

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SOLOMON PURAZO, ACCUSED-APPELLANT.

G.R. No. 133189. May 05, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is another sickening case of incestuous rape.

SOLOMON PURAZO was found guilty by the trial court of rape perpetrated against his own twelve (12)-year old daughter AAA. He was sentenced to death and ordered to indemnify his victim P100,000.00 for moral damages.[1] Pursuant to law, this case is now before us on automatic review.

To prove the guilt of the accused, the prosecution presented six (6) witnesses: private complainant AAA, SPO4 Norma Corbo, DSWD Social Worker May Silva, and three (3) medical doctors: Dr. Aster Khosravibabadi, Dr. Vlademir Semilla and Dr. Bessie Acebes.

The combined testimonies of the prosecution witnesses show that the ordeal of AAA started when she was seven (7). She endured her tribulation until she was nearly twelve (12). Born on 7 May 1985[2] she lived with her father and the latter's common-law wife, Amalia Montejas, along xxxxxxxxxxxx Street, Cebu City, together with the latter's daughter by another man, two (2) younger half-brothers, a younger half-sister, and her aunt xxxxxxxxxxxx , the sister of her father. From the time she turned seven (7) until she was eleven (11), her father would insert his finger into her sex organ, until he finally inserted his penis into her vagina. He would remove her panty and force himself on her while holding her two (2) hands.[3] So many times he did this to her, but the exact number of times she could no longer remember.[4] On several occasions she cried in pain and pleaded for mercy, but this only elicited spanking of her lips with his fingers. AAA recounted that she was sexually molested by her father twice or thrice a week whenever he was drunk or under the influence of drugs.[5]

When AAA was already ten (10), she disclosed these harrowing experiences to her stepmother Amalia. But her stepmother simply ignored her. When AAA was eleven (11), she told her aunt xxxxxxxx, sister of her father, who confronted him but Solomon merely denied the accusation. AAA also informed her Lola Dorie, a neighbor, but the latter just kept the matter to herself as she did not want to get involved.[6]

The sexual assault on AAA continued in the months of January, February and March 1997. The last one was when she was molested on a Sunday, sometime in April, 1997.[7] AAA was then staying with her grandmother in "Wireless, Mandaue" when she was fetched by the accused who told her that she had to attend to her younger sisters at home. On their way home, the accused told her that they had to drop by the house of her uncle. The accused however brought her instead to a grassy dark portion of the seashore in Inawayan, Pardo, Cebu.[8] He forced her to lie down and then removed her trousers and panty. The accused then and there inserted his penis into her vagina. She cried in pain but nobody could hear her since the place was uninhabited. After satisfying his lust, the accused told her to put on her clothes and together they went home.[9]

On 8 May 1997 at around eight o'clock in the evening while AAA was watching television in the house of her Lola Dorie, the accused arrived. Finding AAA there he angrily told her to go home. When she refused, he hit her on her left chin, on the back portion of her head, and on her left and right shoulders, causing her to get dizzy and to fall to the floor. The accused then held her hand and dragged her home. Her Lola Dorie, the latter's niece Cheche and her aunt xxxxxxxx witnessed the whole incident but were too scared to help her.[10]

When they got home, the accused told AAA that he would kill her because she had defamed him. Upon hearing this, AAA immediately jumped over the stairs, ran outside the house and went to the Barangay Hall to report the matter to the Barangay Tanods.

When AAA reached the Barangay Hall that evening she was met by Barangay Tanod Victorino Betinol who was on duty. AAA was crying. She had bruises on her chin and shoulders. Her aunt xxxxxxxx kept AAA company as she reported to Betinol that she was mauled by her father. Thereafter, Betinol, together with six (6) other Tanods, accompanied AAA back to their house where Betinol asked accused Solomon Purazo if he mauled his daughter AAA. After admitting that he did so, upon invitation of the Barangay Tanods, the accused went with them to the Barangay Hall.[11]

AAA disclosed at the Barangay Hall that her father did not only maul her but also sexually abused her and repeatedly raped her. She narrated to the Tanods the agonizing details of her sexual assault by the accused, her own father. In fact she was mauled at that time because her father found out that she had reported him to her grandmother.

After narrating her ordeal, AAA and her aunt were referred by the Tanods to the police for investigation.[12] Meanwhile, her father was arrested and detained. That evening, AAA was brought to the Cebu Medical Center where she was physically examined by Dr. Aster Khosravibabadi, the resident physician on duty. The doctor noticed that AAA's "hymenal ring (was) intact and the introitus, meaning the opening of the vaginal canal, admits one finger with difficulty." [13] While Dr. Khosravibabadi did not find any "hyperemia or swelling that signifies any irritation," [14] she noted that the hymen was "elastic" and opined that it was still "possible that there was penetration." [15] AAA also tested negative for the presence of spermatozoa which however can only last for three (3) days inside the uterus. [16] Dr. Vladimir Semilla also examined AAA for the injuries she suffered in her body and found that she sustained a contusion on the left shoulder area which could have been caused by a fist blow or a bump on the wall. [17]

The following day, 9 May 1997, at around one o'clock in the afternoon, back in the police station, AAA narrated to SPO4 Norma Corbo, a Child and Youth Relation Investigator, the sexual abuses she suffered in the hands of her own father. [18] SPO4 Corbo also took down the sworn statement of AAA. [19] Afterwards, that same day, AAA was brought to the Center for Women of the DSWD in Cebu City. On 12 May 1997, she recounted her story to DSWD Social Worker Mae Silva. [20]

On 19 May 1997 a complaint for rape was filed against SOLOMON PURAZO alleging that "sometime in March 1997, and for sometime subsequent thereto," the accused who is the father of complainant AAA, a minor of twelve (12) years of age, did then and there willfully and feloniously have carnal knowledge with her.

On 5 August 1997 AAA was brought to the Don Vicente Sotto Memorial Hospital for physical examination because she missed her menstrual period for the month of July 1997. While she was negative for pregnancy, [21] she was found to have old healed lacerations on her hymen at the three and nine o'clock positions. [22]

For the defense, only two (2) testified, namely, accused Solomon Purazo himself and his sister xxxxxxxxxx.

For his part, SOLOMON PURAZO professed innocence, gave an alibi, and said that only a fool would ravish his

own kin.[23] He claimed that the rape tales were concocted by his rebellious daughter to get back at him after he had been imposing corporal punishment on her for staying out late at night, and at times, for not going home at all for several days — at her very young age of eleven (11). At one time AAA apparently disappeared from 12 to 20 March 1997 only to be found out later that she was in the company of a man in his early 20's, presumably her boyfriend.[24] AAA would also occasionally leave and return home very late, without asking permission. The accused also testified that he could not have raped his daughter because he was always at work, from four o'clock in the morning until ten o'clock in the evening, seven (7) days a week.[25]

The 8 May 1997 incident again stemmed from the failure of AAA to return home, this time, for two (2) days. She left 6 May 1997, the day before her twelfth birthday, and returned only on 8 May 1997, without any permission. Thus, upon finding out on 8 May 1997 that AAA was in the house of a neighbor, the accused, together with his sister and live-in partner, went there to confront his daughter. Upon being asked where she went, her aunt answered that she went with her sweetheart. AAA then answered that she loved her sweetheart. That was the time accused slapped his daughter at least three (3) times on the face and kicked her, despite being prevented by his sister xxxxxxxxx and Lola Dorie who was trying to shield AAA.[26]

xxxxxxx x for her part testified that she accompanied AAA to the Barangay Hall only to report the punishment AAA had received from her father and for some probable conciliation and mediation proceedings. Contrary to AAA's pronouncements, xxxxxxxx disclaimed being made aware, either by AAA or by anyone else, prior to 8 May 1997, that she was being sexually abused by her father.[27]

On 24 November 1997 the trial court found the accused Solomon Purazo guilty beyond reasonable doubt of raping his minor daughter AAA and sentenced him to death, with the accessory penalties provided by law, and ordered him to indemnify his victim P100,000.00 for moral damages. Hence, this automatic appeal in view of the death penalty imposed by the court a quo.

