

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS PEREZ Y SEBUNGA, ACCUSED-APPELLANT.

G.R. No. 142556. February 05, 2003

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PER CURIAM:

For automatic review is the Decision[1] dated October 26, 1999 of the Regional Trial Court of xxxxxxxxxxxx, xxxxxxxxxxxx, Branch 69, in Criminal Case No. RTC-2116-I, finding appellant Jesus S. Perez (“appellant” for brevity), guilty of raping AAA (“AAA” for brevity) and imposing on appellant the death penalty.

On January 22, 1997, the Second Assistant Provincial Prosecutor[2] of xxxxxxxxxxxx filed an Information[3] charging appellant with the crime of rape “penalized under Article 335 of the Revised Penal Code in relation to Section 5 (b), Article III of Republic Act No. 7610,” committed as follows:

“That on or about the 17th day of January, 1997 at 12:00 noon at xxxxxxxxxxxx, Brgy. xxxxxxxxxxxx, in the Municipality of xxxxxxxxxxxx, Province of xxxxxxxxxxxx, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design and by means of coercion, inducement and other consideration, did then and there, wilfully (sic), unlawfully and feloniously have sexual intercourse with one AAA, a minor of 6 years old, without her consent and against her will, to the damage and prejudice of the latter.”

Upon arraignment, appellant, assisted by counsel de officio Atty. Genaro N. Montefalcon, pleaded not guilty to the offense charged.[4] Subsequently, the trial court allowed the withdrawal of Atty. Montefalcon as counsel for health reasons. The trial court appointed Atty. Roberto Blanco as appellant’s counsel de officio. [5]

At the pre-trial, the prosecution and defense stipulated on the following facts:

“1.

The identity of the accused;

2.

The accused was at the time of the incident in the vicinity thereof;

3.

The victim in this case, AAA, was born on 23 May 1990 as evidenced by her birth certificate;

4.

That after the incident, the child was subjected to a medico-legal examination to which a medico-legal

certificate was issued by Dr. Editha Divino.

The prosecution marked in evidence the birth certificate of the victim AAA as Exhibit 'A', and the medico-legal certificate issued by Dr. Editha Divino as Exhibit 'B'." [6]

Thereafter, trial ensued. The prosecution presented the following witnesses: the victim, AAA; the victim's mother, xxxxxxxxxxxx; the victim's father, xxxxxxxxxxxx; Virginia Espejo Giron; and Dr. Editha dela Cruz Divino. On the other hand, the defense presented appellant and his employer, Bartolome Tolentino.

The Office of the Solicitor General ("OSG" for brevity) summarized the prosecution's version of the incident in the appellee's brief, to wit:

"On January 17, 1997, about noontime, in xxxxxxxxxxxx, Barangay xxxxxxxxxxxx, xxxxxxxxxxxx six-year old AAA was walking along Sulok on her way to her house in xxxxxxxxxxxx when appellant Jesus Sebunga Perez approached her (pp. 7-8, TSN, December 15, 1998). Appellant introduced himself as "Johnny" and immediately afterwards, strangled her neck and boxed her abdomen (p. 10, TSN, December 15, 1998). Still in shock, AAA fell down (id.). At that point, a dog arrived and barked at them.

Appellant then proceeded to lower his black denim pants while simultaneously removing AAA's panty. He then inserted his penis inside AAA's vagina (p. 11, id.). AAA felt excruciating pain in her private parts (sic) but was not able to repel her aggressor whose strength and weight totally engulfed her. Her only recourse was to cry while her young body was being ravished (p. 13, id.).

After satisfying his beastly desires, appellant raised his pants and ran away (p. 14, id.). Notwithstanding that her vagina was bleeding profusely and her dress now covered with her own blood, AAA managed to stand up and seek help. She ran to the house of Virginia Giron, which was only fifty (50) meters away from the scene of the crime. In fact, Giron was outside when she heard her dog barking (apparently, it was the same dog barking at appellant while he was consummating his lust on AAA, pp. 2-3, TSN, January 12, 1999; p. 11, TSN, December 15, 1998). Looking at the direction of the noise, she saw a confused AAA approaching her with blood dripping from her private parts and thighs. When Giron asked AAA what happened, the latter shouted "ni-rape ako, ni-rape ako" (p. 4, TSN, January 4, 1999). Giron then summoned her husband and other companions to look for AAA's attacker but was unable to find him. Giron then proceeded to xxxxxxxxxxxx and xxxxxxxxxxxx, AAA's parents, to inform them of what happened (p. 5, TSN, January 5, 1999; p. 2, TSN, January 19, 1999).

