

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. EDUARDO AGBAYANI Y MENDOZA, ACCUSED-APPELLANT.*G.R. No. 122770. January 16, 1998*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-122770/>**PER CURIAM:**

Nine years and four months ago this Court declared:

Rape is a nauseating crime that deserves the condemnation of all decent person who recognize that a woman's cherished chastity is hers alone to surrender of her own free will. Whoever violates that will descends to the level of the odious beast. The act becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood for the culprit is reduced to lower than the lowly animal. The latter yields only to biological impulses and is unfettered by social inhibitions when it mates with its own kin, but the man who rapes his own daughter violates not only her purity and her trust but also the mores of his society which he has scornfully defied. By inflicting his animal greed on her in a disgusting coercion of incestuous lust, he forfeits all respect as a human being and is justly spurned by all, not least of all by the fruit of his own loins whose progeny he has forever stained with his shameful and shameless lechery.[1]

At the end of the day, after resolving this case of 14-year-old Eden Agbayani who charged her own father with rape committed in the sanctity of their rented room on 19 July 1994, this Court finds itself repeating this declaration.[2]

Before this Court on automatic review is the decision[3] of the Regional Trial Court of Quezon City, Branch 106, in view of the death penalty imposed by it for the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659.[4]

On 12 September 1994, the Station Investigation and Intelligence Division of the National Capital Region Command, Philippine National Police (PNP), endorsed to the Office of the City Prosecutor of Quezon City the complaint of Eden Agbayani (hereafter EDEN) for rape against her father, herein accused-appellant Eduardo Agbayani y. Mendoza.[5]

After appropriate preliminary investigation, a complaint[6] for rape signed by EDEN, assisted by her sister Fedelina Agbayani, and subscribed and sworn to before Asst. City Prosecutor Charito B. Gonzales, was filed against appellant with the Regional Trial Court of Quezon City on 27 October, 1994. The case was docketed as Criminal Case No. Q-94-59149, then set for arraignment, pre-trial and trial on 22 December 1994.[7]

At his arraignment on 22 December 1994, appellant, assisted by Attys. Samuel Baldado and Edwin dela Cruz as counsel de oficio, entered a plea of not guilty.[8] Upon agreement of the parties, trial on the merits immediately followed, with the prosecution presenting the first witness, Dr. Florante Baltazar, a Medico-Legal Officer of the PNP Crime Laboratory,[9] who cross-examined by Atty. Baldado.[10] On the succeeding dates of trial, the prosecution presented EDEN[11] and SPO1 Salvador Buenviaje.[12] During these hearings, however, appellant was represented by Atty. Arturo Temanil of the Public Attorney's Office.[13]

On this part, the defense presented appellant, Adoracion M. Cruz, Fedelina Agbayani, as well as EN who

identified her and Fedelina's affidavit of desistance,[14] which was subscribed and sworn to before notary public Eranio Cedillo on 6 February 1995. Said affidavit reads as follows:

We, Eden Agbayani, 14 years old, complainant and Fedelina Agbayani, 19 years old, sister of Eden Agbayani, and presently residing at No., Phase 1, United Glorietta, Kaniogan, Pasig, Metro Manila, after having been duly sworn to in accordance with law do hereby depose and states [sic]:

That we are the complainant [sic] against our father, Eduardo Agbayani pending before this Honorable Court docketed as Criminal Case No. 59149;

That after evaluating the circumstance that lead [sic] to the filing of the instant case I formally realize that the incident between us and my father is purely family problem that arise from the disciplinarian attitude of our father;

That this resulted to family misunderstanding, hence we decided to formally forego this case and withdraw the same;

That I am executing this affidavit for purposes of finally withdrawing the instant case and therefrom requesting this Honorable Court to dismiss the case against our father.

This affidavit was executed freely and voluntarily.

As EDEN declared in open court what she said in her previous testimony and sworn statement were not true, the trial court held her in direct contempt of court, reasoning that her "intentional falsehood" was "offensive to its dignity and a blatant disrespect to the Court, and actually degrading [to] the administration of justice." Accordingly, the trial court ordered her "committed to incarceration and imprisonment within the period provided by law,"[15] which penalty however was modified to a fine of P200.00 upon EDEN's motion for reconsideration.[16]

On rebuttal, the prosecution had EDEN back on the witness stand. She retracted her affidavit of desistance and claimed that she had signed it under coercion by her mother and elder sister.