The accused now seeking his exoneration laments his conviction and draws our attention to the criminal complaint filed arguing that "(it) charged no specific instance when the offense was committed." [28] He likewise claims that the trial court erred in giving full faith and credence to the testimonies of the prosecution witnesses.[29]

The accused avers, in his first assigned error, that "the complaint miserably failed to describe with particularity the specific time when the alleged rape was committed." [30] The allegation that the rape was committed in 'March 1997' is so vague that it did not give him the chance to make an intelligent defense.

We disagree. Section 11, Rule 110, of the Rules of Court, provides —

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

In explaining the provision, we said that the time averred in the complaint or information would only need, unless the precise time of commission of the offense is an essential element thereof, to meet two (2) criteria: (a) it is as near to the actual date of commission of the offense as the complaint or information of the prosecuting officer will permit; and, (b) the time ultimately proved should be as so alleged in the complaint or information.[31]

We have ruled, time and again, that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated.[32] As early as 1908, we already held that where the time or place or any other fact alleged is

not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information within the period of the statute of limitations and at a place within the jurisdiction of the court.[33]

Thus, in prosecutions for rape, we have sustained complaints and informations which merely alleged: "sometime before and until October 15, 1994," for a rape committed in 1993;[34] "on or about May 1998," for a rape committed sometime in the first week of May 1998;[35] "on or about May 1994," for a rape committed on 11 May 1994;[36] "sometime in 1992 and subsequent thereto in 1994," for two counts of rape committed in August and September 1994;[37] "sometime in the month of April 1993," for a rape committed sometime in 1993;[38] "sometime in the month of September 1998," for a rape committed one night in September 1998;[39] "sometime (in) January 1992, and many times thereafter," for a rape committed during the first week of January 1992;[40] and "on or about the year 1990," for a rape committed in 1990.[41]

We find no reason to deviate from these precedents. Accordingly, we hold that the allegation in the instant complaint, i.e., "sometime in the month of March 1997, and for sometime subsequent thereto," is sufficient to uphold the conviction of the accused for a rape he had committed one Sunday of April 1997. Simply, that "one Sunday of April 1997" is not so remote from "sometime in the month of March 1997, and for sometime subsequent thereto," as to surprise and prejudice the accused.

In his second assigned error, the accused claims that the trial court erred in giving full faith and credence to the testimonies of the prosecution witnesses.[42] We do not perceive any error committed by the court a quo.

As in almost all rape cases, the crux of this issue is the credibility of the witnesses. This is resolved primarily by the trial court since it is in a better position to decide the same after having heard the witnesses and observed their conduct, deportment and manner of testifying. Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case.[43] There is nothing of this sort in the instant case.

Thus, when the trial court says that "(i)n the case at bar, the complainant described in detail how she was raped by the accused, her own father,"[44] we can only affirm and go back to the cold records of the case. For, it is settled that if the lone testimony of the victim is credible, convincing and consistent with human nature and the normal course of things, it is competent to establish the guilt of the accused.[45] In the instant case, the testimony of AAA was direct, unequivocal, categorical, unwavering and spontaneous —

PROSECUTOR:

Q: When was it that he was able to insert his penis into your vagina?

A: Last April 1997

COURT:

Q: What was your age at that time

A: 11 years old.

PROSECUTOR:

Q: Now, you said that you were last raped in April 1997, where did it happen?

A: At Inayawan, Pardo.

Q: Can you tell this Honorable Court how come that you and your father were at Inayawan, Pardo, Cebu City?

A: At first, he told me we would go to the house of my uncle.

Q: Where did he tell that he would bring you to your uncle's house?

A: At that time when he told me I was in Mandaue. He even slapped me because I didn't want to go with him to my uncle's house x x x x

Q: You said at that time then your father told you that he would bring you to your uncle's house. In effect, did he bring you to your uncle's house?

A: No, ma'am.

Q: Where did he bring you?

A: At the seashore.

Q: Do you know where that seashore was located?

A: Yes, ma'am.

Q: Where, in what seashore? In what place?

A: In that seashore, there are stores. There is a grassy portion before the seashore.

Q: When he brought you there, what did he do to you?

A: He pulled me.

Q: And after pulling you?

A: He forced me to lie down.

Q: After he forced you to lie down, what did he do to you?

A: He lied (sic) on my stomach.

Q: What was he wearing at that time?

A: Trousers. And afterwards, he removed my trousers.

Q: x x x x Was that all he removed?

A: Yes, ma'am.

Q: What about the panty, What did he do?

A: The trousers and the panty. But the t-shirt, he did not remove.

Q: You mean to tell us, you were completely naked?

A: Only the trousers and panty.

Q: Now, when your father forcibly removed your trousers and your panty, what did you do?

A: At that time, when he forcibly removed my trousers and panty, I cried but nobody could hear me because it was an uninhabited place and we were the only two persons there, and then he inserted his penis into my vagina. I cried because of the pain.

Q: You said when he inserted his penis into your vagina, you cried because of the pain. Now, can you tell this Honorable Court how long did he insert his penis into your vagina?

A: I could not recall because I was crying at that time. [46]

Too, a daughter of tender age, like AAA who was barely eleven (11) to twelve (12) then, would not accuse her own father had she not been truly subjected to the pain and harrowing experience of sexual abuse she testified to under oath.[47] For, it would take the most senseless mind or a certain amount of moral and psychological depravity for a young daughter to concoct a story which could put her own father to jail for the rest of his remaining life, if not death, and drag the rest of the family including herself to a lifetime of shame.[48]

The accused claims that his daughter was merely impelled by revenge in filing the rape case because of the corporal punishment she had been receiving from him. The contrived defense is nothing new. This supposed motive has never swayed this Court against lending credence to the testimony of a young victim who has remained firm and steadfast in her account of how she was ravished by her own father. We have held in previous cases that parental punishment or disciplinary chastisement is not enough reason for a daughter in a Filipino family to falsely accuse her father of rape. She would not subject herself to an examination of her private parts, undergo the trauma and humiliation of a public trial and embarrass herself with the need to narrate in detail how she was raped if she was not in fact raped.[49]

Likewise, the alibi of the accused that he was at work from dawn till late at night, including Saturdays and Sundays, deserves scant consideration and has to be rejected as it is inherently weak, unreliable, highly improbable and easily fabricated. For an alibi to serve as basis of an acquittal, it must be established with clear and convincing evidence, with the requisites of time and place being strictly met. Where the accused fails to

convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission, as in the instant case, alibi must altogether be rejected.[50]

Under Art. 335 of The Revised Penal Code, as amended by Rep. Act No. 7659, the death penalty may be imposed if the crime of rape is committed and 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. The rape committed by the accused on his own 11-year old daughter is indisputably qualified by minority and relationship. Accordingly, the penalty of death could thus be decreed in the instant case. However, Sec. 2, Rep. Act No. 7659, amending Art. 47 of The Revised Penal Code, recognizes that in death penalty cases, the High Tribunal puts to a vote not only the issue of the guilt of the accused, but also the question on the imposition of the death sentence itself. The law provides —

Sec. 22. Article 47 of the same Code is hereby amended to read as follows —

Art. 47. In what cases the death penalty shall not be imposed; Automatic Review of Death Penalty Cases. — The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy (70) years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty shall be reclusion perpetua

Hence, there may be circumstances to warrant such forbearance. Thus, in *People v. Roque*,^[51] where this Court upheld the conviction of the accused for two (2) counts of rape committed, first in the month of August 1994, and second, in the month of September 1994, under two (2) similarly worded complaints alleging that the two (2) counts of rape were committed "sometime in 1992 and subsequent thereto in 1994," the death penalty imposed by the trial court was reduced to reclusion perpetua. We opined then that —

The necessity that the allegation in the Information be specific enough should be understandable particularly when the accused would be minded to raise the defense of alibi. The instant Information, which placed the time of the commission of the offense sometime in 1992, and subsequent thereto in 1994, concededly was widely inclusive spanning, as it so did, a period of two (2) years. Understandably, it unduly put the accused, who raised the defense of alibi, the difficult task of accounting in detail his actions for every single day of the two-year period to prove that he could not have committed the particular offense charged.

