

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALFREDO BON, APPELLANT.*G.R. NO. 166401 (FORMERLY G.R. NOS. 158660-67). October 30, 2006*

Ponente: TINGA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-166401/>**TINGA, J.:**

Two critical issues emerge in this case. The first relates to whether the Court should affirm the conviction of appellant Alfredo Bon (appellant) for six counts of rape and two counts of attempted rape, the victims being his then-minor nieces. On that score, we affirm. As a consequence though, we are ultimately impelled to confront a question much broader in both scope and import. While the Court had previously declined to acknowledge the constitutional abolition of the death penalty through the 1987 Constitution,[1] we now find it necessary to determine whether the enactment of Republic Act No. 9346 resulted in the statutory interdiction of the death penalty.

The second issue arises as we are compelled to review the maximum term of reclusion temporal in the sentence imposed on appellant by the Court of Appeals for the two counts of attempted rape. The sentence was prescribed by the appellate court prior to the enactment of Republic Act No. 9346 which ended the imposition of the death penalty in the Philippines. The proximate concern as to appellant is whether his penalty for attempted qualified rape, which under the penal law should be two degrees lower than that of consummated qualified rape, should be computed from death or reclusion perpetua.

First, the antecedent facts.

I.

Eight (8) Informations[2] were filed within the period from 21 August 2000 to 23 February 2001 by the Assistant Provincial Prosecutor of Gumaca, Quezon against appellant, charging him with the rape of AAA[3] and BBB,[4] the daughters of his older brother. Appellant was accused of raping AAA in Criminal Case Nos. 6899-G, 6902-G, 6906-G, and 6908-G; while he was accused of raping BBB in Criminal Case Nos. 6689-G, 6903-G, 6905-G, and 6907-G.[5] All these cases were consolidated for trial. The rapes were alleged to have been committed in several instances over a span of six (6) years.

Both AAA and BBB testified against appellant, their uncle, and both identified him as the man who had raped them. During trial, their respective birth certificates and the medical certificates executed by the doctor who physically examined them were entered as documentary evidence.

AAA testified that she was only six (6) years old when she was first molested in 1994 in the house appellant had shared with her grandmother.[6] She recounted that the incident took place when she and appellant were alone in the house. Appellant touched her thighs and vagina, removed her clothes and inserted his penis into her vagina. Appellant threatened that she and her parents would be killed should she disclose the incident to anyone. She thereafter stopped sleeping in the house of her grandmother. It was only three (3) years after, in 1997, that she

slept in the said house, yet again she was sexually abused by appellant. She was then nine (9) years old.[7]

AAA recounted that at age eleven (11) in 1999, she was raped by appellant for the third time, again at the house of her grandmother.[8] The following year, when she was twelve (12), she was abused for the fourth time by appellant. This time, she was raped in an outdoor clearing[9] after having been invited there by appellant to get some vegetables. While at the clearing, appellant forced her to lie down on a grassy spot and tried to insert his penis in her vagina. As she cried in pain, appellant allegedly stopped.[10]

It was only on 12 June 2000 that she decided to reveal to her mother, CCC,[11] the brutish acts appellant had done to her.[12] Her mother thus filed a complaint against her uncle. AAA identified appellant in open court and presented as documentary evidence her birth certificate to prove that she was born on 3 September 1988.[13]

BBB, on the other hand, testified that she was first raped by appellant in 1997 when she was ten (10) years old, also at the house appellant shared with her grandmother. While alone in the house, appellant poked a knife at her, removed her clothes and inserted his penis in her vagina. Despite the pain she felt, she could not resist appellant as he was holding a knife. She did not report the rape to her parents out of fear of appellant's threat that he would kill her.[14] BBB further testified that in 1998 and 1999, she was raped again by appellant on several occasions, the rapes occurring under threat of a bladed weapon, and regardless of the time of day.[15]

BBB stated that she was last raped by appellant on 15 January 2000.[16] On that night, she was sleeping beside her sister AAA in the house of her grandmother when she felt appellant touching her body. She pushed him away but appellant pulled her three (3) meters away from AAA towards the door. As appellant was holding a knife, BBB could not make any noise to alert her sister. Appellant ordered her to remove her clothes and forced her to lie down. After he took off his clothes, appellant placed himself on top of BBB and stayed there for three (3) minutes "moving up and down." Thereafter, she put on her clothes and returned to where her sister was. She added that although it was dark, she knew it was appellant who had molested her as she was familiar with his smell. Since then, she never slept in her grandmother's house again.[17]

It was on 14 June 2000 that BBB disclosed her harrowing experience to her mother. Prior to that, however, she had already revealed the sexual abuses she had underwent to her sister AAA. Upon learning of the same, her mother brought her to the police station and her statement was taken. Thereafter, she was brought to the hospital to be examined. Furthermore, BBB explained that she only reported the abuses done to her on 14 June 2000 or five (5) months after the last rape because she was afraid of appellant's threat of killing her and her family.[18]

The third witness for the prosecution was the mother, CCC. She testified that she only knew of the abuses done on her daughters on 15 June 2000. Five months earlier, CCC became concerned after observing that BBB, on the pretext of preparing clothes for a game, was packing more than enough clothes. She asked her other daughter, DDD, to dig into the matter and the latter told her that BBB was planning to leave their house. Upon learning this, she sent somebody to retrieve BBB. However, it was only five months after that incident that BBB confided to her mother that she was raped by appellant. CCC lost no time in reporting the matter to the authorities and had BBB and AAA examined in the hospital. After examination, it was confirmed that BBB was indeed sexually molested.[19]

CCC initially did not tell her husband about what had happened to their daughters because she was afraid that her husband might kill appellant. It was only after appellant was arrested that she disclosed such fact to her husband. After the arrest of appellant, his relatives became angry at CCC, and her mother-in-law avoided talking to her since then.[20]

The physician who examined BBB and AAA also testified for the prosecution. Dr. Purita T. Tullas (Dr. Tullas),

medical officer of Gumaca District Hospital, testified that she was the one who examined BBB and AAA, and thereafter, issued medical certificates for each child. These medical certificates were presented in court.[21]

The medical certificate of BBB revealed that at the time of examination, there were no external sign of physical injury found on her body. However, Dr. Tullas found that the labia majora and minora of BBB was slightly gaping, her vaginal orifice was admitting two fingers without resistance and there were hymenal lacerations at "three (3) o'clock" and "eight (8) o'clock" which might have happened a long time before her examination. Dr. Tullas concluded that there might have been sexual penetration caused by a male sex organ for several times.[22]

AAA's medical certificate stated that at the time of examination, there were no external physical injuries apparent on her body. AAA's labia majora and minora were well coaptated and the hymen was still intact. On direct examination, Dr. Tullas said that it could happen that the hymen would still be intact despite sexual penetration with a person having an elastic hymen. On the other hand, when asked on cross-examination, she stated that there was also the possibility that no foreign body touched the labia of the pudendum of AAA.[23]

Only appellant testified for his defense, offering denial and alibi as his defense. He averred in court that from 1994 to 2000, he lived in the house of his parents which was about "thirty (30) arm stretches" away from the house of BBB and AAA. He denied having raped BBB on 15 January 2000 because on said date he was at the house of his sister, two (2) kilometers away from the house of his parents where the rape occurred, from 11:30 in the morning and stayed there until early morning of the following day.[24]

He offered a general denial of the other charges against him by BBB and AAA. He claimed that he seldom saw the two minors. He further asserted that prior to the institution of the criminal case against him he had a smooth relationship with his nieces and the only reason the case was filed against him was that CCC, his sister-in-law and the mother of his nieces, harbored ill-feelings towards his deceased father, who would call CCC "lazy" within earshot of other family members.[25]

The RTC convicted appellant on all eight (8) counts of rape.[26] The RTC pronounced appellant's defense of denial and alibi as unconvincing, citing jurisprudence declaring denial and alibi as intrinsically weak defenses. The RTC concluded that appellant failed to controvert the clear, candid and straightforward testimonies of his nieces. It further considered the qualifying circumstances of minority of the victims and the relationship of the victims and appellant, the latter being the former's relative by consanguinity within the third degree.