The trial court's summary of the evidence for the prosecution, with the references to the pages of the stenographic notes and exhibits deleted, is as follows:

The evidence adduced on the record shows that sometime in September of 1993 in Malolos, Bulacan, the accused was charged by his two daughters, FEDELINA and DODIMA AGBAYANI, [with] the crime of rape which case was raffled to the sala of Judge Danilo Manalastas fo Branch 7, Regional Trial Court, Bulacan. The case was, however, provisionally dismissed by said Judge after the complainants desisted from pursuing the same in May 1994. Eduardo Agbayani was thus consequently released from jail on July 13, 1994. Three (3) days thereafter, he began living with four (4) of his six (6) daughters, Fedelina, Eden, Diana, and Edina, in a rented room at 30-A Makabayan St., Bgy. Obrero, Quezon City.

The evidence of the prosecution, in part consisting of the testimonies of Complainant Eden Agbayani, Medico-Legal Officer, Dr. Florante Baltazar and SPO1 Salvador Buenviaje, shows that the above mentioned address, the complainant, Eden Agbayani, on the evening of July 19, 1994, was sleeping on the floor of the room with her father, the accused Eduardo Agbayani was awakened from her sleep by hands caressing her breast and vagina. She turned to discover that it was her father who was then molesting her. Frightened, she asked, "Tay bakit niyo po ginagawa sa akin ito, gayong kalalabas mo lang sa kulungan?" and threatened to kill her [sic]. The accused then proceeded to undress her. Thereafter he undressed himself and succeeded in having carnal knowledge with the complainant who could only cry helplessly. The complainant thereafter felt blood dripping from her vagina and felt pain.

The next day, or on July 20, 1994, the complainant informed her elder sister, Fedelina, of what had been done

to her by her father. She was told not to worry as they would go to Bulacan to report the incident to Fiscal Caraeg of Bulacan, who had, the year before, handled the rape case filed by Fedelina and Dodima. Several attempts were made by her sisters, Fedelina and Eden to reach the said fiscal but it was only on September 9, 1994, that they were able to meet with him. Fiscal Caraeg of Bulacan reported the complaint to Judge Danilo Manalastas who reopened the previous provisionally dismissed case and issued a warrant of arrest against the herein accused.

With the assistance of police officers from Station 10 of the SIID in Quezon City, the accused was arrested on the same day at his residence at 30-A Makabayan St., Bgy. Obrero, Quezon City and was later brought to Malolos, Bulacan where he is currently detained. After the accused's arrest, Eden and Fedelina returned to Station 10 where they made individual statements before SPO1 Salvador Buenviaje narrating the events leading to and occurring after the incident of July 19, 1994.

The next morning, Eden was examined by Medico-Legal Officer and Chief of the PNP Crime Laboratory, Dr. Florante Baltazar, a colonel, who, accordingly, prepared the corresponding Medico-Legal Report.[17]

Appellant put up the defense of denial and alibi. According to him, he could not have raped his daughter EDEN, because on 19 July 1994, he was in Barangay Victoria in Sual, Pangasinan, visiting his eldest daughter.[18] He declared that EDEN charged him with rape because he had hit her with a belt after he caught her lying about her whereabouts on night. Then on 24 July 1994, she left their rented apartment and did not return anymore.[19]

Adoracion Cruz corroborated appellant's alibi. She declared that on 17 July 1994, appellant requested her to take care of his children because he was going to Pangasinan to visit his sick father, returning home only on 21 July 1994.[20]

The trial court gave full credence to the testimony of EDEN, who "appeared, during her entire testimonies on January 20 and May 4, 1995, coherent, candid and responsive;" further, it commended her "for her courage and her unwavering strength in the midst of the emotional and psychological strain and humiliation, not to mention the pressure and lack of moral support of her family, brought on by the filing of this case." It also ruled that EDEN did not voluntarily execute the affidavit of desistance, as it was procured "at the behest of her mother and sister for whom the sanctity of the family and the family's good name were more important than demanding punishment for whatever injury the complainant might have suffered in the hands of the accused." Besides, even assuming arguendo that no such pressure was exerted by her mother and sister, the trial court declared that it understood EDEN's moral predicament, viz for a child like EDEN, it was difficult to charge her own father with rape; insist on his punishment; and hereby inflict emotional stress and financial strain upon the members of her family, particularly her mother.

The trial court likewise gave full faith to the sworn statement (Exhibit "E") of Fedelina Agbayani.

Turning to the defense of appellant, the trial court found his alibi wholly self-serving, and characterized the testimony of Adoracion Cruz unworthy of belief. As to appellant's claim that EDEN filed the complaint because of a grudge against him, the trial court found this "incredible, if not totally absurd," for:

The complainant is an innocent girl of tender years who is likely to possess such vindictiveness and death of conscience as to concoct such a malicious and damaging story. The complainant appeared, during her entire testimonies on January 20 and May 4, 1995, coherent, candid and responsive. Her retraction on March 16 was sufficiently explained to this Court the seriousness of the injury upon her person and dignity inflicted upon by the accused.... Even assuming argumenti gratia that the complainant would indeed lodge a complaint against her father solely on account of an altercation with him, it is highly unlikely that the complainant would concoct a charge which would damage her and wreck havoc on her family's reputation, destroy the household peace and subject her father, the accused, to a grave punishment which by dint of express of law, can obliterate him

from the face of this earth. Indeed, to uphold the defense's proposition would be stretching the imagination too far, if not to the extreme.