The Court is convinced of the guilt beyond reasonable doubt of the appellant for the crime with which he has been charged but, given the circumstances hereinabove stated, there is, in the mind of the Court, sufficient justification in imposing on him the reduced penalty of reclusion perpetua.

Considering that the instant case is on all fours with *People v. Roque*, where the complaining sisters were raped several times over a period of two (2) years by their father who was charged only with two (2) counts, we have no option but to follow case law. Likewise, we therefore vote to reduce the death penalty imposed by the trial court to reclusion perpetua.

In conformity with prevailing jurisprudence, the amount of moral damages should be reduced from P100,000.00 to P50,000.00 which is given without need of proof other than the commission of rape. Another sum of P50,000.00 is however awarded to the victim as indemnity ex delicto.^[52] Considering the tender age of the victim, the aggravating circumstance of father-daughter relationship and to deter fathers with perverse and aberrant sexual behavior from sexually abusing their daughters, the victim is likewise entitled to exemplary damages in the amount of P25,000.00.^[53]

WHEREFORE, the judgment of the Regional Trial Court of Cebu City finding accused SOLOMON PURAZO guilty beyond reasonable doubt of incestuous rape is **AFFIRMED** with the modification that accused is sentenced

instead to suffer the penalty of reclusion perpetua and to pay AAA the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales and Azcuna, JJ., concur.

Puno, J., join J. Vitug.

Vitug, J., please see separate (concurring) opinion.

Panganiban, and Carpio, JJ., see separate opinion.

Callejo, J., please see my concurring and dissenting opinion

[1] Decision penned by Judge Galicano C. Arriesgado, RTC Br. - 18, Cebu City, dated 24 November 1997.

[2] TSN, 2 September 1997, pp. 3-4; Exh. "G," Records, p. 64.

[3] TSN, 4 September 1997, p. 5.

[4] TSN, 2 September 1997, 10-11.

[5] TSN, 4 September 1997, pp. 3-5.

[6] Id., pp. 6-7.

[7] Id., p. 3.

[8] TSN, 11 July 1997, pp. 7-8.

[9] TSN, 9 September 1997, pp. 12-14.

[10] TSN, 2 September 1997, pp. 7-9.

[11] TSN, 7 August 1997, pp. 4-6.

[12] Id., pp. 6-7.

[13] TSN, 16 June 1997, pp. 4-5.

[14] Id., p. 5.

[15] Ibid.

[16] TSN, 4 July 1997, pp. 3-4.

[17] TSN, 21 July 1997, pp. 5-6.

[18] TSN, 31 July 1997, pp. 6-8.

[19] Exh. "E," Records, p. 4.

[20] TSN, 11 July 1997, pp. 6-8.

[21] TSN, 4 September 1997, pp. 7-9; Exh. "F-1," Records, p. 60.

[22] Exh. "F-2," Records, p. 62.

[23] TSN, 29 September 1997, p. 11.

[24] *Id.*, pp. 6-7.

[25] TSN, 1 October 1997, p. 4

[26] *Id.*, p. 5.

[27] TSN, 21 October 1997, p. 18.

[28] Accused-Appellant's Brief, p. 6.

[29] *Id.*, p. 8.

[30] *Id.*, p. 6.

[31] *People v. Roque*, G.R. Nos. 130659 and 144002, 14 August 2002, citing *U.S. v. Dichao*, 27 Phil. 421 (1914).

[32] *People v. Villegas*, G.R. No. 60386, 30 January 1984, 127 SCRA 195; *People v. Hortillano*, G.R. No. 71116, 19 September 1989, 177 SCRA 729; *People v. Puedan*, G.R. No. 95286, 26 April 1991, 196 SCRA 388; *People v. Bugayong*, G.R. No. 126518, 2 December 1998, 299 SCRA 528; *People v. Roque*, G.R. Nos. 130659 and 144002, 14 August 2002.

[33] *U.S. v. Arcos*, 11 Phil. 555 (1908).

[34] *People v. Bugayong*, G.R. No. 126518, 2 December 1998, 299 SCRA 528.

[35] *People v. Morfi*, G.R. Nos. 145449-50, 1 August 2002.

[36] *People v. Dumanlang*, G.R. Nos. 132393-94, 7 August 2002.

[37] *People v. Roque*, G.R. Nos. 130659 and 144002, 14 August 2002.

[38] *People v. Aspuria*, G.R. Nos. 139240-43, 12 November 2002.

[39] *People v. Abellano*, G.R. No. 146468, 13 November 2002.

[40] *People v. Nebria*, G.R. Nos. 140004-05, 18 November 2002.

[41] *People v. Cantomayor*, G.R. No. 145522, 5 December 2002.

[42] Accused-Appellant's Brief, p. 8.

[43] *People v. Villanueva*, G.R. Nos. 146464-67, 15 November 2002.

[44] Decision of the trial court, p. 5.

[45] *People v. Yonto*, G.R. Nos. 148917-18, 21 November 2002.

[46] TSN, 2 September 1997, pp. 12-14.

[47] *People v. Rebose*, G.R. No. 131104, 17 June 1999, 308 SCRA 499; *People v. Nuñez*, G.R. No. 128875, 8 July 1999, 310 SCRA 168; *People v. Javier*, G.R. No. 126096, 26 July 1999, 311 SCRA 122; *People v. Pineda*, G.R. Nos. 118312-13, 28 July 1999, 311 SCRA 368.

[48] *People v. Sangil, Sr.*, G.R. No. 113689, 31 July 1997, 276 SCRA 532; *People v. Fuensalida*, G.R. No. 119963, 6 November 1997, 281 SCRA 452; *People v. Javier*, G.R. No. 126096, 26 July 1999, 311 SCRA 122; *People v. Rivera*, G.R. No. 130607, 17 November 1999, 318 SCRA 317.

[49] *People v. Gonzales*, G.R. No. 133859, 24 August 2000, 338 SCRA 678; *People v. Bertulfo*, G.R. No.

143790, 7 May 2002; People v. Villanueva, G.R. Nos. 146464-67, 15 November 2002.

[50] People v. Cañada, G.R. No. 112176, 6 February 1996, 253 SCRA 277; People v. Javier, G.R. No. 126096, 26 July 1999, 311 SCRA 122; People v. Terrible, G.R. No. 140635, 18 November 2002.

[51] People v. Roque, G.R. Nos. 130659 and 144002, 14 August 2002.

[52] People v. Romero, G.R. Nos. 137037-38, 5 August 2002; People v. Mendoza, G.R. Nos. 143844-46, 19 November 2002.

[53] People v. Villanueva, Jr., G.R. No. 146106, 16 December 2002; People v. Guardian, G.R. No. 142900, 7 August 2002.

SEPARATE (CONCURRING) OPINION

VITUG, J.:

An issue that, in my view, must now be considered is whether or not Republic Act (R.A.) No. 7659 in prescribing a single mandatory penalty of death for certain offenses constitutes a legislative infringement on judicial prerogative. Broadly asked, would it be right for the courts to ignore various mitigating circumstance or like factors that may be attendant to cases involving the mandatory death penalty? The ponencia, with sound reasons, effectively responds in the negative. I agree not only because Section 22 of R.A. No. 7659, amending article 47 of the Revised Penal Code, recognizes that in death penalty cases the Court first puts to a vote the question of guilt of an appellant and, in the affirmative, then puts to a vote the imposition of that penalty,[1] but also, and most importantly, because fundamental grounds require the exercise of judicial judgment.

The 1987 Constitution stipulates in its Section 1, Article VIII, that judicial power shall be "vested in one Supreme Court and in such lower courts as may be established by law." It "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack of jurisdiction on the part of any branch or instrumentality of the Government."

