

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RESTITUTO MANHUYOD, JR., ACCUSED-APPELLANT.***G.R. No. 124676. May 20, 1998*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-124676/>**DAVIDE, JR., J.:**

This is a case of a father having raped his 17-year old daughter after the effectivity of R.A. No. 7659.[1] Accused could thus have been meted out the death penalty pursuant to Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, if found guilty beyond reasonable doubt. However, here, the trial court's imposition of capital punishment was not based on said statute, but by reason of the aggravating circumstance of relationship under Article 15 of the Revised Penal Code.

However repulsive and condemnable the act of a father raping his daughter, yet, the Constitution mandates that an accused is entitled to the presumption of innocence. Thus, after a scrutiny of the record and the evidence in this case, we find ourselves unable to affirm the judgment of the trial court. Acquittal then is compelled by law since the presumption of innocence was not overcome, the conviction having been based on hearsay evidence and a miscomprehension of the rule on statements forming part of the *res gestae*.

On 6 June 1995, before the Central Visayas Office (CEVRO) of the National Bureau of Investigation (NBI), a complaint[2] for rape was filed by Yolanda Manhuyod, accused's wife and mother of the offended party, Relanne S. Manhuyod. The complaint charged accused with having raped Relanne, then 17 years of age, on 20 April 1995 and 3 May 1995. Immediately upon the filing of the complaint, Relanne was examined by Dr. Tomas Refe, Medico-Legal Officer III of the CEVRO, NBI, whose findings and conclusions in Living Case No. 95-MI-II,[3] were as follows:

**GENITAL EXAMINATION:**

Pubic hairs, fully grown, abundant. Labia mejora, gaping. Labia minora, gaping posteriorly. Fourchette, tense. Vestibular mucosa, reddish to violaceous. Hymen, moderately thick, wide, with old healed lacerations, superficial at 8:00 o'clock and deep at 4:00 o'clock positions corresponding to the face of a watch [sic]; edges of these lacerations are rounded and non-coaptable. Hymenal orifice, admits a tube 2.8 cms. in diameter with moderate resistance. Vaginal walls, moderately tight and rugosities, moderately prominent.

**CONCLUSIONS:**

- No evidence of extragenital physical injury noted on the body of the Subject at the time of examination.
- Hymenal orifice, 2.8 cms. in diameter distensible as to allow complete penetration of an average size adult penis in erection without producing further laceration.

On 8 June 1995, Yolanda and Relanne gave their sworn statements[4] to Atty. Oscar Tomarong, Officer-in-Charge of the NBI Sub-office in Dipolog City. Then in a letter[5] dated 9 June 1995 to the Office of

the Provincial Prosecutor of Dipolog City, Atty. Tomarong recommended the prosecution of accused for rape, as charged by Yolanda and Relanne. On even date, Relanne, assisted by Yolanda, filed a complaint[6] with the Provincial Prosecutor's Office charging herein accused with rape committed on 3 May 1995.

After due proceedings, the Office of the Provincial Prosecutor of Zamboanga del Norte, through Valeriano Lagula, Second Assistant Provincial Prosecutor and Officer-in-Charge, filed with Branch 11 of the Regional Trial Court of Zamboanga del Norte, sitting in Sindangan, Zamboanga del Norte, an information charging accused with rape, allegedly committed as follows:

That, in the morning, on or about the 3rd day of May, 1995, in the Municipality of Liloy, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one RELANNE S. MANHUYOD, his 17 year old daughter, against her will and without her consent, as a result of which she became pregnant.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[7]

At his arraignment on 23 June 1995 following his arrest and commitment in the Provincial Jail, accused entered a plea of not guilty. Pre-trial and trial were then set for 18 June 1995.[8] The record, however, does not disclose if pre-trial was actually conducted as scheduled.

