussion of certain procedural rules is in order before going into the merits of the case. It has not escaped our notice that the complaint for rape with use of a deadly weapon was amended after arraignment of appellant to include the allegation that the victim has become insane by reason or on the occasion of the rape. Although the penalty for rape with the use of a deadly weapon under the original Information is reclusion perpetua to death, the mandatory penalty of death is imposed where the victim has become insane by reason or on the occasion of rape as alleged in the Amended Information.

Under Section 14, Rule 110 of the Rules of Court, an amendment after the plea of the accused is permitted only as to matters of form, provided: (i) leave of court is obtained; and (ii) such amendment is not prejudicial to the rights of the accused. A substantial amendment is not permitted after the accused had already been arraigned.

In *Teehankee, Jr. vs. Madayag*,[13] we had occasion to state that a substantial amendment consists of recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following were held to be merely formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (4) amendment, which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.

We further elucidated in the *Teehankee* case that the test as to whether an amendment is only of form and an accused is not prejudiced by such amendment is whether or not a defense under the information as it originally stood would be equally available after the amendment is made, and whether or not any evidence which the accused might have would be equally applicable to the information in one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.[14]

Tested against the foregoing guidelines, the subject amendment is clearly not one of substance as it falls under all of the formal amendments enumerated in the *Teehankee* case. The insertion of the phrase that the victim has become insane by reason or on occasion of the rape in the Information merely raised the penalty that may be imposed in case of conviction and does not charge another offense different from that charged in the original Information. Whatever defense appellant may have raised under the original information for rape committed with a deadly weapon equally applies to rape committed with a deadly weapon where the victim has become insane by reason or on occasion of the rape. The amendment did not adversely affect any substantial right of appellant.

Therefore, the trial court correctly allowed the amendment.

Furthermore, it is also settled that amendment of an information to charge a more serious offense is permissible and does not constitute double jeopardy even where the accused was already arraigned and pleaded not guilty to the charge, where the basis of the more serious charge did not exist, but comes as a subsequent event.[15] In this case the basis for the amendment was the psychosis of complainant which was determined after the filing of the information.

Unlike other qualifying circumstances, insanity of the victim by reason or on occasion of the rape may not be readily discerned right after the commission of the crime. The resultant insanity of the victim could be easily mistaken as a mere initial reaction, such as shock, to the incident. In other cases, it may take some weeks or even months for the insanity of the victim to manifest. Consequently, a psychiatrist would need some time with the victim before concluding that she is indeed suffering from insanity as a result of rape. Under these circumstances, the subsequent diagnosis of insanity by reason or on occasion of the rape is akin to a supervening event; in which case, the corresponding amendment of the information may be allowed, as correctly done by the trial court.

Besides, the trial proper started only after appellant had been re-arraigned and appellant never objected to the amendment at any stage of the proceedings. It is basic that objection to the amendment of an information or complaint must be raised at the time the amendment is made, otherwise, silence would be deemed a consent to said amendment. It is a time-honored doctrine that objection to the amendment must be seasonably made, for when the trial was had upon an information substituted for the complaint or information without any objection by the defense, the defect is deemed waived. It cannot be raised for the first time on appeal.[16]

We shall now proceed to the merits of the case.

The trial court gave credence to the testimony of victim Ellen Vertudazo that appellant raped her with the use of a deadly weapon. It held that she would not have agreed to endure the indignities of physical examination of her private parts and the embarrassment of a public trial were it not for a desire to seek justice for herself. Moreover, the trial court found that other than the self-serving testimony of appellant, no evidence was introduced to support his claim that he and complainant were having an illicit love affair; and that there was no ill motive on the part of complainant for imputing the serious charge of rape against appellant.

In his Appellant's Brief, appellant raises a single assignment of error, to wit: "The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape", in support of which, he argues:

- The fact that at first complainant said she opened the door for the accused and later denied this, is not an inconsequential contradiction.
- Complainant had not become insane by reason of the rape because she gave intelligent answers on the witness stand.

We find the appeal without merit.

It is doctrinal that the evaluation of testimonial evidence by trial courts is accorded great respect precisely because of its chance to observe first-hand the demeanor of the witnesses, a matter which is important in determining whether what has been testified to may be taken to be the truth or falsehood.[17] Appellant failed to show any cogent reason for us to disturb the findings of the trial court.