Concededly, judicial power, as opposed to and so distinguished from ministerial power, involves the exercise of judgment and the use of mental faculties that may not be subject of arbitrary legislation.[2] Resolving an issue of law or fact is a judicial question that may not be interfered with in the guise of regulatory legislation. Judicial discretion is inherent in the courts,[3] and any attempt to subvert it would be constitutionally infirm.[4]

The imposition by R.A. 7659 of the death penalty as being a mandatory punishment for the commission of "heinous offenses" has caused serious debates to come by on both political and constitutional grounds and has split the Supreme Court, although the reasons for the division have not focused on the statutory single penalty being an impingement on judicial power. The dilemma of having to strike the right scale between the power of Congress to legislate restrictions to prevent unbridled use of discretion by the sentencing authority and the latter's mandate to exercise judgment thereon has now become a valid legal issue.

In the United States and in most Commonwealth Countries, the legislature has left the judiciary with wide latitude in the sentencing scheme. The resultant wide disparity in sentences (e.g., for the crime of armed robbery, sentences can range from parole to fifty years imprisonment), has reduced the process into what critics have termed to be the level of unpredictability that characterizes any game of chance.

In *McGautha vs. California*,[5] the US Supreme Court noted that there was almost from the beginning, a

"rebellion against the common-law rule imposing a mandatory death sentence on all convicted murderers." In response, State legislatures resorted to restricting the death penalty to defined offenses such as premeditated murder or divided the culpability for the crime of murder into degrees, with the mandatory death penalty imposable only for murder in the first degree. The solution did not work. In silent protest, juries took the law into their own hands and refused to convict on a capital offense. In order to counter the problem of jury nullification, legislatures did not try to refine the definition of capital homicide but, instead, adopted a method of forthrightly granting juries the discretion of responding to mitigating factors by withholding the mandatory death penalty in an attempt, by this flexible arrangement, to replace the harshness of mandatory statutes. McGautha concluded thusly: "In the light of history, experience and the present limitation of the human knowledge, we find it quite impossible to say that committing to the untrammelled discretion of the jury the power to pronounce life or death in capital cases is offensive to anything in the Constitution." The pronouncement notwithstanding, the Court refused to find constitutional dimensions in the argument that those who exercise their discretion to send a person to death should be given standards by which that discretion might be exercised. This omission later proved fatal. Unrestrained jury prerogatives led to great disparity in sentencing. Evidence was that the unimpeded exercise of dispensing power followed discriminatory patterns and that the death sentence was disproportionately imposed and carried out on the poor, the Negro and the members of unpopular groups. As warden Lewis E. Lawes of Sing Sing noted: Not only did capital punishment fail in its justification, but no punishment could be invented with so many inherent defects.

On 29 June 1972, the United States Supreme Court, in *Furman vs. Georgia*,^[6] one of its landmark cases, declared that while the penalty of death was not unconstitutional on its face, the arbitrary and discriminatory manner of its application, rendered it violative of the prohibition against "cruel and unusual punishment" embodied in the Eight Amendment. Justice Brennan, in a concurring opinion, quoted Mr. Holmes' remarks on the occasion of the drafting of the U.S. Bill of Rights proscription against Cruel and Unusual Punishment:

"What gives additional glare of horror to these gloomy circumstances in the consideration, that Congress have to ascertain, point out and determine what kind of punishments shall be inflicted on persons convicted of crimes. They are nowhere restrained from inventing the most cruel, and most unheard-of punishments, and annexing them to the crimes; and there are no constitutional checks on them, but that racks and gibbets may be among the mild instruments of their discipline . . . I trust that they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to left nor dependence put on the virtue of representatives."

Justice Brennan stressed that judicial enforcement of the Clause could not be evaded by invoking the obvious truth that legislatures had the power to prescribe punishments for crimes because that would precisely be the reason for the enactment of the Clause in the Bill of Rights. Brennan elucidated:

"Yet, we must not, in the guise of judicial restraint, abdicate our fundamental responsibility to enforce the Bill of Rights. Were we to do so, the constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and converted by precedent into impotent and lifeless formulas. Rights in words might be lost in reality."

The *Furman* pronouncement did not rest on a steady seat as it was won by a slim majority, with five justices voting for the unconstitutionality in the application of death penalty, with the four others dissenting on the issue. The response to *Furman* was overwhelming. The Supreme Court edict had left in its wake 36 States of the Union in a frenzy to revise their statutes to conform to its guidelines. The States of the Union took either of two routes — the path of guided-discretion death penalty and the path of the mandatory death penalty.

Georgia chose the first road. It amended its statutory scheme for the crime of murder and other offenses by

providing for a bifurcated proceeding under which the guilt and the innocence of the accused was first determined either by jury or by the trial judge, with the judge being required to so charge the jury as to any lesser included offenses when supported by evidence. After a verdict finding, or plea of guilty, a pre-sentence hearing was conducted where the jury (or judge) would hear argument and receive additional evidence in mitigation or aggravation of punishment. Under the Georgia statute, at least one of ten specified aggravating circumstances should be found to exist beyond reasonable doubt, and be designated in writing, before the jury (or judge) may impose the death sentence. The trial judge in jury cases was bound by the jury's recommended sentence. It was in *Gregg vs. Georgia*[7] where the US Supreme Court had the first occasion to rule on the constitutionality of the amended statute. Although *Gregg* did not indicate which facets of the character and record of the offender was deemed relevant in capital sentencing, under American procedural rules, the pre-sentence report usually would take into account the offense, the defendant's version of the offense, prior criminal record, family history, marital history, home and neighborhood environment, education, religion, interests, habits, leisure activities, physical and mental health, employment record, military service, financial condition, and most importantly, the evaluation summary and recommended disposition.[8] The US Supreme Court affirmed the death penalty of Troy Leon Gregg and pronounced Georgia's bifurcated proceeding to be constitutional 1) by requiring the jury to consider the circumstances of the crime and the character of the defendant before recommending sentence, and 2) by compelling the Georgia Supreme Court to determine whether a death sentence was a) the result of passion or prejudice, b) was supported by evidence establishing a statutory aggravating circumstance, and c) was not disproportionate in comparison with sentences imposed on similarly situated defendants in other cases.

North Carolina also made similar attempts to remedy the statutory defects identified in *Furman* by swinging to the extreme opposite direction. It totally eliminated jury discretion through mandatory death penalty laws. By holding as unconstitutional the provision of its death penalty statute that gave the jury unbridled discretion to return a verdict of guilty of first-degree murder without capital punishment, and by holding further that such provision was severable, the North Carolina statute survived as a mandatory death penalty law. Its legislature then enacted a new statute making the death penalty mandatory for first-degree murder, which includes any willful, deliberate and premeditated killing and any murder committed in perpetrating or attempting to perpetrate a felony. In *Woodson vs. North Carolina*,[9] the US Supreme Court struck down North Carolina's mandatory death penalty as unconstitutional. *Woodson* pronounced that North Carolina's mandatory scheme, instead of rationalizing the problem might well exacerbate the problem identified in *Furman* by resting the penalty determination on a particular jury's willingness to act lawlessly. North Carolina had misread *Furman*. It was not the presence of jury discretion that made death penalty cruel and unusual but the arbitrary, irrational, excessive and discriminatory quality of its imposition. The *Woodson* Court, in dismissing the mandatory death penalty statute as unconstitutional, belabored the statute's exclusion from the sentencing process the relevant facets of the character and record of the individual offender or circumstances which could be peculiar to every offense.

The State of Louisiana took a route similar to North Carolina's, and its efforts expectedly met the same fate before the US Supreme Court. Like North Carolina, Louisiana had made death a wholly mandatory penalty, whenever the jury found the defendant guilty of the newly defined crime of first-degree murder.[10] In *Roberts vs. Louisiana*,[11] the US Supreme Court held Louisiana's mandatory sentencing design as unconstitutional for being inflicted, like all other mandatory sentencing schemes, from the vices of lack of focus on the circumstances of the particular offense and the character and propensities of the offender. The US Supreme Court recognized that the diversity of circumstances present in cases falling within the single category of killings during the commission of a specific felony, as well as the variety of possible offenders involved in such crimes, underscored the rigidity of Louisiana's enactment and its similarity to the North Carolina statute. Even the more narrowly drawn categories of first-degree murder in the Louisiana law afforded no meaningful opportunity for the consideration of mitigating

factors presented by circumstances of the particular crime or the attributes of the individual offender. Louisiana's mandatory death sentence statute, having failed to comply with Furman's requirement that standardless jury discretion be replaced by procedures that safeguard against the arbitrary and capricious imposition of death sentences, was declared to be suffering from the same constitutional infirmity identified in Woodson.