The trial court finally found that appellant employed on EDEN force or intimidation by virtue of his moral ascendancy over her and his threat that he would kill her if she reported the incident to anyone.

Accordingly, the trial court, applying Section 11 of R.A. No. 7659 which imposes the penalty of death when the victim is under eighteen years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or common law spouse of the parent of the victim, rendered judgement against appellant, to wit:

WHEREFORE, considering all the foregoing, judgment is hereby rendered finding the accused, EDUARDO AGBAYANI, GUILTY beyond reasonable doubt of the crime of RAPE committed against complainant, Eden Agbayani, his minor daughter. This Court as a consequence thereof, hereby imposes upon him the supreme penalty law R.A. 7659. Further, Accused is hereby ordered to pay the complainant, Eden Agbayani, the sum of P75,000.00 as damages, with all the necessary penalties provided for by law without subsidiary imprisonment, however, in the event of insolvency and to pay the costs.

Let the entire records of this case be forwarded to the Supreme Court on automatic review.

SO ORDERED.

On 26 May 1995, appellant, through his new counsel de parte Attorneys Froilan V. Siobal and Domingo Floresta, filed a Motion for New Trial[21] on the ground that serious irregularities prejudicial to his substantial rights were committed during the trial, viz., the failure of the counsel de oficio to: (a) present at trial the Barangay Captain of Barangay Obrero, Quezon City, who would have testified, on basis of his certification attached to the motion, that there was a house bearing No. 30, Makabayan St., in his barangay, but that there was no such place as 30-A Makabayan St. of said barangay, which was the address given by EDEN; (b) consider the futility of Adoracion Cruz's testimony; (c) present private complainant's mother and sister Fedelina on sur-rebuttal to testify as to the circumstances which brought about the execution of the affidavit of desistance; and (d) cross examine complainant and the police investigator exhaustively. He further alleged that his counsel de oficio was never prepared during all the scheduled hearings, worse, even waived the presence of appellant after the third witness for the prosecution was presented. He also averred that the trial court used its inherent power of contempt to intimidate private complainant.

In their Comments/Opposition to the Motion for New Trial,[22] the public and private prosecutors alleged that there were no such irregularities; neither was there new and material evidence to be presented that appellant could not, with reasonable diligence, have discovered and produced at the trial and which if introduced and admitted at trial would probably change the judgment of the court.

In its Order[23] of 31 July 1995, the trial court denied the motion for new trial being devoid of merit and for not being within the purview of Sections 1 and 2, Rule 121 of the Rules of Court.

In his Appellant's Brief filed before this Court, appellant contends that the trial court erred in: (a) denying his motion for new trial; and (b) holding that the prosecution proved beyond reasonable doubt that he committed the crime charged.

In support of the first assigned error, appellant reiterates the grounds in his motion for new trial, and adds two others namely, (1) the lower court failed to apprise him of his right to have counsel of his own choice; and (2) the lower court did not give him the opportunity to prepare for trial, despite the mandated period of two days prescribed in Section 9 of Rule 116 of the Rules of Court.

In his second assigned error, appellant contends that EDEN's testimony is not sufficient to convict, since its is unclear and not free from serious contradictions. Considering their proximity to EDEN, it was impossible for her sisters or any one of them not to have been awakened when EDEN was allegedly being abused by him. Strangely, EDEN simply kept quiet and allowed him to abuse her; neither did she shout for help or put up a fight that would have awakened her sisters. Notably, EDEN and her sisters allowed him to live and sleep with them again in their rented room even after the alleged rape.

Finally, appellant asserts that EDEN's testimony is unreliable because her affidavit of desistance must have necessarily been contradictory thereto. Her "subsequent turn-around ... that she was pressured and influenced to execute and sign the affidavit of desistance further confirmed her being untruthful and, in effect, demolished whatsoever faith left on her charge against the accused."

The Office of the Solicitor General (OSG) considers the first assigned error as devoid of merit. When appellant appeared without counsel at the arraignment, the trial court informed him that it would appoint de officio counsel for him if he so desired, to which appellant agreed. Moreover, the 2-day period to prepare for trial provided in Section 9 of Rule 116 is merely directory and does not prohibit the court from proceeding with trial after arraignment, especially if the defense, as here, consented thereto. It would have been entirely different if the defense did not agree, in which case the court would have no other alternative but to grant him the period.