As the penalty imposed consisted of eight (8) death sentences, the records of the case were automatically elevated to this Court for review. However, in the aftermath of the pronouncement of the Court in *People v. Mateo*[27] the present case was transferred to the Court of Appeals for appropriate action and disposition.

On 29 December 2004, the Court of Appeals agreed with the rulings of the RTC in regard to six (6) of the eight (8) death sentences imposed on appellant.[28] The appellate court ratiocinated, thus:

We have painstakingly gone over the record of these cases and find no cogent reason to deviate from the findings of the trial court except in at least two (2) cases. The prosecution's case which was anchored mainly on the testimonies of private complainants [BBB] and [AAA], deserve full faith and credit for being clear, precise and straightforward. Like the trial court, We find no reason to disbelieve the private complainants. It was established with certitude that the accused on several occasions sexually assaulted his nieces. The perpetration of the crimes and its authorship were proved by the victims' candid and unwavering testimonies both of whom had the misfortune of sharing the same fate in the hands of their own uncle. The sincerity of [AAA] was made more evident when she cried on the witness stand in obvious distress over what their uncle had done to her and her sister.[29]

The Court of Appeals downgraded the convictions in Criminal Case Nos. 6906 and 6908 to attempted rape. In

these two (2) cases, it was alleged that appellant had raped AAA in 1999 and on 11 June 2000, respectively. According to the appellate court, it could not find evidence beyond reasonable doubt in those two (2) cases that appellant had accomplished the slightest penetration of AAA's vagina to make him liable for consummated rape. It stressed that there was not even moral certainty that appellant's penis ever touched the labia of the pudendum, quoting portions of the transcript of the stenographic notes where AAA was asked if appellant was then successful in inserting his penis into her vagina and she answered in the negative.[30] Accordingly, the Court of Appeals reduced the penalties attached to the two (2) counts of rape from death for consummated qualified rape to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, for attempted rape.

Appellant, in his Supplemental Brief[31] before this Court, assails the findings of the Court of Appeals. He cites inconsistencies in the testimony of BBB as to what really transpired on 15 January 2000. Particularly, appellant observes that BBB testified on 6 June 2001 as to her rape on 15 January 2000. BBB, her sister and appellant had been sleeping side by side. However, when BBB again testified on 3 July 2002, this time she stated that on that night, as she and her sister AAA were sleeping in their room at their parents' house (and not at her grandmother's), the accused passed through a window, entered their room and raped her again.[32] Appellant also latches on the inconsistencies in BBB's testimony as to the length of the duration of her rape on that day. In BBB's testimony on 6 June 2001, she said that appellant was atop her for three (3) minutes while in the 3 July 2002 hearing, BBB stated that the rape lasted for only half a minute.

It must be observed though that BBB was at a tender age when she was raped in 2001. Moreover, these inconsistencies, which the RTC and the Court of Appeals did not consider material, were elicited while BBB was testifying in open court. Our observations in *People v. Perez*[33] on the appreciation of alleged inconsistencies in the testimony of rape victims who happen to be minors are instructive, thus:

We note that these alleged inconsistencies refer, at best, only to trivial, minor, and insignificant details. They bear no materiality to the commission of the crime of rape of which accused-appellant was convicted.[[34]] As pointed out by the Solicitor General in the Appellee's Brief, the seeming inconsistencies were brought about by confusion and merely represent minor lapses during the rape victim's direct examination and cannot possibly affect her credibility. Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall. The rape victim was testifying in open court, in the presence of strangers, on an extremely intimate matter, which, more often than not, is talked about in hushed tones. Under such circumstances, it is not surprising that her narration was less than letter-perfect.[[35]] "Moreover, the inconsistency may be attributed to the well-known fact that a courtroom atmosphere can affect the accuracy of testimony and the manner in which a witness answers questions."[[36]][[37]]

Further, the public prosecutor offered a convincing explanation on why BBB was confused on some points of her two testimonies. Particularly in the Memorandum for the People[38] filed with the RTC, the public prosecutor creditably explained the inconsistencies, thus:

[BBB]'s testimony on July 3, 2002 might be contradictory to her first testimony on June 6, 2001, with respect to the last rape on January 15, 2000, as regards the place of commission—house of her parents or house of accused; and the length of time he stayed on her top - 3 minutes or half-minute. But she remained consistent in her declaration that on January 15, 2000, her uncle inserted his penis into her vagina, and he was moving while on her top then she felt something came out from him. He was able to rape her because he threatened her with a knife or bladed weapon. Further, the first she took the witness stand on June 6, 2001, she was made to recall the last rape, the first rape and many acts of sexual abuses [sic] against her. She was even confused about her age when she was first raped by her uncle. After she testified on November 14, 2001, for the separate charges of rapes in 1997, 1998 and 1999, she was able to recall more clearly the last rape on January 15, 2000, which happened in her own house. These noted discrepancies as to the exact place of commission - accused's house

or victim's house - is not an essential element of the crime of rape and both houses are situated in Brgy. Villa Padua Ilaya, Gumaca, Quezon, which is within the territorial jurisdiction of this Honorable Court. x x x [39]

In addition, we share the lower court's disbelief of appellant's proffered defenses of denial and alibi. These two defenses are inherently the weakest as they are negative defenses. Mere denials of involvement in a crime cannot take precedence over the positive testimony of the offended party. For alibi to prosper, it is not enough for the defendant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it is physically impossible for him to have been at the scene of the crime at the time.[40]

In the case at bar, appellant's alibi that he was at his sister's house barely two (2) kilometers away when the rape took place on 15 January 2000 cannot be given credence by this Court. If we are to thread this line of reasoning, appellant could have easily left his sister's house in the middle of the night, raped BBB, and then returned to his sister's house without much difficulty and without anybody noticing his absence.

Well-settled is the rule that a categorical and positive identification of an accused, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.[41] The defenses of denial and alibi deserve scant consideration when the prosecution has strong, clear and convincing evidence identifying appellant as the perpetrator.[42] In this case, both BBB and AAA, minors and relatives of appellant, positively identified him as their rapist in open court. The lower courts found no issue detracting from the credibility of such identification.

It is worthy to note that the alibi presented by appellant is limited to the 15 January 2000 rape of BBB. He offers nothing to counteract the accusations against him involving the seven (7) other specific acts of rape other than the averment that he did not know anything about the allegations propounded on him, an infinitesimal defense considering the evidence against him.

Appellant does claim that the present case was merely instituted because of the grudge of CCC towards his deceased father. It is outrageous to even suggest that a mother will subject her daughters to the humiliating experience of coming before the court and narrating their harrowing experience just because she was tagged by her father-in-law as lazy. In addition, CCC's father-in-law had died several years before the criminal charges against appellant were ever instituted. If CCC truly wanted to retaliate and damage the reputation of her father-in-law, she could have done so when the latter was still alive. No member of a rape victim's family would dare encourage the victim to publicly expose the dishonor of the family, more specifically if such accusation is against a member of the family, unless the crime was in fact committed.[43]

Besides, no sane woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity.[44] The weight of such testimonies may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, these testimonies shall be accorded utmost value.

The twin aggravating circumstances of minority and relationship were properly appreciated in this case. The minority of the victims and their relationship with appellant were aptly established in the lower court proceedings. Not only did the prosecution allege in the Informations the ages of the victims when they were raped but the prosecution also presented the birth certificates of BBB and AAA in court as documentary evidence to prove that they were both minors when appellant raped them. Appellant, in open court, also admitted that that he was the

uncle of both victims being the brother of the victims' father, and thus, a relative of the victims within the third degree of consanguinity.

Furthermore, the delay in reporting the repulsive acts of appellant to BBB and AAA is understandably justified, considering that appellant repeatedly threatened to kill them and their family should they disclose the incidents to anyone. It has been held time and again that delay in revealing the commission of rape is not an indication of a fabricated charge.[45] Such intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It is enough that the intimidation produces a fear that if the victim does not yield to the perverse impulses of the accused, something would happen to her at the moment, or even thereafter, as when she is threatened with death if she would report the incident.[46]

At the same time, we agree with the Court of Appeals that the two counts of rape in Criminal Case Nos. 6906-G and 6908-G were not proven beyond reasonable doubt, but only the two separate incidents of attempted rape.