On 6 July 1995, the prosecution, with conformity of the accused, filed a Motion to Dismiss[9] on the ground that Relanne and Yolanda had executed a Joint Affidavit of Desistance,[10] declaring that they "lost interest in the further prosecution of the [case] as the case arose out of a family conflict which was [already] patched up;" thus the prosecution declared that "without the testimonies of the complainants,

In its resolution[11] of 17 July 1995, the trial court denied the Motion to Dismiss on the following grounds: (1) the affidavit of desistance could not justify dismissal of the complaint, as the so-called "pardon" extended to accused by affiants in the affidavit of desistance was made after the filing of the information,[12] hence could not serve as the basis for dismissing the case;[13] (2) once a complaint for a private crime was filed, the State effectively became the offended party and any pardon given by the private complainant would be unavailing; and (3) Section 20-A of R.A. No. 7659 provides that any person charged under the Act for an offense where the imposable penalty is reclusion perpetua to death would not be allowed to take advantage of the provision on "plea-bargaining." The trial court then set the case for pre-trial and trial on 18 and 25 of August and 1 September 1995.

As Relanne and Yolanda did not appear at pre-trial on 18 August 1995, the court issued an order[14] declaring pre-trial terminated and ordering trial to proceed on 25 August and 1 September 1995.

On 25 August 1995, as well as on the succeeding dates thereafter set by the trial court for Relanne and Yolanda to testify, to wit: 8 September 1995;[15] 22 September 1995;[16] 6 October 1995;[17] and 27 October 1995,[18] mother and daughter did not appear in court, despite the court's orders directing the prosecutor to file a complaint to hold them for indirect contempt[19] and ordering NBI agents Atty. Oscar Tomarong and Atty. Friolo Icao, Jr. to arrest them.[20]

In a 1st indorsement[21] dated 6 May 1995, Atty. Tomarong reported to the trial court that, among other things, Relanne and Yolanda had left for Cebu probably to elude arrest after having learned from both the print and broadcast media that the court had ordered their arrest; Yolanda, a public school teacher, had filed an indefinite leave of absence; and Relanne had not been attending her classes. The NBI thus asked for more time to arrest Relanne and Yolanda, but due to its failure to arrest and produce them in court both at the scheduled hearings of 6

October and 27 October 1995, the prosecution rested its case solely on the basis of the testimonies of NBI agent Atty. Tomarong, NBI agent Atty. Icao, Jr. and NBI Medico-Legal Officer Dr. Refe, together with the documents they identified or testified on. The court then gave the prosecution 10 days to submit a formal offer of exhibits, and announced to the parties that if the exhibits would be admitted, the defense could file a demurrer to evidence which, if denied, would be followed by the defense presenting its evidence beginning 15 December 1995.[22]

In the prosecution's formal offer of its exhibits dated 9 November 1995,[23] the following exhibits were offered: (1) "A," the complaint sheet accomplished and filed by Yolanda with the NBI, CEVRO; (2) "B," the sworn statement of Yolanda given before Atty. Tomarong and subscribed and sworn to before Atty. Icao, Jr. on 8 June 1995; (3) "C," the sworn statement of Relanne given before Atty. Icao, Jr. on 8 June 1995; and (4) "D," the medical certificate issued by Dr. Refe. NBI agent Tomarong identified Exhibits "A" and "B,"[24] NBI agent Icao identified Exhibit "C,"[25] while Dr. Refe identified Exhibit "D." [26]

Accused objected to the admission of Exhibits "A," "B" and "C" on the ground that they were hearsay, and to Exhibit "D" on the ground that the medical certificate was not conclusive as to the commission of rape and the contents in said exhibit were not corroborated on its material points by the offended party since the latter did not testify.[27]

In its order[28] of 15 November 1995, the trial court admitted all the foregoing exhibits as "exception[s] to the hearsay rule," and ordered that the defense commence presenting its evidence on 15 December 1995.