When her parents asked AAA if she knew her assailant, the latter answered the name "Johnny." (id.) The couple brought their daughter to the President Ramon Magsaysay Memorial Hospital for medical examination (p. 2, TSN, February 24, 1999). She was examined by Dra. Editha Dela Cruz Divino, who issued a medico-legal certificate dated January 23, 1997 stating the following:

- Bleeding of genitalia coming from median laceration at the vaginal floor around four (4) centimeters in size. Possible cause, a fall and then hitting a sharp object and also an alleged sexual assault (p. 4, TSN, February 24, 1999).
- Genitalia had hymenal lacerations at 3, 6, 9 and 12 o'clock positions.

(pp. 4-6 id.)

Because of the extent of the damage on her genitals, AAA undertook an IV sedation operation to repair her lacerations (p. 6, id.) During her confinement at the hospital, the xxxxxxxxxxxx couple reported the incident to the xxxxxxxxxxxx PNP Police Station and recounted their daughter's narration including the name of the culprit as "Johnny" who, according to their neighbors, was a worker at the fishpond of Bartolome Tolentino (pp. 11-12, TSN, January 5, 1999). Police operatives then proceeded to the said fishpond and arrested appellant. After her

discharge from the hospital, AAA learned that appellant was already apprehended (pp. 3-8, TSN, January 5, 1999). In the police station, she was able to positively identify the appellant as the person who sexually assaulted her (p. 18, TSN, December 15, 1998).”[7]

Appellant denied raping AAA. Appellant testified that on the date of the alleged rape incident, he was working at a fishpond at xxxxxxxxxxxx. He heard of the rape of a young girl from his manager, Bartolome Tolentino (“Tolentino” for brevity). [8] Appellant further testified that on January 25, 1997, policemen went to the fishpond where he worked. The policemen arrested appellant and brought him to the police station at xxxxxxxxxxxx. Later, the policemen took him to the municipal jail of xxxxxxxxxxxx.

On cross-examination, appellant testified that his nickname is not “Johnny” but “Jessie.”[9] He testified that on January 17, 1997, at around 12 o’clock noon, he left the fishpond and walked home to Barangay Alwa which was about thirty meters from the fishpond.[10]

The defense formally offered the testimony of witness Tolentino to prove that appellant was employed as caretaker of Tolentino’s fishpond for almost two years before the alleged rape incident. Appellant was purportedly of good moral character while employed as a fishpond caretaker. The prosecution admitted the offer of testimony. Hence, the trial court dispensed with the testimony of Tolentino in open court.[11]

After trial, the court a quo rendered judgment[12] on October 26, 1999, the dispositive portion of which reads:

“WHEREFORE, foregoing considered, accused Jesus Perez y Sabung (SIC) is found GUILTY beyond reasonable doubt of the crime of Statutory Rape, defined and penalized under Article 335 of the Revised Penal Code with the qualifying circumstance that the victim was only 6 years old at the time of the commission of the offense, in relation to Section 5 (b), Article III, Republic Act 7610, and is sentenced to suffer the penalty of DEATH. Jesus Perez is directed to pay to the private complainant the amount of Seventy-Five Thousand Pesos (P75,000.00) as and by way of civil indemnity and Fifty Thousand (P50,000.00) as and by way of moral damages.”

Hence, this automatic review.

In his brief, appellant raises the following lone assignment of error:

“THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.”

Appellant contends that his identification in open court by AAA was highly irregular. Appellant points out that the prosecutor had already identified him as the man wearing an orange t-shirt when the prosecutor asked AAA to identify her alleged rapist. Appellant stresses that when AAA identified him in open court, she referred to him as a man named “Johnny” and did not give any description or any identifying mark. Moreover, appellant claims he was alone in the cell when AAA identified him after the police arrested him. Appellant bewails that the identification was not done with the usual police line-up.

Appellant’s contention is untenable.

As a rule, leading questions are not allowed. However, the rules provide for exceptions when the witness is a child of tender years[13] as it is usually difficult for such child to state facts without prompting or suggestion.[14] Leading questions are necessary to coax the truth out of their reluctant lips.[15] In the case at bar, the trial court was justified in allowing leading questions to AAA as she was evidently young and unlettered, making the recall of events difficult, if not uncertain.[16] As explained in *People v. Rodito Dagamos*: [17]

“The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of

a child witness. The reasons are spelled out in our Rule on Examination of a Child Witness, which took effect on December 15, 2000, namely, (1) to facilitate the ascertainment of the truth, (2) to ensure that questions are stated in a form appropriate to the developmental level of the child, (3) to protect children from harassment or undue embarrassment, and (4) avoid waste of time. Leading questions in all stages of examination of a child are allowed if the same will further the interests of justice.”