It is to be noted that there is an attempt to commit rape when the offender commences its commission directly by overt acts but does not perform all acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[47] In Criminal Case No. 6906-G, the records show that there was no penetration or any indication that the penis of appellant touched the labia of the pudendum of AAA. This was evident in AAA's testimony at the hearing on 17 October 2001, to wit:

Q

-

Do you remember of any unusual incident that happened to you when you were eleven years old?

A

-

Yes, Mam. [sic]

Q

-

What was that?

A

-

He also touched my vagina and my other private parts and he inserted also his penis (into) my vagina. [sic]

Q

-

Was he able to insert his penis into your vagina?

A

-

No, Mam. [sic]

Q

-

Why?

A

-

It was painful, Mam. [sic]

x x x x

Q

-

How many times did he try to insert his penis into your vagina?

A

-

Many times, Mam.[48] [sic]

AAA also testified in the same vein in Criminal Case No. 6908-G.

Q

-

I am now through with Criminal Case No. 6906-G. In Criminal Case No. 6908-G, also for Rape. When was the last time that this sexual abuse was committed by your Uncle?

A

-

June 11, Mam. [sic]

Q

-

What year?

A

-

June 11, 2000, Mam. [sic]

x x x x

Q

-

What did your Uncle do to you on June 11, 2000?

A

-

He also removed my clothes, Mam. [sic]

Q

-

And after removing your clothes, what did he do to you?

A

-

He was trying to insert his penis into my vagina, Mam. [sic]

x x x x

Q

-

And what did you feel when he was trying to insert his penis in your vagina?

A

-

Painful, Mam. [sic]

Q

-

And what did you do when you feel painful?

A

-

I cried, Mam. [sic]

Q

-

When you cried, what did your Uncle do, if any?

A

-

He did not pursue what he was doing, Mam. [sic]

x x x x

Q

-

And your Uncle was not able to penetrate his penis to your vagina?

A

-

No, Mam.[49] [sic]

In downgrading the offense committed and consequently decreasing the penalty, the CA declared:

It is carnal knowledge, not pain, that is the element to consummate rape. Indeed pain may be deduced from the sexual act but accused cannot be convicted of rape by presuming carnal knowledge out of pain. It is well-settled that complete penetration of the penis into the vagina is not necessary to convict for consummated rape since the slightest penetration of one into the other will suffice. However, in *People v. Campuhan*, the term "slightest penetration" was clarified to mean that there must be sufficient and convincing proof of the penis indeed touching at the very least the labias of the female organ. Mere epidermal contact between the penis and the external layer of the victim's vagina (the stroking and the grazing of the male organ upon the female organ or the mons pubis) categorizes the crime as attempted rape or acts of lasciviousness. There must be positive proof of even the slightest penetration, more accurately, the touching of the labias by the penis, before rape could be deemed consummated. We, therefore, take exception to the finding of the trial court that when the accused was trying to insert his penis into the child's vagina, the act proved painful to [AAA,] which made the accused stop from further executing the act. From the testimony of private complainant, [AAA] in the afore-numbered cases, the prosecution failed to demonstrate beyond any shadow of doubt that accused-appellant's penis reached the labia of the pudendum of AAA's vagina. There is no basis then to apply the rule that the introduction of the penis into the aperture of the female organ (thereby touching the labia of the pudendum) already consummates the case of rape. x x x [50]

It should be added that under Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, penetration is an essential act of execution to produce the felony. Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.[51]

The Court thus affirms the conclusions of the Court of Appeals that it has been established beyond reasonable doubt that appellant is guilty of six (6) counts of rape and two (2) counts of attempted rape. However, in light of Rep. Act No. 9346, the appropriate penalties for both crimes should be amended.

II.

We shall not dwell at length on the proper penalty imposable on appellant for the six (6) counts of rape. The sentence of death imposed by the RTC and affirmed by the Court of Appeals can no longer be affirmed in view of Rep. Act No. 9346, titled "An Act Prohibiting the Imposition of Death Penalty in the Philippines." Section 2 of the law mandates that in lieu of the death penalty, the penalty of reclusion perpetua shall be imposed. Correspondingly, the Court can no longer uphold the death sentences imposed by lower courts, but must, if the guilt of the accused is affirmed, impose instead the penalty of reclusion perpetua, or life imprisonment when appropriate. Since the passage of Rep. Act No. 9346, the Court has had occasion to effectuate such reduction in recent cases such as *People v. Tubongbanua*[52] and *People v. Cabalquinto*.[53]

III.

The question of what should be the appropriate penalty for the two (2) counts of attempted rape proves to be the more challenging but interesting question facing the Court.

The Court of Appeals had sentenced appellant, for the attempted rape of AAA, to "an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum," for each count of attempted rape. There is no doubt as to the validity of this sentence at the time it was meted prior to the enactment of Rep. Act No. 9346. Article 51 of the Revised Penal Code establishes the penalty to be imposed upon the principals of an attempted felony:

ART. 51. xxx — A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.[54]

What is the penalty "lower by two degrees than that prescribed by law" for attempted rape? Article 266-B of the Revised Penal Code, which incorporates the amendments introduced by Rep. Act No. 8353, prescribes:

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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. x x x[55]

The prescribed penalty for the consummated rape of a victim duly proven to have been under eighteen years of age and to have been raped by her uncle, is death under Article 266-B of the Revised Penal Code. The determination of the penalty two degrees lower than the death penalty entails the application of Articles 61 and 71 of the Revised Penal Code:

Art. 61. Rules of graduating penalties.—For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

- When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.[56]

x x x x

Article 71 of the Revised Penal Code (Article 71) warrants special attention, crucial as it is to our disposition of this question. The provision reads:

Art. 71. Graduated scales. — In the case in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in Article 61 shall be observed in graduating such penalty.

The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty:

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

- Death
- Reclusion perpetua
- Reclusion temporal
- Prision mayor
- Prision correccional

- Arresto mayor
- Destierro
- Arresto menor
- Public censure
- Fine[57]

X X X X

Following the scale prescribed in Article 71, the penalty two degrees lower than death is reclusion temporal, which was the maximum penalty imposed by the Court of Appeals on appellant for attempted rape. Reclusion temporal is a penalty comprised of three divisible periods, a minimum, a medium and a maximum.

At the same time, the Indeterminate Sentence Law prescribes that "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The purpose of the prescription of minimum and maximum periods under the Indeterminate Sentence Law is to effect the privilege granted under the same law, for prisoners who have served the minimum penalty to be eligible for parole per the discretion of the Board of Indiscriminate Sentence.[58] Thus, convicts sentenced to suffer death penalty or life-imprisonment are ineligible under that law, as are persons sentenced to reclusion perpetua, an indivisible penalty without minimum or maximum periods.[59]

Hence, the Court of Appeals sentenced appellant to suffer the penalty for attempted rape, with a maximum penalty within the range of reclusion temporal, and a minimum penalty within the range of the penalty next lower, or prision mayor. If Rep. Act No. 9346 had not been enacted, the Court would have affirmed such sentence without complication. However, the enactment of the law has given rise to the problem concerning the imposable penalty. Appellant was sentenced to a maximum term within reclusion temporal since that is the penalty two degrees lower than death. With the elimination of death as a penalty, does it follow that appellant should now be sentenced to a penalty two degrees lower than reclusion perpetua, the highest remaining penalty with the enactment of Rep. Act No. 9346? If it so followed, appellant would be sentenced to prision mayor in lieu of reclusion temporal.

IV.

Obviously, our ruling on the appropriate penalty on appellant for attempted rape will affect not only appellant, but several classes of convicts as well. Before we proceed with the discussion, the Court finds it necessary to make the following qualification.