On 9 November 1995, the defense filed a demurrer to evidence,[29] which, however, the trial court denied in its resolution of 23 November 1995[30] for being "devoid of merit." The trial court held that Exhibits "B" and "C" were convincing as they mentioned details which could not have been concocted, as such, they "constitute[d] part of the res gestae, an exception to the hearsay rule;" and as to the statement of Dr. Refe "in answer to clarificatory questions (pp. 5 to 6 t.s.n. hearing on 22 September 1995)," while the same may have had "all the earmarks of hearsay," the statement was admissible for not having been objected to. Finally, the trial court held that since it was a settled rule that an affidavit was not considered the best evidence if the affiant was available, then, as in this case where Relanne and Yolanda were unavailable, their sworn statements were admissible for being "the best evidence."

The trial court likewise denied[31] the accused's motion[32] to reconsider the resolution, and set the reception of accused's evidence on 15 December 1995, which, however, was subsequently reset to 12 January 1996.[33]

In his first and second manifestations,[34] accused informed the trial court that he was waiving his right to present his evidence and asked that the case be submitted for decision. He reiterated this waiver at the hearing on 12 January 1996,[35] which then prompted the court to order the parties to simultaneously submit their respective memoranda within a non-extendible period of 20 days. The record, however, once more fails to disclose that any of the parties so filed.

On 23 February 1996, the trial court promulgated its decision,[36] the decretal portion of which read as follows:

WHEREFORE, the Court finds accused, SPO2 Restituto Manhuyod, Jr. guilty of the crime of Rape by force and intimidation with [the] aggravating circumstance of relationship under Article 15 of the Revised Penal Code and sentencing him to "suffer the penalty of DEATH" (R.A. 7659), and to indemnify the complainant P50,000. (People vs. Magaluna., 205 SCRA 266 [1992]).

Pursuant to Circular No. 4-92-A of the Supreme Court [let] accused immediately be transferred to the Bureau of Corrections in Muntinlupa, Metro Manila.

Costs de officio.

SO ORDERED.

On 26 February 1996, accused filed his Notice of Appeal.[37]

We accepted the Appeal on 3 December 1996.

In his Accused-Appellant's Brief filed on 30 April 1997, accused imputes to the trial court the commission of the following errors:

### I

IN NOT DISMISSING THE CRIMINAL COMPLAINT AGAINST APPELLANT FOR EVIDENT LACK OF INTEREST TO PROSECUTE.

### II

IN ADMITTING AS EVIDENCE THE HEARSAY TESTIMONY OF THE PROSECUTION WITNESSES DESPITE THE TIMELY AND VEHEMENT OBJECTIONS OF THE DEFENSE INASMUCH AS THEY HAD NO PERSONAL KNOWLEDGE OF THE CRIME ASCRIBED AGAINST APPELLANT.

### III

IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF APPELLANT WAS NOT PROVED BEYOND REASONABLE DOUBT.

Accused jointly discusses these assigned errors, in the main, reiterating his arguments in his demurrer to evidence, i.e., the sworn statements of Relanne and Yolanda were inadmissible hearsay and could not be part of the *res gestae* under Section 42, Rule 130 of the Rules of Court. Moreover, the NBI agents and medico-legal officer had no personal knowledge as to what actually and truthfully happened; hence, their testimony as to what Relanne and Yolanda narrated were likewise inadmissible hearsay. Accused further contended that what was established during trial was that Relanne and Yolanda were no longer interested in pursuing the criminal complaint against him; hence the case should have been dismissed for their lack of interest to prosecute the same.

In its Brief for the Appellee, the Office of the Solicitor General agreed with the trial court and prayed for the affirmance in toto of the challenged decision. As accused waived the filing of a Reply Brief in his Manifestation filed on 16 April 1997, this case was then deemed submitted for decision on 3 February 1998.

As we stated at the outset, the accused must be acquitted.