The Court has repeatedly stated that it is highly inconceivable for a child of tender age, inexperienced in the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private part, subject herself to public trial, and tarnish her family’s honor and reputation, unless she was motivated by a strong desire to seek justice for the wrong committed against her.[18]

AAA recounted her harrowing experience, thus:

“Q

What time was this when Johnny introduced himself to you?

A

I do not recall, ma’m.

Q

Was it in the morning, noontime or in the afternoon or in the evening?

A

Noontime, ma’m.

Q

So, when Johnny said, ‘Ako si Johnny,’ what did you do?

A

None, ma’m.

Q

After that when Johnny said, ‘Ako si Johnny’, what happened?

A

He strangled (sinakal) me.

Q

Were there persons around in the place when Johnny strangled you?

A

None, ma’m.

Q

So, what did he do then after he strangled you?

A

He boxed me on my stomach, ma'm.

Q

When he boxed you on your stomach, what happened to you?

A

I was shocked, ma'm.

Q

Did you fall down?

A

Before that, I was already lying down, so when he boxed me, I was shocked.

Q

You said that you were already lying down. Who made you lie down?

A

The person, ma'm.

Q

Why were you shocked, AAA?

A

Because he strangled me and boxed me.

Q

After he boxed you on your abdomen, what happened? What else did he do to you?

A

There was a dog that arrived in the place and it barked at us. Then Johnny moved in a hurry by penetrating my private part and after he dressing (SIC) me, he ran away.

Q

You said that Johnny penetrated your private part. With what instrument did he use in penetrating your private part?

A

His penis, ma'm.

Q

What was he wearing at that time?

A

A black denim, ma'm.

Q

When he used his penis in entering your private part, did he remove his pants?

A

No, ma'm.

Q

What did he do with his pants?

A

He brought out his penis, ma'm.

Q

You mean to say AAA, he lowered his pants?

A

Yes, ma'm.

Q

What about you, were you wearing any panty?

A

Yes, ma'm.

Q

What was your clothes at that time?

A

A dress, ma'm.

Q

When his penis entered your vagina AAA, did he remove your panty?

A

Yes, ma'm."[19]

The identity of appellant as the rapist has been established by the clear, convincing and straightforward testimony of AAA. During the trial, she testified as follows:

“Q

AAA, there is a man sitting wearing orange t-shirt, do you know this man?.

A

Yes, ma'm.

Q

Do you know his name?

A

Yes, ma'm.

Q

What is his name?

A

Johnny, ma'm.

Q

Why do you know him?

A

Because he introduced himself to me.

Q

Where did he introduced himself to you?

A

At Sulok, ma'm.

Q

Sulok is a place? .

A

Yes, ma'm

Q

Do you have any companion when this man introduced himself to you?

A

None, ma'm.

Q

How did he introduce himself to you?

A

The man introduced himself to me by saying, 'Kilala mo ba ako? Hindi po. Ako si Johnny.'"[20]

The trial court further asked AAA:

“Q

You were talking of a certain Johnny. s this Johnny in court now?

A

Yes, sir.

Q

Can you point to him?

A

Yes, sir.

Q

Point to him.

A

(Witness pointing to the person sitting at the accused bench and when asked of his name answered Jesus Perez)

Q

Is this Johnny whom you point to the person whom you saw in that 'Sulok?'

A

Yes, sir." [21]

AAA's simple, positive and straightforward recounting on the witness stand of her harrowing experience lends credence to her accusation. Her tender age belies any allegation that her accusation was a mere invention impelled by some ill-motive. As the Court has stressed in numerous cases, when a woman or a child victim says that she has been raped, she in effect says all that is necessary to show that rape was indeed committed.[22]

AAA had a clear sight of appellant's face since the rape occurred at "noontime." [23] Her proximity to appellant during the sexual assault leaves no doubt as to the correctness of her identification for a man and woman cannot be physically closer to each other than during the sexual act.[24] Thus, even if AAA did not give the identifying marks of appellant, her positive identification of appellant sufficed to establish clearly the identity of her sexual assailant.