As to appellant's other grievances, the OSG points out that throughout all the hearings, appellant never questioned the way his defense was being handled by his counsel de officio. The latter's request for a continuance because he had not yet conferred with appellant was not evidence of counsel's lack of sincerity. On the contrary, it showed counsel's awareness of his duty to confer with appellant to ferret out the relevant facts as regards the second witness for the prosecution. Likewise, the waiver of appellant's presence during the hearing of 18 March 1995 did not prejudice him, because on that date, the defense presented EDEN to testify as to her affidavit of desistance, and Fedelina to corroborate the statements of EDEN – which testimonies were in appellant's favor. As to the manner appellant's counsel de officio cross-examined the prosecution witnesses, the OSG stresses that the record shows that said counsel tried his best.

The OSG then characterizes the second assigned error as "barren of merit." EDEN's positive identification of appellant as the author of the crime rendered appellant's defense of alibi unavailing; moreover, she demonstrated clearly and vividly what transpired that fateful evening of 19 July 1994. Thus in view of EDEN's candid and categorical manner of testifying the OSG concluded that she was a credible witness.[24]

As to the commission of rape in a small room and in presence of other persons, the OSG maintains that such was not at all improbable.[25] There was, as well, nothing unusual in EDEN's silence; as she could only attempt to shout because appellant had succeeded in covering her mouth with his hands and exercised a high level of moral ascendancy over EDEN, his daughter.[26] Hence the OSG invokes the principle that in a rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitutes for violence or intimidation.[27]

As regards EDEN's affidavit of desistance, the OSG maintains that court look with disfavor on retraction of testimonies previously given in court, for such can easily be secured from poor and ignorant witnesses usually for monetary consideration,[28] as well as the probability that it may later be repudiated.

In his Reply Brief, appellant countered that his consent to the appointment of counsel de officio his arraignment did not relieve the court of its duty under Section 6 of Rule 116 of the Rules of Court to inform him of his right to counsel and that it would be grievous error to deny an accused such right. Appellant then elaborated on this point as follows:

This is not without judicial precedent. In *People vs. Cachero*, 73 Phil. 426 and *People vs. Domenden*, 73 Phil. 349, cited in *RJ Francisco's Criminal Procedure*, Third Ed., 1966, p. 323 it was held, that:

"The courts should comply with Rule 116, Sec. 3. It would be a grievous error to proceed by sentencing the accused without due process of law and this is not complete, when the accused is denied the right recognized by said rule. The records must show compliance therewith or that the accused renounced his right to be assisted by counsel. This is demanded by the interest of justice and remove all doubt that if the accused had waived said right, he was fully informed before giving his plea of its consequences. Omission by courts whether voluntary should not truly be censured but also condemned."

Discussing further the right to the 2-day period to prepare for trial, the appellant contends that said right:

[H]as been held to be mandatory and denial of this right is reversible error and a ground for new trial. (*R.J. Francisco's Criminal Procedure*, Third Ed., 1986, p. 404, citing *people vs. Mijares, et al.*, 47 OG 4606; *Dumasig v. Morave*, 23 SCRA 259). This must be so "xxx to prevent that any accused be caught unaware and deprived of the means of properly facing the charges presented against him."

The first assigned error does not persuade this Court. It is true that the transcript of the stenographic notes of the proceedings of 22 December 1994 and the order issued by the trial court after the conclusion of said proceedings only state that the court appointed de officio counsel with the consent of the said accused. They do not categorically disclose that the trial informed appellant of his right to counsel of his own choice. However, this does not mean that the trial court failed to inform appellant of such right. The precise time the two counsel de officio were appointed is not disclosed in the record either. At the recorded portion of the arraignment aspect of the proceedings on 22 December 1994, the two formally entered their appearance, thus:

COURT:

Call the case.

(Interpreter calls the case).

FISCAL ROSARIO BARIAS:

For the prosecution, Your Honor.

ATTY. MARIETA AGUJA:

Respectfully appearing for the prosecution, Your Honor under the control and direct supervision of the Trial Prosecutor, Your Honor, we are ready to present our first witness.

ATTY. BALDADO:

For the accused Your Honor, appointed as counsel de officio.