Indeed, the evidence for the prosecution failed miserably in meeting the quantum of proof required in criminal cases to overturn the constitutional presumption of innocence. Section 2 of Rule 133 expressly provides that an accused in a criminal case is entitled to an acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean a degree of proof as, excluding possibility of error, produces absolute certainty; all that is required is moral certainty, or that degree of proof which produces a conviction in an unprejudiced mind.

In this case, in view of the desistance of the offended party, Relanne, and her mother, Yolanda, and their failure to appear and testify at trial, the prosecution was left with nothing but their sworn statements (Exhibits "C" and "B," respectively); the sworn charge sheet (Exhibit "A") of Yolanda; and the testimonies of the NBI agents before whom the sworn statements were given or subscribed to and the NBI medico-legal officer who examined Relanne on 6 June 1995.

We first scrutinize the testimonies of the NBI agents and the medico-legal officer.

NBI agent Atty. Tomarong identified the charge sheet signed by Yolanda (Exh. “A”) and her sworn statement (Exh. “B”), then detailed the questions he asked and information he obtained from Yolanda as to the alleged rape.[38] On his part, NBI Agent Atty. Icao, Jr. identified Relanne’s sworn statement (Exh. “C”) and testified in the same manner as Atty. Tomarong.[39] Finally, NBI Medico-Legal Officer Refe identified the medical certificate he issued (Exhibit “D”), then testified as to the details of his examination of Relanne and his findings.[40]

While the defense objected to the presentation of Atty. Tomarong and Atty. Icao on the ground that their testimonies would be hearsay,[41] plainly, nothing was objectionable concerning their identification of the documents they themselves prepared in the course of performing their official duties. However, there can be no doubt that as regards the alleged commission of rape as related to them by Relanne and Yolanda, the testimonies of the NBI officials constituted inadmissible hearsay.

It is a basic rule in evidence set forth in Section 36 of Rule 130 of the Rules of Court that a witness can testify only to those facts which he knows of his own personal knowledge, i.e., which are derived from his own perception; otherwise, such testimony would be hearsay. Hearsay evidence is defined as “evidence not of what the witness knows himself but of what he has heard from others.”[42] Obviously then, the NBI agents’ testimonies touching upon what was told them by Relanne and Yolanda concerning the events relating to the alleged commission of rape in question was hearsay. As a matter of fact, insofar as Yolanda was concerned, since she was not an eyewitness to the commission of the rape, but obtained knowledge thereof only from Relanne, the testimony of Atty. Tomarong with respect to what Yolanda told him, even constituted “double hearsay.”

It is settled that unless the affiants themselves take the witness stand to affirm the averments in their affidavits, the affidavits must be excluded from a judicial proceeding for being inadmissible hearsay. The rationale for this is respect for the accused’s constitutional right of confrontation, or to meet the witnesses against him face-to-face.[43] To safeguard this right, Section 1 of Rule 132, of the Rules of Court thus provides that the examination of witnesses presented in a trial or hearing must be done in open court, and under oath or affirmation.[44] At bottom, admitting Exhibits “A,” “B,” and “C” only as part of the testimonies of the NBI agents could validly be done, but in light of the foregoing discussion, these exhibits should have been excluded insofar as their contents related to the truth of the matter concerning the commission of the rape in question.

Anent the medical certificate (Exhibit “D”), we disagree with accused, however, that the contents thereof likewise constituted inadmissible hearsay. Exhibit “D” was prepared by Dr. Refe on the basis of his actions and what he observed during his medical examination of Relanne. Thus, as he actually testified thereto and was cross-examined by the defense, accused’s contention on this score must fail.