In sum, the US Supreme Court, evident in Woodson and reiterated in Roberts, has declared mandatory sentences as a form of cruel and unusual punishment because it is "a process that accords no significance to relevant facets of the character and the record of the individual offender or the circumstances of the particular offense, excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from diverse frailties of man, (and) treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death." While the US Supreme Court, in the earlier case of Trop vs. Dulles,[12] has conceded that it does not have the exact scope of the constitutional phrase "cruel and unusual," as firmly established in the Anglo-American tradition of criminal justice and as directly taken from the English Declaration of Rights in 1866, that can be traced back to the English Magna Carta, its basic underlying concept, nevertheless, can be nothing less than the dignity of man.

Achieving the delicate balance between the see-sawing interests of ensuring discretion in the sentencing process, on one hand, and the competing concern of defining the boundaries within which that discretion is to be exercised, upon the other hand, has been a persistent problem but at no instance did the American Supreme Court resort to sanctioning the extremist solution of totally withdrawing discretion from the sentencing authority. That Court has once mandated that in discharging his duty of imposing a proper sentence, "the sentencing judge is authorized, if not required, to consider all of the mitigating circumstances involved in the crime." [13]

Like the 1935 and the 1973 Charters, Section 19(1) of the 1987 Philippine Constitution provides:

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted."

In 1993, Congress enacted into law Republic Act No. 7659 providing for the imposition of the death penalty for certain offenses that virtually left the courts with hardly any sentencing discretion. On 07 February 1997, the Supreme Court, in *People vs. Echegaray*, [14] affirmed the constitutionality of the statute without, however, being required to delve into that specific issue.

Section 19 of the Philippine Bill of Rights [15] implicitly empowers Congress to reinstate the death penalty but only if such re-imposition is a) for compelling reasons and b) confined to heinous crimes. Constitutionalists Fr. Joaquin Bernas asks: Should not congress instead preserve judicial discretion to all capital offenses, which, even in the words of this Court (in *Echegaray*), are equally heinous? [16] Bernas advances that legislative facts are different from judicial facts, the former being of a more limited scope since the legislature, in considering all facts relevant to enacting a piece of legislation, cannot be expected to take full account of all possible situations. In contrast, a trial court judge must point to judicial facts which establish a link between the offense committed and the reality which the penal law envisions to be deserving of the supreme penalty. Senator Arturo Tolentino during the Senate deliberations for the enactment of Republic Act No. 7659, arguing for an optional rather than a mandatory death penalty, has indeed acknowledged that neither the legislative qualification or designation of the crime as "heinous" nor the imposition of the death penalty per se should be conclusive on the judiciary, both matters being not solely legislative but likewise judicial in concept and nature. [17]

It is thus submitted that the mandatory character of the death penalty for heinous crimes prescribed and defined in Republic Act No. 7659 notwithstanding, the courts are not precluded, given mitigating factors or conditions duly established in evidence, (a) from declaring the crime charged to be, in fact, non-heinous in character, or (b) from

concluding that no compelling reasons exist to warrant the imposition of the death penalty, either of which would allow such courts to impose the penalty next lower in degree than death. Indeed, it is this interpretation that very well saves this aspect of Republic Act No. 7659 from being held unconstitutional.

WHEREFORE, for the reasons above adverted to, I vote with my respected colleagues in the conclusions reached by them.

[1] People vs. Roque, G.R. No. 130659 and No. 144002, 14 August 2002.

[2] Crane vs. Voorhis, 257 NY 298, 178 NE 169, 78 ALR 395; Board of County Com'rs vs. General Security Corporation, 157 Kan 64, 133 P2d 479.

[3] Ruff vs. Georgia, S & F.R. Co., 67 Fla 224, 64 So 782.

[4] Simmons vs. State, 160 Fla 626, 36 So 2d 207.

[5] 402 US 183, 198, 28 L Ed 2d 711, 721 91 S Ct. 1454.

[6] 408 US 238, 33 L Ed 2d, 92 S Ct. 2726.

[7] 428 US 153 49 L Ed 859, 96 S Ct. 2909.

[8] See Gerald D. Robin, Introduction to the Criminal Justice System, 2[nd] Edition, Harper and Row Publishers, New York (1984) at 332.

[9] 428 US 280, 49 L Ed 2d 944, 96 S Ct 2978.

[10] Under the new definition, a specific intent to kill or to inflict great bodily harm while the offender is engaged in armed robbery, is first degree murder and the mandatory punishment is death. If only one of these conditions existed, the offense is second-degree murder and the mandatory punishment is imprisonment with hard labor for life. Any qualification or recommendation which a jury might add to its verdict — such as a recommendation of mercy where the verdict is guilty of first-degree murder, is without any effect.

[11] 428 US 325 49, L Ed. 2d 974, 96 S Ct. 3001.

[12] 356 US 86, 2 L Ed 2d 630, 78 S Ct 590.

[13] William vs. Oklahoma, 358 US 3 L Ed 2d 516, 79 S Ct 42 L.

[14] 267 SCRA 682.

[15] Section 19(1), Article III, 1987 Constitution.

[16] Joaquin G. Bernas, S.J. "Constitutionalism and the Narvasa Court," delivered on 20 November 1998.

[17] Parenthetically, there are now, according to Paul Hoffman, Chairman of Amnesty International, about 110 countries that support a ban on executions, compared to fewer than 30 countries that had abolished the death penalty in 1970. The group filed with the United Nations a petition signed by 3.2-million people seeking an end to state-sponsored executions. UN Secretary-General Kofi Annan lent his support to calls for a worldwide moratorium on death penalty upon receiving the petition. In a resolution (CHR No. A2001-20), dated 05 April 2001, the Commission on Human Rights, invites attention to the Second Optional Protocol calling for the abolition of the death penalty. The Commission concludes:

"WHEREFORE, the Commission on Human Rights issues this Resolution expressing its appreciation to H.E.

President Gloria Macapagal Arroyo to suspend the execution of death sentence, as it enhances the constitutional policy set forth in Article II, Section 11 of the Philippine Constitution that the State values the dignity of every human person. This Resolution is addressed to the Congress to repeal R.A. No.7659, particularly the Senate, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights."

SEPARATE OPINION

PANGANIBAN, J.:

I concur, not on the grounds given in the ponencia, but on my firm and oft repeated opinion —starting with my Dissent in *People v. Echegaray* (335 Phil 343, 391, February 7, 1997) — that the Death Penalty Law is unconstitutional. Hence, I vote to impose reclusion perpetua, not the death penalty, in this case.

SEPARATE OPINION

CARPIO, J.:

I concur with the ponencia of Justice Josue N. Bellosillo finding appellant Solomon Purazo guilty of the crime of qualified rape and imposing on him the penalty of reclusion perpetua instead of death.

The rape committed by appellant on his own 11-year old daughter is indisputably qualified by minority and relationship. The trial court is mandated to impose the death penalty on appellant pursuant to Republic Act No. 7659, commonly called the Death Penalty Law which imposes the death penalty on heinous crimes. However, on automatic review, the Supreme Court is not mandated to impose the death penalty just because the accused is guilty of a heinous crime. The Death Penalty Law requires an overriding condition before one adjudged guilty of heinous crime can be meted out the death penalty. If a majority of the members of the Court do not vote to affirm the death penalty, the penalty is automatically reduced to reclusion perpetua.

Article 47 of the Revised Penal Code provides that "the death penalty shall be imposed in all cases in which it must be imposed under existing laws." [1] This provision is mandatory on the trial court but not on the Court. If the Court affirms the conviction of the accused, the death penalty is not ipso facto imposed. The law requires the Court to hold a second voting on whether to impose the death penalty.

This is the clear import of the first paragraph of Article 47 of the Revised Penal Code:

"Art. 47. In what cases the death shall not be imposed; Automatic review of the Death Penalty Cases. — The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua.

xxx."