Prior to the enactment of Rep. Act No. 9346, the death penalty was imposable under two different frames of reference. This was especially made clear with the 1993 amendments to the Revised Penal Code through Rep. Act No. 7659, or the Death Penalty Law. Under the Revised Penal Code, as amended, the death penalty was provided for in two ways, namely: as the maximum penalty for "reclusion perpetua to death," and death itself as an automatic and exclusive penalty. Death as the automatic penalty was mandated for the crimes of qualified bribery "if it is the public officer who asks or demands such gift or present;"[60] kidnapping or detention "for the purpose of extorting ransom from the victim or any other person;"[61] destructive arson wherein "death results;"[62] and rape qualified by any of the several circumstances enumerated under the law.

On the other hand, the penalty of "reclusion perpetua to death" was imposable on several crimes, including murder,[63] qualified piracy,[64] and treason.[65] The imposition of the death penalty for crimes punishable by "reclusion perpetua to death" depended on the appreciation of the aggravating and mitigating circumstances generally outlined in Articles 13 and 14 of the Revised Penal Code. Reference to those two provisions was unnecessary if the penalty imposed was death, as opposed to "reclusion perpetua to death."

There is no need for now to discuss the effects of Rep. Act No. 9346 on the penalties for frustrated and attempted felonies which were punishable by "reclusion perpetua to death" if consummated, or on accomplices and accessories to such felonies. Such situations do not relate to the case of appellant, who was convicted of two (2) counts of attempted rape, which, if consummated, of course would have carried prior to the enactment of Rep. Act 9346 the penalty of death, and not "reclusion perpetua to death."

The Court also recognizes that the graduation of penalties reckoned from "reclusion perpetua to death" differs from that based on the exclusive penalty of death. For example, it has been held that the penalty two degrees lower than "reclusion perpetua to death" is prision mayor.[66] In contrast, the Court has likewise held that for qualified rape in the attempted stage, "the penalty x x x two (2) degrees lower than the imposable penalty of death for the offense charged x x x is reclusion temporal." [67] In *People v. Tolentino*, [68] we ruled that the accused, who had been sentenced to die for the rape of his nine (9)-year old stepdaughter, was guilty only of attempted rape. In explaining that "reclusion temporal" was the proper penalty, the Court, through then Chief Justice Davide, explained:

Under Article 51 of the Revised Penal Code, the penalty for an attempted felony is the "penalty lower by two degrees than that prescribed by law for the consummated felony." In this case, the penalty for the rape if it had been consummated would have been death, pursuant to Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, since [RT[69]] was eight years old and TOLENTINO was the common-law spouse of [RT's] mother. The last paragraph thereof provides: 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.

x x x x

The penalty in this case should have been reclusion temporal, which is the penalty lower by two degrees than death. However, with the application of the Indeterminate Sentence Law, TOLENTINO may be sentenced to an indeterminate imprisonment penalty whose minimum shall be within the range of prision mayor and whose maximum shall be within the range of reclusion temporal in its medium period pursuant to Article 64 (1) of the Revised Penal Code.[70]

This dichotomy results from the application of Article 61 of the Revised Penal Code. Both reclusion perpetua and death are indivisible penalties. Under Article 61 (2) of the Revised Penal Code, "[w]hen the penalty prescribed for the crime is composed of two indivisible penalties - the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale." Hence, in passing sentence on those convicted of attempted felonies which warranted the penalty of "reclusion perpetua to death" if consummated, the Court has consistently held that penalty two degrees lower than "reclusion perpetua to death" is prision mayor. In contrast, if the penalty for the consummated crime is the single indivisible penalty of death, as was prescribed for several crimes under Rep. Act No. 7659, Article 61(1) of the Revised Penal Code provides that "the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71". Thus,

the proper penalty two degrees lower than death is reclusion temporal.

It is also for this reason that the controversy we are now addressing did not similarly arise after the enactment of the 1987 Constitution, which prohibits the imposition of the death penalty subject to its subsequent readoption at the choice of Congress. Generally, the highest penalty imposed under the Revised Penal Code was "reclusion perpetua to death," a penalty composed of two indivisible penalties. As a result, the Court had no occasion, after the passage of the 1987 Constitution, to consider the effect of the charter on penalties downgraded from a single indivisible penalty. It was under Rep. Act No. 7659, passed in 1993, that some commonly occurring crimes, such as qualified rape and kidnapping for ransom, were penalized with the single indivisible penalty of death.

The discussion for purposes of this decision will only center on crimes, such as qualified rape as defined in the Revised Penal Code, as amended, for which the imposable penalty was death alone. Thus, our ruling will bear no direct effect on the sentencing of accomplices and accessories or persons guilty of the attempted or frustrated stage of felonies for which the imposable penalty was "reclusion perpetua to death."

Hence, it should be understood that any reference forthwith to the penalty of death does not refer to the penalty of "reclusion perpetua to death."

V.

If there was a clear intent in Rep. Act No. 9346 to downgrade the penalties for convicts whose sentences had been graduated beginning from death pursuant to Article 71, the Court would not hesitate to enforce such downgrading based on clear statutory intent. However, nothing in Rep. Act No. 9346 expressly refers to those penalties imposed on frustrated or attempted felonies, or on accessories and accomplices.

Section 1 of Rep. Act No. 9346 bears examination:

Section 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection, is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

If the penalties for attempted rape of a minor,[71] among others, were deemed to have been amended by virtue of Rep. Act No. 9346, such amendment can be justified under the ambit of the repealing clause, which reads, "all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly." While this clause may, given its breadth, initially impress as the nature of a general repealing clause, it is in actuality an express repealing clause. Section 1 specifically repeals all laws, executive orders and decrees insofar as they impose the death penalty, and not merely such enactments which are inconsistent with Rep. Act No. 9346.

Section 1 arguably presents more problems in that regard with its utilization of the particular phrase "insofar as they impose the death penalty." We can entertain two schools of thought in construing this provision, both of them rooted in literalist interpretations. First, it can be claimed that the present application of the penalties for attempted rape of a minor (among many examples) does not "impose the death penalty," since none of the convicts concerned would face execution through the application of the penalty for attempted rape. Hence, the statutory provisions enforced in determining the penalty for attempted rape, or other crimes not punishable by death, are not amended by Rep. Act No. 9346.

On the other hand, the operation of the provisions imposing the penalty for attempted rape of a minor necessarily

calls for the application, if not its literal imposition, of death as a penalty, in the context of applying the graduated scale of penalties under Article 71 of the Revised Penal Code. If we were to construe "impose" as to mean "apply," then it could be argued that Article 71 was indeed amended by Rep. Act No. 9346. After all, the application of Article 71 to crimes such as attempted rape of a minor call for the actual operation of the death penalty not only in theory, but as a means of determining the proper graduated penalty.

On face value, the attractive worth of the firstly offered line of thinking is enhanced by its innate conservatism, limiting as it would the effects of Rep. Act No. 9346. It also can be understood if confronted with the option of employing either a liberal or a conservative construction, there is a natural tendency to employ the conservative mode. Further, the reasoning is seemingly consistent with that employed by the Court in *People v. Muñoz*,^[72] a decision which will be thoroughly analyzed in the course of this discussion.

If the true intent of Rep. Act No. 9346 was to limit the extent of the "imposition" of the death penalty to actual executions, this could have been accomplished with more clarity. For example, had Section 1 read instead "insofar as they sentence an accused to death," there would have been no room for doubt that only those statutory provisions calling for actual executions would have been repealed or amended. The inability of Congress to shape the repealing clause in so specific a fashion does leave open the question whether Congress did actually intend to limit the operation of Rep. Act No. 9346 to actual executions only.

But let us for now test that premise by assuming for the nonce that the legislative intent of Rep. Act No. 9346 was to limit the prohibition of the law to the physical imposition of the death penalty, without extending any effect to the graduated scale of penalties under Article 71 of the Revised Penal Code.

VI.

There are troubling results if we were to uphold, based on legislative intent, the interpretation of Rep. Act No. 9346 that limits its effects only to matters relating to the physical imposition of the death penalty.