ATTY. DE LA CRUZ:

For the accused, Your Honor appointed by the court as counsel de officio.[29]

This obviously means that the appointment had taken place earlier. The trial court's order[30] of 22 December 1994 states that said de officio counsel were duly appointed by the Court with the consent of the accused." Since appellant has miserably failed to show that he was not informed of his right to counsel, the presumptions that the law has been obeyed and official duty has been regularly performed by the trial court stand.[31] In other words, the trial court is presumed to have complied with its four-fold duties under Section 6[32] of Rule 116 of the Rules of Court, namely, (1) to inform the accused that he has the right to have his own counsel before being arraigned;

(2) after giving such information, to ask accused whether he desires the aid of counsel; (3) if he so desires to procure the services of counsel, the court must grant him reasonable time to do so; and (4) if he so desires to have counsel but is unable to employ one, the court must assign counsel de oficio to defend him.[33]

It is settled that the failure of the record to disclose affirmatively that the trial judge advised the accused of his right to counsel is not sufficient ground to reverse conviction. The reason being that the trial court must be presumed to have complied with the procedure prescribed by law for the hearing and trial of cases, and that such a presumption can only be overcome by an affirmative showing to the contrary. Thus it has been held that unless the contrary appears in the record, or that it is positively proved that the trial court failed to inform the accused of his right to counsel, it will be presumed that the accused was informed by the court of such right.[34]

In *U.S. v. Labial*,[35] this Court held:

Adhering to the doctrine laid down in that case, the only question to be determined in this case is whether the failure of the record to disclose affirmatively that the trial judge advised the accused of their right to have counsel is sufficient ground to reverse the judgment of conviction and to send the case back for a new trial. Upon this point we are all agreed that in the absence of an affirmative showing that the court below did in fact fail to advise the accused of their rights under the provisions of Section 17 of General Orders No. 58, as amended by section 1 of Act No. 440, the mere omission from the record brought here upon appeal of an entry affirmatively disclosing that he did so, is not reversible error.

In the absence of an affirmative showing to the contrary, the court below must be presumed in matters of this kind to have complied with the provisions of law prescribing the procedure to be followed in the trial had before him.

While in *People v. Miranda*[36] this Court explicitly stated:

However, said counsel calls attention to the fact that the record is silent as to whether or not, at the time appellant was arraigned, the trial court informed him of his right to be assisted by an attorney, under section 3 of Rule 112 of the Rules of Court.

This precise issue was determined in *United States v. Labial* (27 Phil., 87,88), in the sense that unless the contrary appears in the records, it will be presumed that the defendant was informed by the court of his right to counsel. “*** If we should insist on finding every fact fully recorded before a citizen can be punished for an offense against the laws, we should destroy public justice, and give unbridled license to crime. Much must be left to intentment and presumption, for it is often less difficult to do things correctly than to describe them correctly.” (*United States vs. Labial*, supra.) The same doctrine was reiterated in *People vs. Abuyen* (52 Phil. 722) and in *United States vs. Custan* (28 Phil. 19). We see no reason to modify it now.

In the instant case, the trial court appointed two de oficio counsel who assisted the appellant at his arraignment, one of whom extensively cross-examined the first witness for the prosecution, Dr. Florante Baltazar.[37] Besides, it is only in this appeal that appellant raised the issue of the failure of the trial court to inform him of the right to counsel. At no time did he previously raise it in the trial court despite ample opportunity to do so. His consent to be assisted by counsel de oficio, coupled with said counsel’s extensive cross-examination of Dr. Baltazar, may even be considered a waiver of his right to question the alleged failure of the trial court to inform of his right to counsel.[38]

The cases of *People v. Domenden*[39] and *People v. Cachero*[40] cited by appellant are inapplicable. In both cases the trial courts there clearly failed to inform the accused of their right to counsel nor appoint de oficio counsel during the arraignment. Nevertheless, we take this opportunity to admonish trial courts to ensure that their compliance with their pre-arraignment duties to inform the accused of his right to counsel, to ask him if he desires

to have one, and to inform him that, unless he is allowed to defend himself in person or he has counsel of his choice, a de officio counsel will be appointed for him, must appear on record.

Turning to the alleged violation of appellant's right to the 2-day period to prepare for trial, Section 9 of Rule 116 of the Rules of Court reads:

SEC. 9. Time to prepare for trial. -- After a plea of not guilty, the accused is entitled to two (2) days to prepare for trial unless the court for good cause grants him further time.

It must be pointed out that the right must be expressly demanded.[41] Only when so demanded does denial thereof constitute reversible error and a ground for new trial.[42] Further, such right may be waived, expressly or impliedly.[43] In the instant case, appellant did not ask for time to prepare for trial, hence, he effectively waived such right.

During the succeeding hearings, appellant was represented by Atty. Temanil of the Public Attorney's Office in Quezon City, who entered his appearance as de parte, and not as de officio, counsel. It is to be presumed that Atty. Temanil's services were obtained pursuant to the law creating the Public Attorney's Office (PAO), formerly the Citizen's Legal Assistance Office (CLAO).[44] There is at all no showing that Atty. Temanil lacked the competence and skill to defend appellant. The latter's contention that his counsel was not ready at all times because at the hearing on 20 January 1995 he asked for a continuance as he has "not yet interviewed [his] client,"[45] is misleading. Atty. Temanil made that statement after he cross-examined EDEN and after the judge realized that it was almost 1:00 o'clock in the afternoon and both of them were already hungry, thus:

ATTY. TEMANIL:

I just want to make it on record, Your Honor that from the start of the trial the witness appears to be fluent and suffers no difficulty in answering the questions, even the questions propounded by the Private Prosecutor, Your Honor.