Appellant's claim that the police improperly suggested to AAA to identify appellant is without basis. True, AAA did not identify appellant in a police line-up when AAA identified appellant in his cell. However, appellant, in his testimony admitted that he had two other companions in his cell.[25] Moreover, the Court has held that there is no law requiring a police line-up as essential to a proper identification. Even without a police line-up, there could still be a proper identification as long as the police did not suggest such identification to the witnesses.[26] The records are bereft of any indication that the police suggested to AAA to identify appellant as the rapist.

AAA's identification in open court of appellant as her rapist dispels any doubt as to the proper identification of appellant. AAA positively identified and pointed to appellant as her rapist. We are satisfied that her testimony, by itself, is sufficient identification of her rapist. As held in *People v. Marquez*: [27]

"xxx. Indeed, the revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint. Stated differently, it is most improbable for a five-year old girl of tender years, so innocent and so guileless as the herein offended party, to brazenly impute a crime so serious as rape to any man if it were not true."

In his Reply Brief, appellant contends that even assuming that the guilt of appellant has been proven beyond reasonable doubt, the trial court erred in imposing the death penalty. Appellant maintains that the death penalty cannot be imposed on him for failure of the prosecution to prove AAA's age by independent evidence. Appellant points out that while AAA's birth certificate was duly marked during the pre-trial, it was not presented and identified during the trial. Appellant asserts that AAA's minority must not only be specifically alleged in the Information but must also be established beyond reasonable doubt during the trial.

Appellant's argument deserves scant consideration.

At the pre-trial, the parties mutually worked out a satisfactory disposition of the criminal case. Appellant, assisted by counsel, signed a Pre-Trial Agreement[28] which, as incorporated in the Pre-Trial Order, stated that:

"x x x.

3. The victim in this case, AAA was born on 23 May 1990 as evidenced by her birth certificate;

x x x.” (Emphasis supplied)

During the pre-trial, the prosecution marked in evidence AAA’s birth certificate as Exhibit “A”.[29] The prosecution submitted its Offer of Evidence[30] which included Exhibit “A”, a certified true copy of AAA’s birth certificate. The trial court admitted Exhibit “A” [31] without any objection from the defense.

The purpose of pre-trial is to consider the following: (a) plea bargaining; (b) stipulation of facts; (c) marking for identification of evidence of the parties; (d) waiver of objections to admissibility of evidence; (e) modification of the order of trial if the accused admits the charge but interposes lawful defenses; and (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.[32] Facts stipulated and evidence admitted during pre-trial bind the parties. Section 4, Rule 118 of the Revised Rules of Criminal Procedure[33] provides:

“SEC. 4. Pre-trial order. - After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.” (Emphasis supplied)

Moreover, AAA herself testified in open court as to her age. During the trial on December 15, 1998, which was about twenty- three (23) months after the rape incident occurred on January 17, 1997, AAA testified on cross-examination that she was “8 years old last May 23.”[34] Thus, by deduction, since AAA was born on May 23, 1990 as shown in her birth certificate, she was about six (6) years and seven (7) months old on January 17, 1997, the day the crime took place. We rule that the prosecution has indisputably proven that AAA was below seven years old at the time appellant raped her.

Finally, the trial court was correct in imposing the death penalty on appellant. Under Article 335[35] of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659,[36] the death penalty shall be imposed if the crime of rape is committed against a child below seven (7) years old. AAA was six (6) years and seven (7) months old when appellant raped her.

If rape is qualified by any of the circumstances[37] warranting the imposition of the death penalty, the civil indemnity for actual or compensatory damages is mandatory.[38] Following prevailing jurisprudence, the civil indemnity is fixed at P75,000.00. In addition, moral damages of P50,000.00 should also be awarded to the rape victim without need for pleading or proving it.[39]