Illustrations are necessary. The easy demonstration of iniquitous results is in the case of accomplices. Under Article 267 of the Revised Penal Code, as amended, kidnapping for ransom was punishable by death. Let us say X and Y were tried for the crime. X was charged as a principal for having directly participated in the kidnapping. Y was charged as an accomplice for having allowed X to use his house to detain the victim, even though Y was abroad at the time of the crime and otherwise had no other participation therein. Both X and Y were convicted by final judgment. Since X could no longer be meted the death penalty, he is sentenced instead to reclusion perpetua. Ordinarily, Y as an accomplice should receive the penalty next lower in degree, or reclusion temporal. Yet following the "conservative" interpretation of Rep. Act No. 9346, the graduation of penalties remains unaffected with the enactment of the new law. Thus, under Article 71, which would still take into account the death penalty within the graduated scale, Y, as an accomplice, would be sentenced to reclusion perpetua, the same penalty as the principal.

It might be countered that part of the legislative intent of Rep. Act No. 9346, by retaining the graduated scale of penalties under Article 71, was to equalize the penalties of principals and accomplices for crimes previously punishable by death. We do not doubt that the legislature has the theoretical capability to amend the penal law in such fashion. Yet given the drastic effects of equalizing the penalties for principals and accomplices, a step that runs contrary to entrenched thought in criminal law, one could reasonably assume that a legislature truly oriented to enact such change would have been candid enough to have explicitly stated such intent in the law itself. Of course, nothing in Rep. Act No. 9346, either in the caption or in the provisions, explicates the intention to equalize the penalties for principals and accomplices in any crime at all.

Moreover, it cannot be denied that it would, at bare minimum, seem strange that the penalties for principals and accomplices are equalized in some crimes, and not in others. Let us return to our previous example of X and Y, but this time, assume that they were charged for simple kidnapping, with no qualifying circumstance that would have resulted in the imposition of the death penalty. Since the crime is not punishable by death, Rep. Act No. 9346 would have no effect in the imposition of the penalty for simple kidnapping. Accordingly, X would have been sentenced to reclusion perpetua as the principal, while Y would have been sentenced to reclusion temporal as an accomplice.

Since simple kidnapping is a comparatively lighter crime than kidnapping for ransom, the lesser penalties are justified. Since Y was merely an accomplice to the crime of simple kidnapping, the imposition on him of a lighter penalty than X is in accord with the Revised Penal Code and established juridical and legal thought. Less justifiable would be the notion that in kidnapping for ransom, the principal and the accomplice would receive the same penalty, while in simple kidnapping, the principal suffers a higher penalty than the accomplice. Frankly, there is no rational explanation for such a disparity, and no legal justification other than the recognition that Congress has the power to will it so.

Admittedly, the impact of Rep. Act No. 9346 is less dramatic in relation to frustrated and attempted felonies which were punishable by death if consummated. The consummated felony previously punishable by death would now be punishable by reclusion perpetua. At the same time, the same felony in its frustrated stage would, under the foregoing premise in this section, be penalized one degree lower from death, or also reclusion perpetua. It does not seem right, of course, that the same penalty of reclusion perpetua would be imposed on both the consummated and frustrated felony. However, the anomaly would be mainly in theory, as we recognize that those felonies previously punishable by death are improbable of commission in their frustrated stage, unlike several felonies punishable by "reclusion perpetua to death,"^[73] such as murder, which may be frustrated.

Still, it cannot be denied that these felonies previously punishable by death are capable of commission in their attempted stages and that the Revised Penal Code provides that the penalty for attempted felonies is "a penalty lower by two degrees than that prescribed by law for the consummated felony." The Court has thus consistently imposed reclusion temporal, the penalty two degrees lower than death, as the maximum term for attempted felonies which, if consummated, would have warranted the death penalty.^[74] If it were to be insisted that Rep. Act No. 9346 did not affect at all the penalties for attempted felonies, then those found guilty of the subject attempted felonies would still be sentenced to reclusion temporal, even though the "penalty lower by two degrees than that prescribed by law for the consummated felony" would now be prision mayor.

It should be pointed out that the interpretation of Rep. Act No. 9346 that would sanction a penalty for some attempted felonies that is only one degree lower than the consummated crime would, again, be disharmonious and inconsistent with the Revised Penal Code and established thought in criminal law. Conceding again that the legislature has the discretion to designate the criminal penalties it sees fit, a regime that foists a differential theoretical basis for the punishment of different attempted felonies resulting in discriminatory penalties is not only irrational but also, to say the least, highly suspect. Considering that physical liberties are at stake, it would be a most cruel joke if such discriminatory effects ensued not from deliberate legislative will, but from oversight.

VII.

The implementation of Rep. Act No. 9346 in a way that leaves extant the penalties for accomplices, accessories, frustrated and attempted felonies, clearly results in illogical, iniquitous and inconsistent effects. In contrast, no similar flaws ensue should we construe Rep. Act No. 9346 instead as not having barred the application of the death penalty even as a means of depreciating penalties other than death. In particular, the operative amendment

that would assure the integrity of penalties for accomplices, accessories, frustrated and attempted felonies lies in Article 71, which ranks "death" at the top of the scale for graduated penalties.

Simply put, the negation of the word "death" as previously inscribed in Article 71 will have the effect of appropriately downgrading the proper penalties attaching to accomplices, accessories, frustrated and attempted felonies to the level consistent with the rest of our penal laws. Returning to our previous examples, Y, the convicted accomplice in kidnapping for ransom, would now bear the penalty of reclusion temporal, the penalty one degree lower than that the principal X would bear (reclusion perpetua). Such sentence would be consistent with Article 52 of the Revised Penal Code, as well as Article 71, as amended, to remove the reference to "death." Moreover, the prospect of the accomplice receiving the same sentence as the principal, an anomalous notion within our penal laws, would be eliminated. Thus, the same standard would prevail in sentencing principals and accomplices to the crime of kidnapping in ransom, as that prescribed to the crime of simple kidnapping. The harmonization that would result if Rep. Act No. 9346 were construed as having eliminated the reference to "death" in Article 71 would run across the board in our penal laws. Consistent with Article 51 of the Revised Penal Code, those convicted of attempted qualified rape would receive the penalty two degrees lower than that prescribed by law, now Rep. Act No. 9346, for qualified rape.

There are principles in statutory construction that will sanction, even mandate, this "expansive" interpretation of Rep. Act No. 9346. The maxim *interpretare et concordare legibus est optimus interpretandi* embodies the principle that a statute should be so construed not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system—a uniform system of jurisprudence.[75] "Interpreting and harmonizing laws with laws is the best method of interpretation. x x x x This manner of construction would provide a complete, consistent and intelligible system to secure the rights of all persons affected by different legislative and quasi-legislative acts." [76] There can be no harmony between Rep. Act No. 9346 and the Revised Penal Code unless the later statute is construed as having downgraded those penalties attached to death by reason of the graduated scale under Article 71. Only in that manner will a clear and consistent rule emerge as to the application of penalties for frustrated and attempted felonies, and for accessories and accomplices.

It is also a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state and liberally in favor of the accused.[77] If the language of the law were ambiguous, the court will lean more strongly in favor of the defendant than it would if the statute were remedial, as a means of effecting substantial justice.[78] The law is tender in favor of the rights of an individual.[79] It is this philosophy of caution before the State may deprive a person of life or liberty that animates one of the most fundamental principles in our Bill of Rights, that every person is presumed innocent until proven guilty.

Resort to the aforementioned principles in statutory construction would not have been necessary had Rep. Act No. 9346 ineluctably stated that the repeal of all laws imposing the death penalty did not engender the corresponding modification of penalties other than death, dependent as these are on "death" as a measure under the graduated scale of penalties under Article 71. Admittedly, if this were indeed the intent of Congress, and such intent were unequivocally expressed in Rep. Act No. 9346, the resulting inequities and inconsistencies we had earlier pointed out would have remained. If that were to be the case, we would have acknowledged, perhaps tacitly, that such inequities and inconsistencies fell part of the legislative intent. It does not speak well of a Congress to be deliberately inconsistent with, or ignorant of its own prior enactments. Yet ultimately, Section 1 of Rep. Act No. 9346 is not expressive of such rash or injudicious notions, as it is susceptible to a reading that would harmonize its effects with the precepts and practices that pervade our general penal laws, and in a manner that does not defy the clear will of Congress.