COURT:

Put that on record.

That is true, Atty. Temanil, it is almost 1:00 o'clock in the afternoon and we are both hungry now.

ATTY. TEMANIL:

I will just asked [sic] for continuance considering that I have not yet interviewed my client, Your Honor.[46]

Neither is there merit in appellant's claim that his counsel committed irregularities: (1) in not considering the futility of the testimony of Adoracion Cruz; (2) in not presenting the barangay captain in the evidence in chief for the defense, and EDEN's mother and sister Fedelina in sur-rebuttal; and (3) in not cross-examining exhaustively EDEN.

Adoracion Cruz was presented to corroborate appellant's alibi that he was in the province and not in their rented room from 17 to 21 July 1994. On the other hand, the testimony of the barangay captain could not alter the fact that rape was committed in a rented room in a house along Makabayan Street in his barangay. Appellant neither testified that he did not occupy a house numbered 30-A nor denied that he was living with EDEN and her sisters in that room. Besides, he and his children were not renting the entire house, but merely a room, which could probably be the unit numbered "30-A" referred to by EDEN.

As to the presentation of EDEN's mother and sister Fedelina as sur-rebuttal witnesses to disprove the claim of EDEN that they coerced her into signing the affidavit of desistance, suffice it to state that there was nothing to

show that they were in fact willing to refute EDEN's claim.

Finally, contrary to appellant's allegation, a meticulous examination of the transcripts of the stenographic notes convinces this Court that Atty. Temanil sufficiently cross-examined EDEN. If he decided to terminate his cross-examination, it could have been due to the futility of any further cross-examination which might only prove favorable to the prosecution, as it might have opened another window of opportunity for EDEN to strengthen her testimony.

The second assigned error is equally unpersuasive. It raises the issue of the credibility of EDEN as a witness. One of the highly revered dicta Philippine jurisprudence has established is that this Court will not interfere with the judgment of the trial court in passing upon the credibility of opposing witnesses, unless there appears in the records some facts or circumstances of weight and influence which have been overlooked and, if considered, would affect the result. This is founded on practical and empirical considerations, i.e., the trial judge is in a better position to decide the question of credibility, since he personally heard the witnesses and observed their deportment and manner of testifying.[47] He had before him the essential aids to determine whether a witness was telling the truth or lying. Truth does not always stalk boldly forth naked; she often hides in nooks and crannies visible only to the mind's eye of the judge who tried the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or 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.[48] On the other hand, an appellate court has only the cold record, which generally does not reveal the thin line between fact and prevarication that is crucial in determining innocence or guilt.[49]

At any rate, in view of the gravity of the offense charged and the extreme penalty of death imposed, this Court took painstaking effort and meticulous care in reviewing the transcripts of the stenographic notes of the testimonies of the witnesses.

This Court is fully satisfied that EDEN told the truth that she was raped by her father, herein appellant, on 19 July 1994, in their rented room in Barangay Obrero, Quezon City. Her story was made even more credible by the simplicity and candidness of her answers, as well as by the fact that it came from an innocent girl writhing in emotional and moral shock and anguish. She must have been torn between the desire to seek justice and the fear that a revelation of her ordeal might mean the imposition of capital punishment on her father. By testifying in court, she made public a painful and humiliating secret, which others may have simply kept to themselves for the rest of their lives. She thereby jeopardized her chances of marriage, as even a compassionate man may be reluctant to marry her because her traumatic experience may be psychological and emotional impediment to a blissful union. Moreover, such a revelation divided her family and brought it shame and humiliation.

If EDEN did testify regardless of these consequences and even allowed the examination of her private parts, she did so inspired by no other motive than to obtain justice and release from the psychological and emotional burdens the painful experience had foisted upon her. It was then improbable that EDEN fabricated a story of defloration and falsely charged her own father with a heinous crime.

What appellant claims to be improbabilities in the testimony of EDEN are more apparent than real. The presence of her sisters in the small room did not at all make impossible the commission of rape. The evil in man has no conscience. The beast in him bears no respect for time and place; it drives him to commit rape anywhere – even in places where people congregate such as in parks, along the roadside within school premises, and inside a house where there are other occupants.[50] In *People v. Opena*,[51] rape was committed in a room occupied also by other persons. In the instant case, EDEN's other companions in the room when she was molested by appellant were young girls who were all asleep.

That EDEN was unable to resist or shout for help can easily be explained by the fact that appellant threatened to kill her. Whether he was armed was of no moment. That threat alone coming from her father, a person who wielded such moral ascendancy, was enough to render her incapable of resisting or asking for help.