The trial court brushed aside accused’s invocation of the hearsay rule on the ground that the sworn statements could be considered as part of the *res gestae*, thus constituting admissible hearsay pursuant to Section 42 of Rule 130 of the Rules of Court, which reads as follows:

Sec. 42. Part of the *res gestae*. - Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

In *People v. Sanchez*,[45] this Court observed:

*Res gestae* means the “things done.” It “refers to those exclamations and statements made by either the

participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.” A spontaneous exclamation is defined as “a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him. The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear,’ the utterance may be taken as expressing the real belief of the speaker as to the act just observed by him.” In a manner of speaking, the spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself. Or, stated differently, “xxx the events speak for themselves, giving out their fullest meaning through the unprompted language of the participants. The spontaneous character of the language is assumed to preclude the probability of its premeditation or fabrication. Its utterance on the spur of the moment is regarded, with a good deal of reason, as a guarantee of its truth.

In *People v. Ner*,<sup>[46]</sup> this Court stated:

All that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances. In sum, there are three requisites to admit evidence as part of the *res gestae*: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.<sup>[47]</sup>

It goes without saying that the element of spontaneity is critical. The following factors are then considered in determining whether statements offered in evidence as part of the *res gestae* have been made spontaneously, viz., (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself.<sup>[48]</sup> As to the first factor, the following proves instructive:

T]he rule is that the statements, to be admissible, should have been made before there had been time or opportunity to devise or contrive anything contrary to the real facts that occurred. What the law altogether distrusts is not *after-speech* but *afterthought*.

[T]here are no limits of time within which the *res gestae* can be arbitrarily confined. These limits vary in fact with each particular case. The acts or declarations are not required to be contemporaneous with the primary fact, but they must be so connected with it as to make the act or declaration and the main fact particularly inseparable, or be generated by an excited feeling which extends, without break or let-down, from the moment of the event they illustrate. In other words, if the acts or declarations sprang out of the principal transaction, tend to explain it, were voluntary and spontaneous, and were made at a time so near it as to preclude the idea of deliberate design, they may be regarded as contemporaneous in point of time, and are admissible.<sup>[49]</sup>

In *People v. Sanchez*,<sup>[50]</sup> this Court had occasion to state that the cases are not uniform as to the interval of time that should separate the occurrence of the startling event and the making of the declaration. What is important is that the declarations were voluntarily and spontaneously made “so nearly contemporaneous as to be in the presence of the transaction which they illustrate or explain, and were made under such circumstances as necessarily to exclude the ideas of design or deliberation.”

As to the second factor, it may be stressed that “a statement made, or an act done, at a place some distance from the place where the principal transaction occurred will not ordinarily possess such spontaneity as would render it admissible.”<sup>[51]</sup>

Anent the third factor, “[a] statement will ordinarily be deemed spontaneous if, at the time when it was made, the conditions of the declarant was such as to raise an inference that the effect of the occurrence on his mind still continued, as where he had just received a serious injury, was suffering severe pain, or was under intense excitement. Conversely, a lack of spontaneity may be inferred from the cool demeanor of declarant, his consciousness of the absence of all danger, his delay in making a statement until witnesses can be procured, or from the fact that he made a different statement prior to the one which is offered in evidence.”<sup>[52]</sup>

With regard to the fourth factor, what is to be considered is whether there intervened between the event or transaction and the making of the statement relative thereto, any circumstance calculated to divert the mind of the declarant which would thus restore his mental balance and afford opportunity for deliberation.<sup>[53]</sup>

The last factor needs no further elaboration.

Tested against the foregoing requisites to admit statements as part of the *res gestae* and factors to test the spontaneity of the statements, we do not hesitate to rule that the sworn statement of Relanne (Exhibit “C”) fails to qualify as part of the *res gestae* for these reasons: (1) it was executed only on 8 June 1995 or, thirty-six (36) days after the alleged rape on 3 May 1995, providing her more than sufficient time to concoct or contrive a falsehood; (2) it was made after she had resolved to file a case for rape against her father, a decision which required much deliberation and would cause her obvious pain as the filing would expose her to public humiliation and shame, bring dishonor to her family and visit upon her father the penalty of death; (3) she gave the statement after three critical intervening events had occurred, viz., her pregnancy, filing the complaint sheet and her being referred to the NBI medico-legal officer for examination; and (4) it was made far from the place where the principal event -- the alleged rape -- was committed, i.e., the latter took place in the De la Paz, Liloy, Zamboanga del Norte, while the statement was made in Dipolog City, at the sub-office of the NBI, and any map of Zamboanga del Norte will show that Tampilisan and Dipolog City do not even adjoin each other.