VIII.

One who would like to advocate that Rep. Act No. 9346 did not correspondingly amend any of the penalties other than death in our penal laws would most certainly invoke our ruling in *People v. Muñoz*,^[80] decided in 1989. Therein, a divided Court ruled in that the constitutional bar on the imposition of the death penalty did not enact "a corresponding modification in the other periods [in penalties]", there being no expression of "such a requirement... in Article III, Section 19(1) of the Constitution or indicat[ion] therein by at least clear and unmistakable implication."^[81] In so concluding, the Court made the oft-cited pronouncement that there was nothing in the 1987 Constitution "which expressly declares the abolition of the death penalty."^[82]

It is time to re-examine *Muñoz* and its continued viability in light of Rep. Act No. 9346. More precisely, would *Muñoz* as precedent deter the Court from ruling that Rep. Act No. 9346 consequently downgraded penalties other than death?

It can be recalled that the accused in *Muñoz* were found guilty of murder, which under the Revised Penal Code, carried the penalty of reclusion temporal in its maximum period to death. The subject murders therein were not attended by any modifying circumstance, and thus penalized in the penalty's medium term. Jurisprudence previous to *Muñoz* held that the proper penalty in such instances should be "the higher half of reclusion temporal maximum," with reclusion temporal maximum, divided into two halves for that purpose. *Muñoz* rejected this formulation, holding instead that the penalty should be reclusion perpetua. Towards this conclusion, the Court made the above-cited conclusions relating to the constitutional abolition of the death penalty, and the charter's effects on the other periods. Six justices dissented from that ruling, and as recently as 1997, a member of the Court felt strongly enough to publish a view urging the reexamination of *Muñoz*.^[83]

It would be disingenuous to consider *Muñoz* as directly settling the question now befalling us, as the legal premises behind *Muñoz* are different from those in this case. Most pertinently, *Muñoz* inquired into the effects of the Constitution on the proper penalty for murder; while herein, we are ascertaining the effects of Rep. Act No. 9346 on the proper penalty for attempted qualified rape. *Muñoz* may have pronounced that the Constitution did not abolish the death penalty, but that issue no longer falls into consideration herein, the correct query now being whether Congress has banned the death penalty through Rep. Act No. 9346. Otherwise framed, *Muñoz* does not preclude the Court from concluding that with the express prohibition of the imposition of the death penalty Congress has unequivocally banned the same.

Muñoz made hay over the peculiar formulation of Section 19(1), Article III, which provided that "[n]either shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it." *Muñoz* and its progenies, have interpreted that provision as prohibiting the actual imposition of the death penalty, as opposed to enacting an amendatory law that eliminates all references and applications of the death penalty in our statutes. It can also be understood and appreciated that at the time *Muñoz* was decided, it would have been polemical to foster an unequivocal pronouncement that Section 19(1), Article III abolished the death penalty, since the very provision itself acknowledged that Congress may nonetheless subsequently provide for the penalty "for compelling reasons involving heinous crimes," as Congress very well did just four (4) years after *Muñoz*. No such language exists in Rep. Act No. 9346. Of course, the legislature has the inherent and constitutional power to enact laws prescribing penalties for crimes, and the Constitution will not prohibit Congress from reenacting the death penalty "for compelling reasons involving heinous crimes." Yet it was that express stipulation in the Constitution that dissuaded the Court from recognizing the constitutional abolition of the death penalty; and there is no similar statutory expression in Rep. Act No. 9346, which could be construed as evocative of intent similar to that of the Constitution.

The doctrine in Muñoz that the constitutional prohibition on the imposition of the death penalty did not enact a corresponding modification of other penalties is similarly irrelevant to this case, which calls for an examination as to whether such corresponding modifications of other penalties arose as a consequence of Rep. Act No. 9346, and not the Constitution.

For purposes of legal hermeneutics, the critical question is whether Rep. Act No. 9346 intended to delete the word "death" as expressly provided for in the graduated scale of penalties under Article 71. Muñoz did not engage in an analogous inquiry in relation to Article 71 and the Constitution, for what was relevant therein was not the general graduated scale of penalties, but the range of the penalties for murder. Herein, at bare minimum, no provision in Rep. Act No. 9346 provides a context within which the concept of "death penalty" bears retentive legal effect, especially in relation to Article 71. Unlike the Constitution, Rep. Act No. 9346 does expressly stipulate the amendment of all extant laws insofar as they called for the imposition of the penalty of death.

The impression left by Muñoz was that the use of the word "imposition" in the Constitution evinced the framer's intent to retain the operation of penalties under the Revised Penal Code. In the same vein, one might try to construe the use of "imposition" in Rep. Act No. 9346 as a means employed by Congress to ensure that the "death penalty", as applied in Article 71, remain extant. If the use of "imposition" was implemented as a means of retaining "death" under Article 71, it would have been a most curious, roundabout means indeed. The Court can tolerate to a certain degree the deliberate vagueness sometimes employed in legislation, yet constitutional due process demands a higher degree of clarity when infringements on life or liberty are intended. We have ruled, on due process grounds, as arbitrary and oppressive a tax assessed on a standard characterized as "nothing but blather in search of meaning." [84] In the matter of statutes that deprive a person of physical liberty, the demand for a clear standard in sentencing is even more exacting.

Yet in truth, there is no material difference between "imposition" and "application," for both terms embody the operation in law of the death penalty. Since Article 71 denominates "death" as an element in the graduated scale of penalties, there is no question that the operation of Article 71 involves the actual application of the death penalty as a means of determining the extent which a person's liberty is to be deprived. Since Rep. Act No. 9346 unequivocally bars the application of the death penalty, as well as expressly repeals all such statutory provisions requiring the application of the death penalty, such effect necessarily extends to its relevance to the graduated scale of penalties under Article 71.

We cannot find basis to conclude that Rep. Act No. 9346 intended to retain the operative effects of the death penalty in the graduation of the other penalties in our penal laws. Muñoz cannot enjoin us to adopt such conclusion. Rep. Act No. 9346 is not swaddled in the same restraints appreciated by Muñoz on Section 19(1), Article III. The very Congress empowered by the Constitution to reinstate the imposition of the death penalty once thought it best to do so, through Rep. Act No. 7650. Within the same realm of constitutional discretion, Congress has reversed itself. It must be asserted that today, the legal status of the suppression of the death penalty in the Philippines has never been more secure than at any time in our political history as a nation.

Following Muñoz, the sovereign people, through the 1987 Constitution, might not have willed the abolition of the death penalty and instead placed it under a suspensive condition. As such, we affirmed the characterization of the death penalty during the interregnum between the 1987 Constitution and its reimposition through law as being "in a state of hibernation." [85] No longer. It reawakened — then it died; because the sovereign people, through Rep. Act No. 9346, banned the death penalty. Only by an Act of Congress can it be reborn. Before that day, the consideration of death as a penalty is bereft of legal effect, whether as a means of depriving life, or as a means of depriving liberty.

Despite our present pronouncement on the ban against of the death penalty, we do not acknowledge that Muñoz lacked legal justification when it was decided; that its application as precedent prior to Rep. Act No. 9346 was erroneous; or that previous sentences imposed on convicts on the basis of Muñoz were wrong. Muñoz properly stood as the governing precedent in the matter of sentences that passed finality prior to Rep. Act No. 9346; and the consistent reliance by the courts on its doctrines entrenched its footing in criminal law jurisprudence.

IX.