If reclusion perpetua is imposed, it necessarily means that the majority of the members of the Court voted that the accused is guilty of a heinous crime but less than a majority voted to impose the death penalty. This can only happen if the Court votes twice.

Thus, the language of the law lends itself to only one interpretation — that in deciding cases where the penalty to

be imposed is death, the Court should vote twice. The first voting is to decide whether the accused is guilty beyond reasonable doubt of the heinous crime charged. If he is, the Court will then proceed to a second voting to decide whether to impose the death penalty. If less than a majority of the members of the Court vote to impose the death penalty, the law requires that reclusion perpetua shall be imposed, even if the accused is guilty of a heinous crime for which death is the prescribed penalty. As the Court stated in *People v. Roque*,^[2] —

"xxx Section 22 of Republic Act No. 7659, amending Article 47 of the Revised Penal Code, recognizes that in death penalty cases the High Tribunal puts to a vote not only the issue of the guilt of an appellant but also the question on the imposition of the death sentence itself.

This is in accord with the intent of the legislators when they enacted the Death Penalty Law. The legislators understood that the Death Penalty Law would require the Court to vote separately on the imposition of the death penalty, apart from the voting on the guilt of the accused. In the Senate, the following exchange during the deliberations on the Death Penalty Law reveals this basic understanding:

"Senator Gonzales.^[3] There will be two votings by the Supreme Court — voting on the question of guilt, and second, voting on the penalty of whether or not the death penalty shall be imposed. Would that be correct, Mr. President?

Senator Tolentino. I did not get that Mr. President, I am sorry

Senator Gonzales. As I have said, when the case is now on appeal or review before the Supreme Court, there will actually be two votings. The first voting would be on the question of guilt of the offender. The second will be on the imposition of the death penalty. My question, Mr. President, is, what requisite vote is necessary for a verdict of guilty?

Senator Tolentino. In the case of the pronouncement of guilty, I think it is just the same as any other case before the Supreme Court. But when they come now to the imposition of a penalty, if it is going to be death, then there must be unanimity among the Justices.

Senator Gonzales. Apparently, that was the practice before, Mr. President. There were two votings by the Supreme Court, one on the question of guilt, and two, on the imposition of the death penalty."^[4] (Emphasis supplied)

Under the Death Penalty Law, the imposition of the death penalty is subject to the overriding condition that a majority of the members of the Court must vote to affirm the death penalty. The absence of such majority vote overrides the death penalty and results in the automatic imposition of reclusion perpetua. In effect, when a death penalty case is on automatic review before the Court, the law provides a range of penalties imposable on an accused who is guilty of a heinous crime. The death penalty is imposed if a majority vote is obtained, and reclusion perpetua if such vote is not obtained.

The Constitution provides that the death penalty can only be imposed "for compelling reasons involving heinous crimes."^[5] This is the constitutional standard that must be observed in deciding whether to impose the death penalty. The legislature has defined the heinous crimes that deserve the death penalty. But even if a person is charged and convicted of a heinous crime, the Constitution still requires that there must be "compelling reasons" for imposing the death penalty. As explained by Senator Raul Roco during the Senate deliberations on the Death Penalty Law:

"REMARKS OF SENATOR ROCO

Senator Roco stated that the Body would vote whether or not death as a penalty will be reincorporated in the scale of penalties provided by the Revised Penal Code. However, he pointed out that if the Body decides in favor of death penalty, the Body would still have to address two issues: 1) Is the crime for which the death

penalty is supposed to be imposed heinous pursuant to the constitutional mandate? 2) And, if so, there a compelling reason to impose the death penalty for it? The death penalty, he stressed, cannot be imposed simply because the crime is heinous."[6] (Emphasis supplied)

Senator Roco's remarks clarified that even if a crime is classified by law as heinous and punished with the death penalty, its commission does not automatically result in the imposition of the death penalty. Senator Roco's remarks, however, did not explain who would determine the compelling reasons to impose the death penalty. It was left to the veteran legislator Senator Arturo Tolentino to explain the respective roles of the legislature and the Court in the imposition of the death penalty. The legislature would prescribe the statutory standard for determining whether compelling reasons exist, while the Court would apply this statutory standard. This statutory standard is set forth in the Death Penalty Law as follows:

"x x x grievous, odious and hateful offenses x x x which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society."[7]

Thus, the Supreme Court is to apply this statutory standard to determine, from the facts and circumstances of each death penalty case under review, whether to impose the death penalty. This can be readily gleaned from the following discussion during the deliberations of the Death Penalty Law in the Senate:

"Senator Tañada. With respect to the compelling reasons, Mr. President, does the Gentleman believe that these compelling reasons, which would call for the reimposition of the death penalty, should be separately, distinctly and clearly stated for each crime so that it will be very clear to one and all that not only are these crimes heinous but also one can see the compelling reasons for the reimposition of the death penalty therefor?

Senator Tolentino. Mr. President, that matter was actually considered by the Committee. But the decision of the Committee was to avoid stating the compelling reason for each and every offense that is included in the substitute measure. That is why in the preamble, general statements were made to show these compelling reasons. And that, we believe, included in the bill, when converted into law, would be sufficient notice as to what were considered compelling reasons by the Congress, in providing the death penalty for these different offenses. If a matter like this is questioned before the Supreme Court, I would suppose that with the preamble already in general terms, the Supreme Court would feel that it was the sense of congress that this preamble would be applicable to each and every offense described or punishable in the measure. So we felt that it was not necessary to repeat these compelling reasons for each and every offense.

Senator Tañada. Mr. President, I am thinking about the constitutional limitations upon the power of Congress to enact criminal legislation, especially the provisions on the Bill of Rights, particularly the one which says that no person shall be held to answer for a criminal offense without due process of law. Can we not say that under this provision, it is required that the compelling reasons be so stated in the bill so that the bill, when it becomes a law, will clearly define the acts and the omissions punished as crimes?

Senator Tolentino. Mr. President, I believe that in itself, as substantive law, this is sufficient. The question of whether there is due process will more or less be a matter of procedure in the compliance with the requirements of the Constitution with respect to due process itself which is a separate matter from the substantive law as to the definition and penalty for crimes.

Senator Tañada. Under the Constitution, Mr. President, it appears that the reimposition of the death penalty is subject to three conditions and these are:

1. Congress should so provide such reimposition of the death penalty;
2. There are compelling reasons; and
3. These involve heinous crimes.

Under this provision of the Constitution, paragraph 1, Section 13, does the distinguished Gentleman not feel that Congress is bound to state clearly the compelling reasons for the reimposition of the death penalty for each crime, as well as the elements that make each of the crimes heinous included in the bill?

Senator Tolentino. Mr. President, that is a matter of opinion already. I believe that whether we state the compelling reasons or not, whether we state why a certain offense is heinous, is not very important. If the question is raised in the Supreme Court, it is not what we say in the bill that will be controlling but what the Supreme Court will feel as a sufficient compelling reason or as to the heinous nature whether the crime is heinous or not. The accused can certainly raise the matter of constitutionality but it will not go into the matter of due process. It will go into the very power of Congress to enact a bill imposing the death penalty. So that would be entirely separate from the matter of due process."^[8] (Emphasis supplied)

Clearly, the legislature has recognized that it is the majority of the Court that should determine, given all the attendant facts and circumstances of each case, whether there are compelling reasons to impose the death penalty. This is the reason the law requires the Court to hold a second voting — to consider the presence of compelling reasons. If there are no compelling reasons, then the law automatically imposes the penalty of reclusion perpetua for the heinous crime.

This power to determine whether there are compelling reasons to impose the death penalty is consistent with the Court's constitutional power to review all criminal cases in which the penalty imposed is reclusion perpetua to death.^[9] The existence of compelling reasons can only be determined from all the relevant facts and circumstances of each case under review. The power to determine whether compelling reasons exist necessarily rests with the Court, making this power judicial by nature. In contrast, the power to define heinous crimes and provide for their penalty, as well as to prescribe the standard for determining the compelling reasons for imposing the death penalty, is a legislative power.