Intimidation in rape cases is not calibrated nor governed by hard and fast rules. Since it is addressed to the victim's and is therefore subjective, it must be viewed in light of the victim's perception and judgment at the time of the commission of the crime. It is enough that the intimidation produced fear – fear that if the victim did not yield to the bestial demands of the accused, something far worse would happen to her at that moment. Where such intimidation existed and the victim was cowed into submission as a result thereof, thereby rendering resistance futile, it would be the height of unreasonableness to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary.[52]

In any event, in a rape committed by a father against his own daughter, as in this case, the former's moral ascendancy or influence over the latter substitutes for violence or intimidation.[53] Likewise, it must not be forgotten that at her tender age of 14 years, EDEN could not be expected to act with the equanimity of disposition and with nerves of steel, or to act like a mature and experienced woman who would know what to do under the circumstances, or to have courage and intelligence to disregard the threat.[54] Even in cases of rape of mature women, this Court recognized their different and unpredictable reactions. Some may shout; some may faint; and some may be shocked into insensibility; while others may openly welcome the intrusion.[55]

Neither does the fact that EDEN continued to live with appellant in the same rented room disprove the rape. While she was hurt physically, psychologically and emotionally, yet the thought must have been irresistible and compelling that her assailant was her own father, who was both a father and mother to her since her mother was in Saudi Arabia and who provided her with the daily wherewithal to keep her alive. Besides, a less harsh life outside was uncertain. Instances are not few when daughters raped by their fathers stayed with the latter and kept in the deepest recesses of their hearts the evil deed even if the memory thereof haunted them forever.

Nor is there merit in the insistent claim that EDEN's affidavit of desistance "must have necessarily contradicted her previous testimony." We have earlier quoted in full this affidavit of desistance. Plainly, nowhere therein did she retract her previous testimony or claim that she was raped by her father. In any case, EDEN withdrew her affidavit of desistance and solemnly declared that she was pressured by her mother and sister to sign it. Moreover, affidavits, being taken ex parte, are generally considered inferior to the testimony given in open court;[56] and affidavits or recantation have been invariably regarded as exceedingly unreliable, since they can easily be secured from poor and ignorant witnesses. It would be a dangerous rule to reject the testimony taken before a court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule would make a solemn trial a mockery, and place the proceedings at the mercy of unscrupulous witnesses. [57]

This Court has no doubt that appellant is guilty as charged. The penalty therefor is death under the first circumstance mentioned in Article 335(7) of the Revised Penal Code, as amended by R.A. No. 7659, which provides, in part, as follows:

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

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

This law may be difficult to accept for those who believe that the verdict of death for a sin or crime is God's

exclusive prerogative. But the fundamental law of the land allows Congress, for compelling reasons, to impose capital punishment in cases of heinous crimes,[58] hence the passage of R.A. No. 7659. Hoc quidem per quam durum est sed ita lex scripta est. The law may be exceedingly hard but so the law is written and the Court is duty-bound to apply it in this case.

To the appellant who inflicted his animal greed on his daughter in a disgusting coercion of incestuous lust, thereby forsaking that which is highest and noblest in his human nature and reducing himself to lower than the lowliest animal, the full force of the law must be weighed against him, for he deserves no place in society. All that we concede to him is a modification of the award of “P75,000.00 as damages,” which is hereby reduced to P50,000.00 in accordance with current case law.

WHEREFORE, judgment is hereby rendered AFFIRMING the decision of the Regional Trial Court of Quezon City, Branch 106, in Criminal Case No. Q-94-59149 finding accused-appellant EDUARDO AGBAYANI y MENDOZA guilty beyond reasonable doubt as principal of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, and imposing upon him the penalty of DEATH, subject to the above modification as to the amount of indemnity.

Two justices voted to impose upon the accused-appellant the penalty of reclusion perpetua.

Upon the finality of this Decision, let certified true copies thereof, as well as the records of this case, be forwarded without delay to the Office of the President for possible exercise of executive clemency pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. No. 7659.

With costs de officio.

SO ORDERED.

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

[1] People v. Ramos, 165 SCRA 400, 408 [1988]

[2] See also People v. Matrimonio, 215 SCRA 613, 633 [1992].

[3] Original Record (OR), 121-133; Rollo, 76-88. Per Judge Julieta P. Tabiolo.

[4] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes. It took effect on 31 December 1993 (People v. Simon, 234 SCRA 555 [1994])

[5] OR 11-12.

[6] Id., 1-2

[7] OR, 19.

[8] Id., 32; TSN, 22 December 1994, 26.

[9] Ibid., id., 3

[10] TSN, 22 December 1994, 15.