Rep. Act No. 7659, in the course of reintroducing the death penalty in the Philippines, also effectively classified the crimes listed therein as "heinous," within constitutional contemplation. Such reclassification under Rep. Act No. 7659 was accompanied by certain legal effects other than the imposition of the death penalty, such as the increase in impossible fines attached to certain heinous crimes.[86] The categorization of certain crimes as "heinous", constituting as it does official recognition that some crimes are more odious than others, has also influenced this Court in adjudging the proper pecuniary indemnities awarded to the victims of these crimes. Hence, a general inclination persists in levying a greater amount of damages on accused found guilty of heinous crimes.

It should be understood that the debarring of the death penalty through Rep. Act No. 9346 did not correspondingly declassify those crimes previously catalogued as "heinous". The amendatory effects of Rep. Act No. 9346 extend only to the application of the death penalty but not to the definition or classification of crimes. True, the penalties for heinous crimes have been downgraded under the aegis of the new law. Still, what remains extant is the recognition by law that such crimes, by their abhorrent nature, constitute a special category by themselves. Accordingly, Rep. Act No. 9346 does not serve as basis for the reduction of civil indemnity and other damages that adhere to heinous crimes.

X.

Having pronounced the statutory disallowance of the death penalty through Rep. Act No. 9346 and the corresponding modification of penalties other than death through that statute, we now proceed to discuss the effects of these rulings.

As to sentences not yet handed down, or affirmed with finality, the application is immediate. Henceforth, "death," as utilized in Article 71 of the Revised Penal Code, shall no longer form part of the equation in the graduation of penalties. For example, in the case of appellant, the determination of his penalty for attempted rape shall be reckoned not from two degrees lower than death, but two degrees lower than reclusion perpetua. Hence, the maximum term of his penalty shall no longer be reclusion temporal, as ruled by the Court of Appeals, but instead, prision mayor.

There should be little complication if the crime committed was punishable by the free-standing penalty of "death," as utilized in Rep. Act No. 7659, as opposed to the ranged penalty of "reclusion perpetua to death," as often used in the Revised Penal Code and other penal laws. The facts of the present case do not concern the latter penalty, hence our reluctance to avail of an extended discussion thereof. However, we did earlier observe that both "reclusion perpetua" and death are indivisible penalties. Under Article 61 (2) of the Revised Penal Code, "[w]hen the penalty prescribed for the crime is composed of two indivisible penalties x x x the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale." Hence, as we earlier noted, our previous rulings that the penalty two degrees lower than "reclusion perpetua to death" is prision mayor.

Then there is the matter of whether retroactive effect should be extended to this new ruling, favorable as it is to

persons previously convicted of crimes which, if consummated or participated in as a principal, would have warranted the solitary penalty of death. We see no choice but to extend the retroactive benefit. Article 22 of the Revised Penal Code states that "[p]enal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal[[87]] x x x although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same." Given that we have ruled that Rep. Act No. 9346 downgraded the penalties for such crimes, the benefit of Article 22 has to apply, except as to those persons defined as "habitual criminal[s]." Indeed, Rep. Act No. 9346 expressly recognized that its enactment would have retroactive beneficial effects, referring as it did to "persons x x x whose sentences were reduced to reclusion perpetua by reason of this Act."[[88]]

It cannot be discounted that by operation of Rep. Act No. 9346 and Article 22 of the Revised Penal Code, there may be convicts presently serving their original sentences whose actual served terms exceed their reduced sentences. It should be understood that this decision does not make operative the release of such convicts, especially as there may be other reasons that exist for their continued detention. There are remedies under law that could be employed to obtain the release of such prisoners, if warranted. Offices such as the Public Attorney's Office and non-governmental organizations that frequently assist detainees possess the capacity and acumen to help implement the release of such prisoners who are so entitled by reason of this ruling.

XI.

We close by returning to the matter of appellant Alfredo Bon. By reason of Rep. Act No. 9346, he is spared the death sentence, and entitled to the corresponding reduction of his penalty as a consequence of the downgrading of his offense from two (2) counts consummated rape to two (2) counts of attempted rape. For the six (6) counts of rape, we downgrade the penalty of death to reclusion perpetua with no eligibility for parole, pursuant to Rep. Act No. 9346. For each of the two (2) counts of attempted rape, we downgrade by one degree lower the penalty imposed by the Court of Appeals. We hold that there being no mitigating or aggravating circumstances, the penalty of prision mayor should be imposed in its medium period. Consequently, we impose the new penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years and one (1) day of prision mayor as maximum.

Lastly, as to damages, the Court awards AAA P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages for each count of attempted rape, it being the prevailing rate of indemnity as pronounced in the recent case of *People v. Miranda*.[[89]]

Separately, the Court applies prevailing jurisprudence[[90]] in awarding to BBB and AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages, for each count of consummated rape.

WHEREFORE, in light of the foregoing, the Decision of the Court of Appeals is hereby **AFFIRMED WITH MODIFICATION**. The Court sentences appellant Alfredo J. Bon to the penalty of reclusion perpetua with no possibility of parole for each of the six (6) counts of consummated rape committed against AAA in Criminal Case Nos. 6699, 6902, and against BBB in Criminal Case Nos. 6689, 6903, 6905, and 6907. Appellant is further **ORDERED** to indemnify AAA and BBB for the crime of consummated rape, in the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages for each of them.

For the two (2) counts of attempted rape of AAA in Criminal Cases No. 6906 and 6908, appellant is hereby **SENTENCED** to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years and one (1) of prision mayor as maximum for each count of attempted rape. In addition, appellant is **ORDERED** to indemnify AAA for each of the two (2) counts of attempted rape in

the amounts of P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.
Callejo, Sr., J., in the result.

[1] See *People v. Muñoz*, G.R. No. 38969-70, 9 February 1989, 170 SCRA 107.

[2] Later docketed as Criminal Case Nos. 6689-G, 6899-G, 6902-G, 6903-G, 6905-G, 6906-G, 6907-G and 6908-G.

[3] Pursuant to Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and its implementing rules, the real names of the victims, as well those of their immediate family or household members, are withheld and fictitious initials instead are used to represent them, to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

[4] *Id.*

[5] There are eight (8) Informations in all against appellant, all of them accusing him of qualified rape, the victim being a minor and a relative by consanguinity within the third civil degree. We are not reproducing them all in full for reasons of brevity. All eight (8) Informations are generally styled in the same fashion, the variables being the dates of the rape, the weapon used in committing the rape, the names of the victims, and their ages at the time of the rape. Otherwise, they more or less commonly provide as follows:

"That on or about (date) day of (month) (year), in the Municipality of Gumaca, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with (kitchen knife/a bladed weapon/a fan knife), with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one (AAA/BBB), a minor, (age) years of age, against her will.

That accused Alfredo Bon is a relative by consanguinity within the third civil degree of victim (AAA/BBB)" (Rollo, pp. 4-6).

The Information in Criminal Case No. 6689-G omitted the second paragraph cited above, but did state that BBB was his niece. *Id.* at 168.

[6] CA rollo, p. 93.

[7] *Id.*

[8] *Id.*

[9] Referred to by AAA in her testimony as the "kaingin."

[10] CA rollo, p. 93.

[11] *Supra* note 3.

[12] CA rollo, p. 93.

[13] *Id.*

[14]Id.

[15]Id. at 75.

[16] Id. at 96.

[17] Id. at 95.

[18]Id.

[19] Id. at 97-98.

[20] Id. at 98.

[21] Id. at 99.

[22] Id. at 98.

[23]Id. at 99.

[24] Id. at 100.

[25] Id.

[26] CA rollo, pp. 31-63. Decision penned by Presiding Judge A. Maqueda-Roman.

[27] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[28] Rollo, pp. 3-23. Decision penned by Associate Justice M. Del Castillo, and concurred in by Associate Justices R. Brawner and M. De Leon.

[29] Id. at 15.

[30]Id. at 16-17.

[31] Id. at 33-49.

[32] Rollo, p. 47; TSN, 3 July 2002, p. 4.

[33] 337 Phil. 244 (1997).

[34] Citing *People v. Sagaral*, G.R. Nos. 112714-15, 7 February 1997.

[35] Citing *People v. Magaluna*, 205 SCRA 266 (1992).