WHEREFORE, the Decision dated October 26, 1999 of the Regional Trial Court of xxxxxxxxxxxx, xxxxxxxxxxxx, Branch 69, in Criminal Case No. RTC-2116-I, finding appellant Jesus S. Perez guilty beyond reasonable doubt of the crime of qualified rape, sentencing him to suffer the death penalty,[40] and ordering him to pay the victim AAA the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages, is AFFIRMED in toto.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of the Republic Act No. 7659, upon the finality of this Decision, let the records of this case be forthwith forwarded to the Office of the President of the Philippines for possible exercise of the pardoning power.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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- [1] Penned by Judge Rodolfo V. Toledano.
- [2] Ramon S. Villa.
- [3] Records of Criminal Case No. RTC-2116-I, docketed as I.S. No. 97-38-I, p. 2.
- [4] Ibid., p. 13, Order of February 11, 1997.
- [5] Ibid., p. 22, Order of February 18, 1997.
- [6] Ibid., p. 97, Pre-Trial Order of December 8, 1998.
- [7] Rollo, pp. 98-101, Appellee's Brief, pp. 2-5.
- [8] TSN, April 14, 1999, pp. 3-4.
- [9] Ibid., p. 8.
- [10] Ibid., p. 10.
- [11] TSN, May 12, 1999, pp. 2-4.
- [12] Records of Criminal Case No. RTC-2116-I, pp. 204-222.
- [13] Section 10, Rule 132 (as amended effective July 1, 1989) of the Revised Rules of Court provides:
- “SEC. 10. Leading and misleading questions. - A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except: (a) xxx .
- (b) xxx
- (c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is of feeble mind, or a deaf-mute; x x x.” (Emphasis supplied)
- [14] *People v. Losano*, 310 SCRA 707 (1999).
- [15] *People v. Vargas*, 257 SCRA 603 (1996).
- [16] *People v. Esmeraldo Cana y del Valle*, G.R. No. 139229, April 22, 2002.
- [17] G.R. No. 137385, January 23, 2002.
- [18] *Supra*, see note 14.
- [19] TSN, December 15, 1998, pp. 9-12.
- [20] Ibid., pp. 7-8.
- [21] Ibid., 21.
- [22] *People v. Padilla*, 355 SCRA 741 (2001).
- [23] Ibid.; TSN, December 15, 1998, p. 9.
- [24] *People v. Gener Agoncillo*, 358 SCRA 178 (2001); *People v. Nestor Munta*, G.R. No. 142606, November 29, 2001.
- [25] TSN, April 14, 1999, pp. 5-7.
- [26] *People v. Andres Lubong*, 332 SCRA 672 (2000) citing *People v. Salguero*, 198 SCRA 357 (1991).

[27] 347 SCRA 510 (2000).

[28] Records of Criminal Case NO. RTC-2116-I, p. 96.

[29] Ibid., pp. 97 & 154.

[30] Ibid., pp. 152-153.

[31] Ibid., p. 159, Order of April 20, 1999.

[32] Section 1, rule 118 of the Revised Rules of Criminal Procedure.

[33] Effective December 1, 2000. This section was formerly Section 3 of the 1985 Rules on Criminal Procedure.

[34] TSN, December 15, 1998, pp. 3-4.

[35] Article 335 of the Revised Penal Code, as amended by R.A. 7659, provides: “When and how rape is committed. - x x x.

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

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

- When the victim is under the custody of the police or military authorities.

- When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

- When the victim is a religious or a child below seven (7) years old.

- When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

- When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

- When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.”

[36] Further amended by Republic Act No. 8353, otherwise known as “The Anti-Rape Law,” which took effect on October 22, 1997 (People v. Ugang, G.R. No. 144036, May 7, 2002). Under the new law, rape is no longer a private crime but has been reclassified as a crime against persons in Article 266-A (Rape, When and How Committed) and Article 266-B (Penalties) under Title Eight of the Revised Penal Code. Article 266-B reads:

“Article 266-B. Penalties. - xxx.

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

1)

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

2)

When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3)

When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third degree of consanguinity;

4)

When the victim is a religious engaged in legitimate religious vocation or calling or and is personally known to be such by the offender before or at the time of the commission of the crime;

5)

When the victim is a child below seven (7) years old;

6)

When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7)

When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8)

When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9)

When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10)

When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of crime.”

[37] See notes 35 & 36.

[38] *People v. Banago*, 309 SCRA 417 (1999).

[39] *People v. Salustiano Callos*, G.R. No. 133478, January 16, 2002; *People v. Felino Llanita*, G.R. No. 134101, September 5, 2001; *People v. Torejos*, 326 SCRA 75 (2000); *People v. Balgos*, 323 SCRA 372 (2000); *People v. Alba*, 305 SCRA 811 (1999); *People v. Ambray*, 303 SCRA 697 (1999); *People v. Bolatete*, 303 SCRA 709 (1999); *People v. Mahinay*, 302 SCRA 455 (1999).

[40] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribed the death penalty, is unconstitutional (*People v. Echegaray*, 267 SCRA 682 [1997]). Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty should be imposed in this case.

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