Turning to the sworn statement of Yolanda (Exhibit “B”), with more reason should this not qualify as forming part of the *res gestae*. Yolanda did not witness the principal event and all she knew of it was told to her by Relanne. Even if the issue of admissibility is confined to what Relanne had told Yolanda, the same conclusion would be reached for it clearly appears in Exhibit “A” that Relanne had not spontaneously told Yolanda of the alleged rape. In fact, the latter had to confront the former only after the accused confessed to Yolanda that he had molested Relanne. Moreover, the confrontation took place on 3 June 1995, or a month after the alleged rape.

Ineluctably then, the trial court erred in admitting Exhibits “B” and “C” as part of the *res gestae*

Parenthetically, before the issue of *res gestae* is laid to rest, it must not be forgotten that Section 42 of Rule 130 concerns itself with admissibility of evidence and not its weight and sufficiency,<sup>[54]</sup> which is covered by Rule 133. Clearly, these two rules of evidence are not synonymous.

The trial court was, however, correct in denying the motion to dismiss the case solely on the basis of the affidavit

of desistance. The rule supporting the denial is well entrenched. While it may be true that under Article 344 of the Revised Penal Code, the offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by said persons, as the case may be, the pardon to justify dismissal of the case should have been granted prior to the institution of the criminal action. Consequently, an affidavit of desistance filed after the institution of the criminal action in these cases, even if based on an express pardon, cannot be a ground to dismiss the action.[55] With stronger reason then may plain desistance not justify dismissal of the proceedings once instituted. The reason for this rule is that the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged. Once filed, control of the prosecution for any of the aforementioned crimes is removed from the offended party's hands.[56]

The trial court, however, once more gravely erred when it imposed the death penalty not because of the provisions of Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, which the court a quo even cited, but due to the alternative circumstance of relationship under Article 15 of said Code. The pertinent portion of Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, reads:

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

- Where 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.

Clearly then, the father-daughter relationship in rape cases, or between accused and Relanne, in this case, has been treated by Congress in the nature of a special circumstance which makes the imposition of the death penalty mandatory. Hence, relationship as an alternative circumstance under Article 15 of the Revised Penal Code, appreciated as an aggravating circumstance, should no longer be applied in view of the amendments introduced by R.A. No. 7659. It may be pointed, however, that without the foregoing amendment, relationship would still be an aggravating circumstance in the crimes of rape (Article 335) and acts of lasciviousness (Article 336).[57]

If relationship in the instant case were to be appreciated under Article 15 of the Revised Penal Code, the penalty imposable on accused then would not be death, but merely reclusion perpetua for, assuming that Relanne's testimony in court would have confirmed what she narrated in her sworn statement (Exhibit "C"), no circumstance then attended the commission of the rape which could bring the crime under any provision of Article 335 which imposes a penalty higher than reclusion perpetua or of reclusion perpetua to death.

Finally, a few words on the lack of care devoted to the preparation of the information filed before the trial court. The Office of the Provincial Prosecutor had in its possession evidence that the crime was committed by a father against his 17-year old daughter after the effectivity of R.A. No. 7659, hence the imposable penalty was death. It was then necessary to make reference to the amendatory law to charge the proper offense that carried the mandatory imposition of capital punishment. Yet, the information merely stated:

CONTRARY TO LAW (violation of Article 335, Revised Penal Code).

Strictly speaking, this statement refers to the unamended provisions of Article 335 of the Revised Penal Code. However, as even a freshman student of law should know, the original provisions of said Article had, even prior to R.A. No. 7659, already been amended by R.A. No. 2632 and R.A. No. 4111. Prosecutors are thus admonished

to exercise utmost care and diligence in the preparation of complaints or informations to avert legal repercussions which may prove prejudicial to the interest of the State and private offended parties.