Complainant and her family had just moved in the neighborhood a little more than two months before she was raped. Prior to the incident of rape, she only knew appellant as one of her neighbors but did not personally know him.[18] Appellant would have us to believe that hours after a chance meeting at a nearby sari-sari store,

complainant, a married woman with children, was so morally debased as to readily accede to his sexual advances at her own apartment while her children were asleep. Like the trial court, we find it unlikely for a married woman with children who had just moved into the neighborhood to place herself on public trial for rape where she would be subjected to suspicion, morbid curiosity, malicious imputations and close scrutiny of her personal life and character, not to speak of the humiliation and scandal she and her family would suffer, if she were merely concocting her charge against appellant and would not be able to prove it in court.

Appellant insists that the complaint was prompted by complainant's fear that her husband's relatives might discover her infidelity. We are not convinced. Aside from the bare assertion of appellant that he and complainant were having an affair, he failed to present corroborative evidence of any kind such as love notes, mementos or pictures[19] or the testimonies of neighbors, relatives or friends. There is no showing that the relatives of complainant's husband even suspected that she was having an illicit affair. Further, complainant not only filed the charges of rape immediately after the incident, she also submitted herself for medical examination and sought psychiatric treatment due to the trauma caused by her ordeal. If she and appellant were indeed lovers, there would have been no reason for her to be so traumatized by their sexual liaisons and undergo psychiatric treatment.

Worth noting too is the fact that there is no evidence nor even an indication that complainant was impelled by an improper motive in making the accusation against appellant. The absence of any improper motive of complainant to impute such a serious offense against appellant persuades us that complainant filed the rape charge against appellant for no other reason than to seek justice for the bestial deed committed against her. Settled is the doctrine that when there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or implicate him in a serious offense, the testimony deserves full faith and credit.[20]

Appellant presses that the trial court should have taken note that complainant gave contradicting testimonies as she had earlier testified that she opened the door to appellant but later denied this on cross examination; and that complainant must have perceived the serious implications of her earlier testimony so she deliberately changed her testimony.

After a review of the testimony of complainant, we find no such contradictions. Complainant clearly testified that she opened the door when she heard someone calling her name to open it because she thought that her brother-in-law, Venancio, who left the house earlier at the invitation of appellant, had already come home for the night. It was too late when she realized that it was appellant alone who had called on her to open the door.[21]

Appellant further argues that the qualifying circumstance of the use of a deadly weapon in the commission of the crime should not be considered since the weapon was never presented as evidence in court. We are not persuaded.

It is settled that the non-presentation of the weapon used in the commission of rape is not essential to the conviction of the accused.[22] The testimony of the rape victim that appellant was armed with a deadly weapon when he committed the crime is sufficient to establish that fact for so long as the victim is credible.[23] It must be stressed that in rape, it is usually only the victim who can attest to its occurrence and that is why courts subject the testimony of the alleged victims to strict scrutiny before relying on it for the conviction of the accused.[24] In the present case, complainant positively described how appellant, armed with a knife, threatened and raped her. Appellant failed to show any compelling reason for us to brush aside the probative weight given by the trial court to the testimony of herein complainant. Absent any showing that certain facts of substance and significance have been plainly overlooked or that the trial court's findings are clearly arbitrary, the conclusions reached by the trial court must be respected and the judgment rendered should be affirmed.[25]

We take note that Dr. Ernesto Calipayan conducted a physical examination of the victim on October 3, 1994, and

he issued a Medical Certificate wherein it is stated that the “entire vulva and vestibule are normally looking and showed no signs of traumatic injury” and that a microscopic examination of the cervical and vaginal smear showed that it is negative for sperm cells.[26] Said findings however, do not demolish the positive testimony of the victim that she had been raped by appellant. The absence of traumatic injury on her vulva and vestibule is not a strong proof that appellant did not use force on the victim who submitted to the dastardly act of appellant because of the knife wielded by him. It is within the realm of logic, reason and human experience that the victim, who had given birth to two children, because of the fear for her life, may not have exerted that degree of resistance that would have been needed to produce traumatic injury on her private parts.