[11] TSN, 20 January 1995

[12] TSN, 9 February, 1995

[13] TSN, January 1995; TSN, 9 February 1995, 1; TSN, 16 March 1995, 1; TSN, 24 March 1995, 1; TSN, 20 April 1995,1.

[14] Exhibit “1”, OR, 95.

[15] Order of 16 March 1995, id., 72.

[16] Order of 17 March 1995, id., 82.

[17] OR, 122-123; Rollo, 77-78.

[18] TSN, 24 March 1995, 4, 12-13.

[19] Id., 6-8

[20] TSN, 20 April 1995, 4-5

[21] OR, 148-154

[22] Id., 160-168

[23] id., 176-179

[24] Citing *People v. Palicte*, 27 January 1996

[25] Citing *People v. Manuel*, 236 SCRA 545 [1994].

[26] Citing *People v. Dusoohan*, 227 SCRA 87 [1993].

[27] Citing *People v. Matrimonio*, 215 SCRA 613 [1992].

[28] Citing *People v. Mangulabnan*, 200 SCRA 611 [1991].

[29] TSN, 22 December 1994, 2.

[30] Id., 26.

[31] Sections 3 (ff) and (m), respectively, Rule 131, Rules of Court.

[32] The section provides:

SEC. 6. Duty of court to inform accused of his right to counsel – Before arraignment, the court shall inform the accused of his right to counsel and shall ask him is he desires to have one. Unless the accused is allowed to defend himself in person, or he has employed counsel of his choice, the court must assign a counsel de oficio to defend him.

[33] *People v. Holgado*, 85 Phil. 752, 756 [1950]. VICENTE J. FRANCISCO, THE REVISED RULES OF COURT (CRIMINAL PROCEDURE) 559 (2d, 1969).

[34] *U.S. v. Labial*, 27 Phil. 82, 84 [1914]; *U.S. v. Escalante*, 36 Phil. 743, 746 [1917]. *People v. Abuyen*, 52 Phil. 722, 724 [1937]; *People v. Miranda*, 78 Phil. 418 [1947]; *People v. Nang Kay*, 88 Phil. 515, 517-518 [951].

[35] *Supra* note 34, at 84.

- [36] Supra note 34, at 419.
- [37] TSN, 22 December 1994, 15-25.
- [38] U.S. v. Escalante, supra note 34 at 746-747.
- [39] 73 Phil. 349 [1941].
- [40] 73 Phil. 426 [1941].
- [41] People v. Kagui Malasugui, 63 Phil. 221, 229 [1936].
- [42] People v. Mejares, 85 Phil. 727, 729 [1950]; Montilla v. Arellano, 89 Phil. 434, 437 [1951]; People v. Nabaluna, 101 Phil. 402, 404-405 [1957].
- [43] People v. Moreno, 77 Phil. 548, 553-554 [1946], citing People v. Cruz, 54 Phil. 24, 28 [1929].
- [44] Integrated Reorganization Plan which was decreed into law by P.D. No. 1, dated 24 September 1972, and by Letter of Implementation No. 4 dated 23 October 1972. The CLAO was renamed PAO by Sec. 14, Chapter 5, Title III of Book IV of the 1987 Administration Code.
- [45] TSN, 20 January 1994, 31.
- [46] Id., 31.
- [47] People v. Conde, 322 Phil. 757, 766 [1996].
- [48] People v. Delovino, 317 Phil. 741, 753 [1995], citing Creamer v. Bivert, 214 MO 473, 474 [1908] as cited in M. FRANCES MCNAMARA, 2000 FAMOUS LEGAL QUOTATIONS 548 [1967].
- [49] People v. De Guzman, 188 SCRA 407, 410 [1990]; People v. De Leon, 245 SCRA 538, 546 [1995].
- [50] People v. Aragona, 138 SCRA 569, 580 [1985]; People v. Viray, 164 SCRA 135, 143 [1988]; People v. De los Reyes, 203 SCRA 707, 723 [1991].

[51] 102 SCRA 755 [1981].

- [52] People v. Grefiel, 215 SCRA 596, 608, 609 [1992]; People v. Matrimonio, supra note 2, at 630; People v. Pamor, 237 SCRA 462, 472 [1994].
- [53] People v. Erardo, 127 SCRA 250 [1984]; People v. Lucas, 181 SCRA 316 [1990]; People v. Caballes, 199 SCRA 152 [1991]; People v. Matrimonio, supra note 2.
- [54] People v. Matrimonio, supra note 2.
- [55] People v. Cabradilla, 133 SCRA 413, 418-419 [1984]; People v. Grefiel, supra note 54.
- [56] People v. Marcelo, 223 SCRA 24, 37 [1993]; People v. Enciso, 223 SCRA 675, 686 [1993].
- [57] People v. Mangulabnan, 200 SCRA 611, 623 [1991].
- [58] Section 19(1), Article III, Constitution.

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