WHEREFORE, judgment is hereby rendered REVERSING the appealed decision in Criminal Case No. S-2579 of the Regional Trial Court of the Ninth Judicial Region, Branch 11, sitting in Sindangan, Zamboanga del Norte, and, for lack of evidence, ACQUITTING accused-appellant RESTITUTO MANHUYOD, JR., whose immediate release from detention is hereby ordered, unless his continued detention is justified by any other lawful cause. The Director of the Bureau of Corrections is directed to inform the Court within ten (10) days from notice hereof of the fact of such release or continued detention, as the case may be.

Costs de oficio.

SO ORDERED.

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

Purísima, J., on leave.

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[1] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for the purpose the Revised Penal Code, as amended, other Special Laws, and for other Purposes, effective 31 December 1993 (People v. Simon, 234 SCRA 555 [1994]).

[2] Original Record (OR), Criminal Case No. S-2579, 1.

[3] Exhibit “D,” OR, 9.

[4] Exhibits “B” and “C,” respectively, OR, 4-5; 6-8.

**[5] OR, 2.**

[6] Id., 1.

[7] Id., 12; Rollo, 7.

[8] Id., 15.

[9] Id., 18.

[10] Id., 17.

**[11] OR, 19-23.**

[12] Citing People v. Entes, 103 SCRA 162 [1981].

[13] Citing People v. Miranda, 57 Phil. 274 [1932].

**[14] OR, 25.**

[15] Id., 33.

[16] Id., 41.

[17] Id., 47.

[18] Id., 49.

[19] Id., 34-35.

[20] Id., 42.

[21] Id., 45.

**[22] OR, 49.**

[23] Id., 56-59.

[24] Id., 38.

[25] Id., 39.

[26] Id., 43.

[27] Id., 60-61.

**[28] OR, 62.**

[29] Id., 50-54.

[30] Id., 71-75.

[31] Id., 82.

[32] Id., 77-81.

[33] Id., 83.

[34] Id., 84; 85.

[35] Id., 89.

[36] OR, 92-110; Rollo, 15-33. Per Judge Wilfredo G. Ochotorena.

[37] Id., 112; Id., 34.

[38] TSN, 8 September 1995, 3-19.

[39] Id., 22-30.

[40] TSN, 22 September 1995, 3-5.

[41] TSN, 8 September 1995, 4, 22.

[42] Ricardo J. Francisco, Evidence 244 (3rd ed., 1996) (hereafter Francisco).

[43] Section 14(2), Article III.

[44] People v. Sanchez, 213 SCRA 70, 77 [1992] (citations omitted). See also 2 Florenz D. Regalado, Remedial Law Compendium 603 (7th ed., 1995).

[45] Supra note 44 at 78-79 (citations omitted).

**[46] 28 SCRA 1151, 1161-1162 [1969].**

[47] *People v. Sanchez*, supra note 44 at 79. See also *People v. Taneo*, 218 SCRA 494, 506 [1993]; *Anciro v. People*, 228 SCRA 629, 642 [1993].

[48] *Francisco* 315-317.

[49] *Id.*, 315 (citations omitted).

[50] *Supra* note 44 at 80.

[51] *Francisco* 316.

[52] *Francisco* 317.

[53] *Id.*

[54] *Pantranco North Express, Inc. v. Court of Appeals*, 224 SCRA 477, 486 [1993].

[55] *Bayani M. Alonte v. Hon. Maximo A. Savellano, Jr., et al.*, G.R. Nos. 131652 and 131728, 9 March 1998, at 20.

[56] See *People v. Soliao*, 194 SCRA 250, 256 [1991].

[57] 1 *Luis B. Reyes*, *The Revised Penal Code* 471 (13<sup>th</sup> ed., 1993).

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