Moreover, the fact that no sperm was found in the cervical and vaginal smear is satisfactorily explained by Dr. Calipayan that human spermatozoa will not survive between forty-eight to seventy-two hours.[27] In complainant’s case, she was examined on October 3, 1994, or more than forty-eight hours after she was raped on October 1, 1994 between 12:00 midnight and 1:00 in the morning.

It is a settled rule that proof beyond reasonable doubt does not connote absolute certainty, it means that degree of proof which, after an investigation of the whole record, produces moral certainty in an unprejudiced mind of the accused’s culpability.[28] It signifies such proof that convinces and satisfies the reason and conscience of those who are to act upon it that appellant is guilty of the crime charged.[29]

In the case at bar, there is no doubt that appellant had committed the crime of rape. Appellant failed to show that the trial court committed any reversible error in finding him guilty beyond reasonable doubt of raping complainant with the use of a deadly weapon.

Under Article 335 of the Revised Penal Code, as amended, whenever the crime of rape is committed with the use of a deadly weapon, the penalty shall be reclusion perpetua to death.

In meting out the penalty of death, the trial court considered dwelling and nighttime as aggravating circumstances in the commission of the crime of rape committed with a deadly weapon.

The trial court should not have considered the aggravating circumstance of nighttime against appellant. Not only was it not alleged as an aggravating circumstance in the Information, but also, there is no clear proof that appellant deliberately took advantage of the cover of darkness to facilitate the commission of the crime. Complainant herself even testified that the fluorescent light at the ground floor of the house was not switched off until after appellant had already entered the house and told her to turn it off.[30]

However, the trial court did not err in imposing the penalty of death on appellant. It is established by the prosecution that the crime of rape with the use of a deadly weapon was committed in the dwelling of complainant. Dwelling is alleged in the Information and was unrefuted by appellant. Under Article 63 of the Revised Penal Code, in cases where the law provides a penalty composed of two indivisible penalties, the presence of an aggravating circumstance warrants the imposition of the greater penalty which is death.

We now turn to the issue as to whether or not the qualifying circumstance of insanity of the victim by reason or on occasion of the rape committed against complainant should likewise be considered in the imposition of the proper penalty.

Republic Act No. 7659[31] expressly provides that when by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

The trial court observes:

There is no jurisprudence yet, however, which construed the provision “has become insane.” Though there is

no doubt that the death penalty shall be imposed if the victim becomes permanently insane, there is no ruling yet whether temporary insanity by reason of rape (when the victim responded to psychiatric treatment as in the present case) still falls within the purview of the same provision.[32]

For the guidance of the Bench and the Bar, we deem it proper to resolve what should be the correct construction of the provision “has become insane” by reason or on occasion of the rape committed.

It is a hornbook doctrine in statutory construction that it is the duty of the court in construing a law to determine legislative intention from its language.[33] The history of events that transpired during the process of enacting a law, from its introduction in the legislature to its final validation has generally been the first extrinsic aid to which courts turn to construe an ambiguous act.[34]

Republic Act No. 2632[35] is the first law that introduced the qualifying circumstance of insanity by reason or on occasion of rape, amending Article 335 of the Revised Penal Code. An examination of the deliberation of the lawmakers in enacting R.A. No. 2632, convinces us that the degree of insanity, whether permanent or temporary, is not relevant in considering the same as a qualifying circumstance for as long as the victim has become insane by reason or on occasion of the rape.

Congressional records[36] disclose that when Senator Pedro Sabido first broached the possibility of regarding insanity as a qualifying circumstance in rape, he described it as “perpetual incapacity or insanity”. The interpellations on Senate Bill No. 21 which later evolved into R.A. No. 2632 did not include the rationale for the inclusion of the victim’s insanity by reason or occasion of rape as a qualifying circumstance. Neither did the legislators discuss the degree of insanity of the victim by reason or on occasion of rape for it to be considered as a qualifying circumstance. After the interpellations on the other proposed amendments to Senate Bill No. 21, the Senate session was suspended. Upon resumption of the session, the legislators agreed, among other matters, that the provision, “when by reason or on occasion of rape, the victim has become insane, the penalty of reclusion perpetua shall be likewise reclusion perpetua”, be incorporated in the law.[37] Thus, Article 335, as amended by R.A. No. 2632, read as follows:

Art. 335. When and how rape is committed. Penalties - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion temporal.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be imposed in its maximum period.