[36] Citing *People v. Como*, 202 SCRA 200 (1991) and *People v. Serdan*, 213 SCRA 329 (1992).

[37] *People v. Perez*, *supra* note 33 at 250-251. Emphasis supplied.

[38] Records, Vol. I, pp. 221-230.

[39] Id. at 225-226.

[40]*People v. Manayan*, 420 Phil. 357, 377 (2001) citing *People v. Hofileña*, G.R. No. 134772, June 22, 2000; *People v. Legaspi, et al.*, G.R. No. 117802, April 27, 2000; *People v. Llanes, et al.*, G.R. No. 116986, February 4, 2000; *People v. Rendoque, et al.*, G.R. No. 106282, January 20, 2000; *People v. Estrada*, 22 SCRA 111, January 17, 1968.

[41] *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 349 citing *People v. Intong*, G.R.

Nos. 145034-35, 5 February 2004, 422 SCRA 134, 139.

[42] *People v. Lapay*, 358 Phil. 541, 560 (1998).

[43] *People v. Esperanza*, 453 Phil. 54, 74-75 (2003) citing *People v. Villraza*, G.R. Nos. 131848-50, 5 September 2000, 339 SCRA 666.

[44] *People v. Guambor*, G.R. No. 152183, 22 January 2004, 420 SCRA 677, 682.

[45] *People v. Delos Santos*, 420 Phil. 551, 564 (2001)

[46] *Id.*

[47] REVISED PENAL CODE, Art. 6.

[48] TSN, 17 October 2001, p. 6.

[49] *Id.* at 7-9.

[50] CA rollo, pp. 17-18. Citing *People v. Balgos*, 323 SCRA 373.

[51] *Perez v. Court of Appeals*, 431 Phil. 788, 793 (2002).

[52] G.R. No. 171271, 31 August 2006.

[53] *Supra* note 3.

[54] REVISED PENAL CODE, Art. 52.

[55] See REVISED PENAL CODE, Art. 266-B.

[56] See REVISED PENAL CODE, Art. 61.

[57] See REVISED PENAL CODE, Art. 71.

[58] See Rep. Act 4103 (199), Sec. 5.

[59] See Separate Opinion, J. Tinga, *People v. Tubongbanua*, *supra* note 52.

[60] See Rep. Act No. 7659 (1993), Sec. 4.

[61] See Rep. Act No. 7659, (1993), Sec. 8.

[62] See Rep. Act No. 7659 (1993), Sec. 10.

[63] See Rep. Act No. 7659 (1993), Sec. 6.

[64] See Rep. Act No. 7659 (1993), Sec. 3.

[65] See Rep. Act No. 7659 (1993), Sec. 2.

[66] See *People v. Sala*, 370 Phil. 323, 367 (1999).

[67] *People v. Francisco*, G.R. Nos. 135201-02, 15 March 2001, 354 SCRA 475, 491.

[68] 367 Phil. 755 (1999).

[69] *Supra* note 3.

[70] *People v. Tolentino*, *supra* note 68 at 765, 767. See also, e.g., *People v. Campuhan*, 385 Phil. 912 (2000),

where the Court stated: "The penalty for attempted rape is two (2) degrees lower than the imposable penalty of death for the offense charged, which is statutory rape of a minor below seven (7) years. Two (2) degrees lower is reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years. x x x;" Id. at 927.

[71] For purposes of the succeeding academic discussion, "attempted rape of a minor" refers to the attempted rape of a minor which if consummated, would be subject to the death penalty, pursuant to Article 266-B of the Revised Penal Code, as amended. In other words, the so-called qualified rape. It should be understood that not all rapes, even of minors, were automatically covered by the death penalty, which was imposable if any of the aggravating/qualifying circumstances enumerated in Article 266-B were present. It would of course be futile, in discussing the effect of the law abolishing the death penalty, if the above-discussion also applies to those rapes which were not covered by the death penalty. In appellant's case, he would have been liable for the death penalty for the rape of a victim under eighteen (18) years of age, who happened to be a relative by consanguinity or affinity within the third civil degree. See REVISED PENAL CODE, Art. 266-B, par. (1).

[72] Supra note 1.

[73] See e.g., *People v. Orita*, G.R. No. 88724, 3 April 1990, 194 SCRA 105, 115, wherein the Court recognized "it is hardly conceivable how the frustrated stage in rape can ever be committed." However, an exception may lie in theory as to qualified arson, considering that the Court recognized the filing of frustrated arson in *People v. Valdes*, 39 Phil. 240, 243 (1918).

[74] See *People v. Francisco*, supra note 67; *People v. Tolentino*, supra note 68; *People v. Campuhan*, supra note 68. See also *People v. Mariano*, 420 Phil. 727, 743 (2001), *People v. Quarre*, 427 Phil. 422, 439 (2002); *People v. Mendoza*, G.R. Nos. 152589 & 152758, 24 October 2003, 414 SCRA 461, 471; *People v. Miranda*, G.R. No. 169078, 10 March 2006, 484 SCRA 555, 569.

[75] See e.g., *Corona v. Court of Appeals*, G.R. No. 97356, September 30, 1992, 214 SCRA 378, 392; *Loyola Grand Villas Homeowners Association v. Hon. Court of Appeals*, 342 Phil. 651, 667 (1997); *MJCI v. Court of Appeals*, 360 Phil. 380-381 (1998).

[76] *Valencia v. Court of Appeals*, 449 Phil. 711, 726 (2003).

[77] See R. AGPALO, *STATUTORY CONSTRUCTION* (3rd ed., 1995), p. 226, citing jurisprudence.

[78] See id. at 227.

[79] Id.

[80] Supra note 1.

[81] Supra note 1 at 123.

[82] Supra note 1 at 121. See e.g., *People v. de la Cruz*, G.R. No. 100386, 11 December 1992, 216 SCRA 476, 482-484; *People v. Amigo*, 322 Phil. 40, 50 (1996); *People v. Artiaga*, G.R. No. 115689, 30 June 1997, 274 SCRA 685, 694; *People v. Quiboyen*, 369 Phil. 589, 606 (1999).

[83] "In *People v. Muñoz*, 170 SCRA 107, February 9, 1989, the Court, prior to the enactment and effectivity of RA 7659, ruled by a vote of 9-6 (J. Cruz, ponente, C.J. Fernan, JJ. Gutierrez, Jr., Feliciano, Gancayco, Padilla, Bidin, Griño-Aquino and Medialdea, concurring) that the death penalty was not abolished but only prohibited from being imposed. But see also the persuasive Dissenting Opinion of Mme. Justice Ameurfina Melencio-Herrera (joined by JJ. Narvasa, Paras, Sarmiento, Cortes and Regalado) who contended that the Constitution totally abolished the death penalty and removed it from the statute books. *People v. Muñoz* reversed

the earlier "abolition" doctrine uniformly held in *People v. Gavarra*, No. L-37673, 155 SCRA 327, October 30, 1987, (per C.J. Yap); *People v. Masangkay*, NO. L-73461, 155 SCRA 113, October 27, 1987, (per J. Melencio-Herrera) and *People v. Atencio*, Nos. L-67721-22, 156 SCRA 242, December 10, 1987 (per C.J. Narvasa). It is time that these cases are revisited by this Court." See footnote no. 5, Separate Opinion, *People v. Echegaray*, 335 Phil. 343, 392 (1997).

[84] *Yamane v. BA Lepanto Condominium Corporation*, G.R. No. 154993, 25 October 2005, 474 SCRA 258, 281.

[85] See *People v. Gulpe*, G.R. No. 126820, 30 March 2004, 426 SCRA 456, 458.

[86] See e.g., Section 13 of Rep. Act No. 7659, amending Section 4 of the Dangerous Drugs Act of 1972.

[87] As defined in Rule 6, Article 62 of the Revised Penal Code.

[88] See Rep. Act No. 7659, Sec. 3.

[89] G.R. No. 169078, 10 March 2006, 484 SCRA 555, 569-570.

[90] See, e.g., *People v. Quiachon*, G.R. No. 170236, 31 August 2006.

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