The constitution requires the Court to set forth clearly and distinctly the facts and the law^[10] in deciding whether an accused is innocent or guilty of the heinous crime charged. There is, however, no requirement that the Court explain why the majority voted or did not vote to impose the death penalty since the law itself allows a range of penalties for the heinous crime. It is sufficient for the Court to state that compelling reasons exist or do not exist in a particular case. Within the range of penalties prescribed by the legislature, courts have traditionally been given wide discretion in sentencing those convicted of crimes.^[11] Under the present Death Penalty Law, the legislature has effectively provided a range of penalties for heinous crimes, from reclusion perpetua to death. As clearly explained during the deliberations on the Death Penalty Law in the House of Representatives:

"Mr. Garcia (P.).^[12] That is precisely why this bill does not make the imposition of the death penalty mandatory. The penalty imposed for the heinous crimes enumerated in this bill is reclusion perpetua to death. There is no mandatory imposition of the death penalty. Under the Revised Penal Code there are certain crimes where the penalty of death is mandatory. For example, in the crime of rape whether attempted, frustrated or consummated, where the victim is killed, the penalty of death is mandatory. In kidnapping where the victim is killed, the penalty of death is mandatory. Now under this bill, it is not mandatory even under the circumstances I have just enumerated."^[13] (Emphasis supplied)

In summary, the Constitution has reposed on the Court the power to review all criminal cases where the death penalty has been imposed. The Constitution mandates that the death penalty can only be imposed for compelling reasons in offenses classified as heinous crimes by the legislature. The legislature has required the Court to hold a second voting to determine whether compelling reasons exist to impose the death penalty on a person found guilty of a heinous crime. For this purpose, the legislature has prescribed the statutory standard for determining these compelling reasons. If the required majority vote is not obtained because no compelling reasons exists, then the

next lower penalty, reclusion perpetua, is ipso facto imposed by law.

In view of the foregoing, I vote to convict appellant Solomon Purazo of the crime of qualified rape. However, I vote to impose the penalty of reclusion perpetua because no compelling reasons exist to impose the death penalty.

[1] Except when the accused is below 18 or more than 70 years of age. See Article 47, Revised Penal Code, as amended by Section 22 of R.A. No. 7659.

[2] G.R. Nos. 130659 & 144002, August 14, 2002.

[3] Senator Neptali Gonzales.

[4] Record of the Senate, p. 198, Vol. IV, No. 74 (1993).

[5] Section 19 (1), Article III of the Constitution, provides: "xxx Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. xxx."

[6] Journal of the Senate, p. 1246, Vol. 2 (1993).

[7] Second Whereas Clause, R.A. No. 7659.

[8] Record of the Senate, pp. 500-501, Vol. IV (1993).

[9] Section 5 (d), Article VIII of the Constitution.

[10] Section 14, Article VIII of the Constitution.

[11] An example is the Indeterminate Sentence Law (Act No. 4103) which gives judges a wide discretion in imposing the minimum penalty anywhere within the range of the next lower penalty.

[12] Representative Pablo Garcia.

[13] Record of the House of Representatives, p. 27, Vol. V (1993).

CONCURRING AND DISSENTING OPINION

CALLEJO, SR., J.:

I concur with the ponencia of Justice Josue N. Bellosillo on the conviction of the Appellant for qualified rape. As aptly described by the ponente, this is another "sickening case of incestuous rape."^[1] As disclosed by the combined testimonies of the prosecution witnesses, the ordeal of the victim, AAA, started when she was barely seven years old:

....She endured her tribulation until she was nearly twelve (12). Born on 7 May 1985, she lived with her father and the latter's common-law wife, Amalia Montejas, along Spolarium Street, Cebu City, together with the latter's daughter by another man, two (2) younger half-brothers, a younger half-sister, and her aunt Rebecca Purazo, the sister of her father. From the time she turned seven (7) until she was eleven (11), her father would insert his finger into her sex organ, until he finally inserted his penis into her vagina. He would remove her panty and force himself on her while holding her two (2) hands. So many times he did this to her, but the exact number of times she could no longer remember. On several occasions she cried in pain and pleaded for mercy, but this only elicited spanking of her lips with his fingers. AAA recounted that she was sexually molested by her father twice or thrice a week whenever he was drunk or under the influence of drugs.

When AAA was already ten (10), she disclosed these harrowing experiences to her stepmother Amalia. But her stepmother simply ignored her. When AAA was eleven (11), she told her aunt Rebecca, sister of her father, who confronted him but Solomon merely denied the accusation. AAA also informed her Lola Dorie, a neighbor, but the latter just kept the matter to herself as she did not want to get involved.

The sexual assault on AAA continued in the months of January, February and March 1997. The last one was when she was molested on a Sunday, sometime in April, 1997. AAA was then staying with her grandmother in "Wireless, Mandaue" when she was fetched by the accused who told her that she had to attend to her younger sister at home. On their way home, the accused told her that they had to drop by the house of her uncle. The accused however brought her instead to a grassy dark portion of the seashore in Inawayan, Pardo, Cebu. He forced her to lie down and then removed her trousers and panty. The accused then and there inserted his penis into her vagina. She cried in pain but nobody could hear her since the place was uninhabited. After satisfying his lust, the accused told her to put on her clothes and together they went home.

On 8 May 1997 at around eight o'clock in the evening while AAA was watching television in the house of her Lola Dorie, the accused arrived. Finding AAA there he angrily told her to go home. When she refused, he hit her on her left chin, on the back portion of her head, and on her left and right shoulders, causing her to get dizzy and to fall to the floor. The accused then held her hand and dragged her home. Her Lola Dorie, the latter's niece Cheche and her aunt Rebecca witnessed the whole incident but were too scared to help her.

When they got home, the accused told AAA that he would kill her because she had defamed him. Upon hearing this, AAA immediately jumped over the stairs, ran outside the house and went to the Barangay Hall to report the matter to the Barangay Tanods.

When AAA reached the Barangay Hall that evening she was met by Barangay Tanod Victorino Betinol who was on duty. AAA was crying. She had bruises on her chin and shoulders. Her aunt Rebecca kept AAA company as she reported to Betinol that she was mauled by her father. Thereafter, Betinol, together with six (6) other Tanods, accompanied AAA back to their house where Betinol asked accused Solomon Purazo if he mauled his daughter AAA. After admitting that he did so, upon invitation of the Barangay Tanods, the accused went with them to the Barangay Hall.

AAA disclosed at the Barangay Hall that her father did not only maul her but also sexually abused her and repeatedly raped her. She narrated to the Tanods the agonizing details of her sexual assault by the accused, her own father. In fact she was mauled at that time because her father found out that she had reported him to her grandmother.[2]

Under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, the prescribed penalty for the crime is death:

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

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[3]

Instead of imposing the death penalty, the majority reduced the penalty on Appellant to reclusion perpetua. On this matter, I respectfully dissent.

Elaborating on the *raison d'être* for the imposition of the death penalty for incestuous rape under Republic Act 7659, this Court in *People vs. Baculi*,^[4] per Chief Justice Andres N. Narvasa said:

Of all so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation and disgust than incestuous rape. It is indeed difficult to find a more perverted form of sexual aberration than this bestial

felony. It is undeserving of society's compassion or tolerance. Regrettably, it is not of infrequent occurrence, as the records of the Court reveal. Hence, it is that the latest amendments of the Revised Penal Code have prescribed the supreme penalty of death for rapes by parents of their minor daughters.

Earlier, in *People vs. Mandap*,^[5] this Court per Justice Josue Bellosillo, the ponente in this case, minced no words in condemning incestuous rape in this language:

Man is endued with qualities that place him on the highest level among all living creatures. In this relationship with humans he is guided by a sense of morality. He knows that it is highly immoral for persons so closely related by marriage or by blood to indulge in sexual intercourse. Incestuous relations are abhorrent to the nature of man, not only to civilized men but also to semi-civilized and barbarous people. Also, they tend to confuse rights incident to family relations. Most important of all, science and experience have established beyond cavil that they very often result in deficient and degenerate offsprings, seriously deteriorating the race. In contrast, lower forms of animals yield only to biological impulses and are unfettered by social inhibitions when they mate with their own kin. When man perpetuates his lascivious designs on his own direct blood relative, he descends to a level lower than beasts. Incestuous rapes are extremely disgusting because-

x x x 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.^[6]

This Court even said that "the crime in this case is so monstrous" that no punishment which this Court or any other known tribunal can decree, could possibly prove sufficient explanation for the offense.