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

When the rape is frustrated or attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua.

When by reason or on the occasion of the rape the victim has become insane, the penalty shall be likewise reclusion perpetua. [Emphasis supplied]

Significantly, the words “perpetual” and “incapacity” were not retained by the legislators. They merely used the word “insanity”. It is well-established in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effect since the lawmaking body is presumed to know the meaning of the words employed in the statute and to have used them advisedly.[38] Applied inversely, the courts should not interject a condition, make a distinction, or impose any limitation where the legislators did not opt to do so.

Thus, it is without any doubt that when the legislators included the victim’s resultant insanity as a qualifying circumstance in rape cases, it did not intend or impose as a condition that the insanity must be of permanent nature, or that it should have been manifested by the victim before the filing of the complaint of information, before, during or after trial. Otherwise, it would have been so expressly stated, especially so, that Senator Sabido had initially suggested “perpetual incapacity or insanity,” As the Congressional records reveal, the legislators chose not to include the word “perpetual” in the bill enacted into law.

Article 335 of the Revised Penal Code, as amended by R.A. No. 2632, was further amended by Republic Act No. 4111 whereby the penalty is increased to death “when by reason or on the occasion of rape, the victim has become insane”.

R.A. No. 7659 which took effect on December 31, 1993, merely reiterated the imposition of death penalty “when by reason or on the occasion of the rape, the victim has become insane.”

In the enactment of both R.A. Nos. 4111 and 7659, the legislators merely reiterated or reproduced the provision on insanity under R.A. No. 2632 except as to the imposable penalty, without making any distinction as to the degree of insanity that may or may not be considered as a qualifying circumstance.

Consequently, the fact that the victim during trial or while the case is pending, has returned to normal behavior after undergoing treatment, does not exculpate the appellant from the penalty of death.

It is inherently difficult for us to set the parameters or fix a hard and fast rule as to when insanity may be considered a qualifying circumstance. Whether the rape resulted in the insanity of the victim shall have to be resolved by the courts on a case to case basis. Suffice it to be stated that the resultant insanity of the victim in rape cases must at least be manifest at the time of filing the complaint or information or at any time thereafter before judgment is rendered, in which case, the information may accordingly be amended.[39] The reason for this is simple. Rape is always a traumatic experience for the victim who necessarily suffers untold psychological and emotional damage. Like victims of other crimes, rape victims have different ways of coping with the trauma brought about by the crime. While one may exhibit shock or depression immediately after the crime and recover thereafter, another might require a longer period to exhibit these same symptoms and not return to normalcy. Certainly, one can never calculate or measure the depths of the psychological and emotional damage that rape inflicts on the victim.

In the case at bar, Dr. Go had competently and convincingly testified that victim Ellen Vertudazo suffered psychosis or insanity from which she seems to have improved due to her treatment which treatment should be continuous and may last from six months to five years so that the victim may not suffer from regression; and that as of February 16, 1995, the date Dr. Go testified, complainant has not fully recovered from her psychosis.[40] The qualifying circumstance of insanity had already attached notwithstanding the recovery of the victim from her illness. The penalty of death is imposable.

As to the damages awarded, the trial court erred in awarding the mere sum of P30,000.00 to complainant as civil indemnity. Complainant is entitled to P75,000.00 as civil indemnity in accordance with our established rulings in cases where the crime of rape is committed, qualified by any of the circumstances under which the death penalty

is authorized by law.[41] In the present case, the victim became insane by reason of the rape committed against her; and in the commission of rape with the use of a deadly weapon, the aggravating circumstance of dwelling is present. Actually, the trial court had two grounds for the imposition of death penalty.

Complainant is likewise entitled to moral damages without need of further proof in the sum of P50,000.00.[42] The fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the basis for moral damages is too obvious to still require the recital thereof at the trial by the victim since the court itself even assumes and acknowledges such agony on her part as a gauge of her credibility.[43]

In addition, complainant is entitled to the amount of P25,000.00 as and for exemplary damages[44] considering the aggravating circumstance of dwelling; and to the amount of P25,000.00 by way of temperate damages[45] in lieu of actual damages, considering that complainant had to undergo psychiatric treatment but was not able to present proof of the expenses she incurred in her treatment.