Article 63 of the Revised Penal Code mandates that in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts, including the Supreme Court, regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

The courts have no option but to follow the law.^[7] Under Article 47 of the same code, the death penalty shall be imposed in all cases in which it must be imposed under existing laws. The courts have no option but to follow the law.^[8] In *People vs. Judge Lorenzo Veneracion*,^[9] this Court emphasized that where the law provides for the sentence of death as a penalty, specific and well-defined instances, it is the bounded duty of the courts to impose the said penalty. Judges have no choice.

In *Re Graham*, 34 L. Ed. 1051 reiterated in *Psul A. Weems vs. United States*, 54 L. ed. 793, (1910), the United States Supreme Court ruled that:

[T]he general rule that a judgment rendered by a court in a criminal case must conform strictly to the statute, and that any variation from its provisions, either in the character or the extent of punishment inflicted, renders the judgment absolutely void. In *Ex parte Karstendick*, 93 U.S. 396, 399, 23 L. ed. 889, 890, it was said: "In cases where the statute makes hard labor a part of the punishment, it is imperative upon the court to include that in its sentence."

The penalties as prescribed by statute are essentially and exclusively legislative. The courts can only interpret and apply them and have no authority to modify them or revise their range as determined exclusively by the legislature. The courts should not encroach on the prerogative of the lawmaking body.^[10] As the United States Supreme Court so aptly expressed in "*Weems vs. United States*," *supra*, there is a certain subordination of the judiciary to the legislature. The function of the legislature is primary, its exercise fortified by the presumption of right and legality, and is not to be interfered with lightly, nor by any judicial conception of its wisdom or propriety. They have no limitations but constitutional ones.

In this case, instead of imposing the mandatory penalty of death, the majority opted to impose the lower penalty of reclusion perpetua simply and merely because the information filed against appellant alleged that the crime was committed "sometime in the month of March 1997 and for sometime subsequent thereto" citing the ruling of the Court in *People vs. Roque*[11] which cited Article 47 of the Revised Penal Code. The Court in *People vs. Roque* ruled that:

The necessity that the allegation in the Information be specific enough should be understandable particularly when the accused would be minded to raise the defense of alibi. The instant Information, which placed the time of the commission of the offense sometime in 1992, and subsequent thereto in 1994, concededly was widely inclusive spanning, as it so did, a period of two (2) years. Understandably, it unduly put the accused, who raised the defense of alibi, the difficult task of accounting in detail his actions for every single day of the two-year period to prove that he could not have committed the particular offense charged.

The Court is convinced of the guilt beyond reasonable doubt of the appellant of the crime with which he has been charged but, given the circumstances hereinabove stated, there is, in the mind of the Court, sufficient justification in imposing on him the reduced penalty of reclusion perpetua.

Reliance by the majority of Article 47 of the Revised Penal Code as amended by Republic Act 7659 is misplaced. The law cited reads:

ART. 47. In what cases the death penalty shall not be imposed; Automatic review of death penalty cases.—The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua.[12]

It must be noted that under Section 133 of the Revised Administrative Code, as amended by Commonwealth Act No. 33, whenever the judgment of the lower court imposes the death penalty, the case shall be heard and determined by all the Justices of the Court and the unanimous decision of all such Justices shall be necessary for the pronouncement of a judgment imposing the death penalty.

Whenever the judgment of the lower court imposes the death penalty, the case shall be heard and determined by all the Justices of the Court, and the unanimous decision of all such Justices shall be necessary for the pronouncement of a judgment imposing the death penalty. When the Court fails to reach a unanimous decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed.[13]

As observed by this Court in *People vs. Young*,[14] there was a notorious difficulty if not virtual impossibility of obtaining the unanimity. In view of alarming rise of criminality, Congress applied Republic Act 248 (otherwise known as the Judiciary Act of 1948) which provides that:

Whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court. When eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death shall be imposed.[15]

The law was later amended by Article 47 of the Revised Penal Code and Republic Act 7659.

The Court held in *People vs. Young* that Republic Act 296 is procedural and not substantive. Case law has it that procedural laws or rules cannot amend substantive laws.[16] The penalty imposed under Article 335 of the Revised Penal Code as amended by Republic Act 7659 imposing the death penalty for qualified rape, as well as Article 63 of the Revised Penal Code are substantive. There is nothing in Article 47 of the Revised Penal Code which authorizes the Court to reduce on a pro haec basis the penalty to reclusion perpetua where the law violated

provides the mandatory penalty of death. I believe that Article 47 of the Revised Penal Code is applicable only in those cases where in light of the evidence on record, as well as substantive laws, the death penalty should not be imposed such as, for instance where the accused is convicted of kidnapping for ransom and sentenced by the trial court to death penalty. On review, four members of the Court are of the opinion that the prosecution failed to prove that ransom was demanded by the accused for the release of the victim. Four other members of the Court find that the prosecution proved the crime charged but they believe that the accused was a minor and therefore the penalty should be reduced by one degree under Article 68 of the Revised Penal Code. Another example would be where the trial court imposed the death penalty on the accused for robbery with homicide, on its finding that treachery attended the commission of the crime with no mitigating circumstances in favor of the accused. On automatic review, four members of the Court find that treachery is not aggravating in robbery with homicide. Four other members of the Court are of the opinion that treachery aggravated the crime but that the accused was entitled to the generic mitigating circumstance of voluntary surrender; hence, the penalty should be reduced to reclusion perpetua conformably with Article 63 of the Revised Penal Code. In those examples the Court must reduce the penalty to reclusion perpetua because of lack of the requisite majority votes under Article 47 of the Revised Penal Code.

Assuming without conceding that the Court under Article 47 of the Revised Penal Code may reduce on a pro haec basis the penalty to reclusion perpetua, however, I believe that the mere fact that the information alleged that the crime was committed "sometime in March 1997 or months thereafter," is not a justification for the reduction of the penalty to reclusion perpetua.

I am not impervious of the cases cited by the Court in *People vs. Roque*, supra, wherein the Court sentenced the accused to reclusion perpetua citing Article 47 of the Revised Penal Code.

The Court heretofore acknowledged that circumstances could exist to warrant an exercise of such forbearance. In *People vs. Santos*, the Court considered the acts of the deceased victim, a former municipal mayor, in clearing and working on the land claimed by the Ilongots which could have been seen by the accused as an act of oppression and abuse of authority which he felt morally bound to forestall, as well as the limited schooling of the accused, as justification to reduce the penalty of death to reclusion perpetua. In *People vs. De la Cruz*, the Court took into account, in lowering the penalty to reclusion perpetua on the accused most of whom were already death row convicts, the deplorable sub-human conditions of the National Penitentiary where the crime was committed. In *People vs. Marcos*, the failure of the appellant to realize the gravity of his offense was held to justify the reduction of the penalty of death to reclusion perpetua.[17]

I believe that the Court should now review and re-examine its rulings in light of Republic Act 7659.

In sum, I vote for the affirmance of the appealed decision of the trial court convicting appellant of qualified rape and sentencing him to death.

[1] At page 1, ponencia.)

[2] At pages 2-5, supra.

[3] Idem, supra.

[4] Id. pp. 758-759.

[5] 244 SCRA 457 (1995).

[6] At pp. 465-466, *supra*.

[7] *People vs. Mahinay*, 302 SCRA 455 (1999).

[8] *Id.*, *supra*.

[9] 249 SCRA 244 (1995).

[10] *People vs. Muñoz, et al.*, 179 SCRA 107 (1989).

[11] G.R. No. 130659 & 144002.

[12] *Id.*, *supra*.

[13] *Id.*, *supra*.

[14] 83 Phil. 702.

[15] *Id.*, *supra*.

[16] *Luzon Steel Corporation vs. Sia*, 28 SCRA 58 (1969).

[17] *Id.*, *Supra*, p. 24.

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