Three members of the Court maintain their position that R.A. No. 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

WHEREFORE, the judgment of the lower court convicting appellant Roneto Degamo alias “Roy” of qualified rape and sentencing him to suffer the penalty of DEATH is AFFIRMED with the MODIFICATION that appellant is ordered to pay complainant Ellen Vertudazo the amounts of Seventy-Five Thousand Pesos (P75,000.00), as civil indemnity; Fifty Thousand Pesos (P50,000.00), as moral damages; Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages; and Twenty-Five Thousand Pesos (P25,000.00) as temperate damages. Costs against appellant.

Upon the finality of this decision and pursuant to Section 25 of R.A. No. 7659, amending Article 83 of the Revised Penal Code, let the records of this case be forthwith forwarded to the Office of the President of the Philippines for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] Id., pp. 21,25 and 33.

[2] Id., pp. 31 and 33.

[3] TSN, January 24, 1995, pp. 9-10.

[4] Id., pp. 14 and 40.

[5] Id., pp. 10-20.

[6] Id., pp. 8, 20-23 and 50.

[7]She finished her specialization in psychiatry at the University of the Philippines-Philippine General Hospital (UP-PGH) from 1975-1977 and has since handled thousands of psychiatric cases and appeared in court in a number of cases as an expert witness in the field of psychiatry; and, admitted by appellant as an expert witness, TSN, February 16, 1995, pp. 2-7.

[8] Id., pp. 16-19.

[9] TSN, February 16, 1995, pp. 7 and 16.

[10] Id., pp. 19-21.

[11] TSN, April 4, 1995, pp. 17-70.

[12] Records, p. 163.

[13] 207 SCRA 135, 142 (1992).

[14] Ibid.

[15] Melo vs. People, 85 Phil. 766, 769-770 (1950); Teehankee case, supra.

[16] U.S. vs. Mabiral, 4 Phil. 308.

[17] People vs. Ramos, 330 SCRA 453, 458 (2000).

[18] TSN, January 24, 1995, p. 10.

[19] People vs. Tismo, 204 SCRA 535, 554 (1991) citing People vs. Soterol, 140 SCRA 400, 405 (1985) and People vs. Hacbang, 164 SCRA 441, 449-450 (1988).

[20] People vs. Ballenas, 330 SCRA 519, 534 (2000); People vs. Conde, 330 SCRA 645, 652 (2000).

[21] TSN, January 24, 1995, pp. 36-37.

[22] People vs. Vitancur, 345 SCRA 414, 424 (2000).

[23] People vs. Traverro, 276 SCRA 301, 313 (1997).

[24] Vitancur case, supra.

[25] Ibid.

[26] Exhibit "C", Records, p. 137.

[27] TSN, April 4, 1995, pp. 7-8.

[28] People vs. Mariano, 345 SCRA 1, 16 (2000).

[29] Ibid.

[30] TSN, January 24, 1995, p. 16, 30-31.

[31] 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", effective December 31, 1993.

[32] Rollo, p. 67.

[33] Republic vs. Court of Appeals, 299 SCRA 199, 270 (1998).

[34] Ibid.

[35] An Act to Amend Article 335 of the Revised Penal Code (Re: Rape), effective June 18, 1960.

[36] There was no discussion on the insanity amendment in the House of Representatives.

[37] Congressional Record, Vol. I, No. 40, March 24, 1958, p. 573.

[38] Marsaman Manning Agency, Inc. vs. NLRC, 313 SCRA 88, 102 (1999).

[39] Melo vs. People, 85 Phil 766, 769-770 (1950); Teehankee vs. Madayag, *supra*.

[40] TSN, February 16, 1995, pp. 18-21.

[41] People vs. Escano, G.R. No. 140218-23, February 13, 2002; People vs. Perez, G.R. No. 142556, February 5, 2003.

[42] People vs. Manlod, G.R. No. 142901-02, July 23, 2002.

[43] People vs. Prades, 293 SCRA 411, 430-431 [1998].

[44] People vs. Villanueva, G.R. No. 146464-67, November 15, 2002; People vs. Barcelon, Jr., G.R. No. 144308, September 24, 2002.

[45] People vs. Simon, G.R. No. 134121, March 6, 2003; People vs. Abrazaldo, G.R. No. 124392, February 7, 2003.

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