

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO ALICANTE Y DAVID, ACCUSED-APPELLANT.

G.R. Nos. 127026-27. May 31, 2000

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PER CURIAM:

We are again faced with the arduous task of determining whether the accused-appellant is guilty of a crime for which the law mandates the imposition of the extreme penalty of death.

The records reveal that fifteen (15) informations for the crime of rape were filed against accused-appellant Armando Alicante y David for having carnal knowledge of his minor daughter Richelle. These cases were filed on 17 July 1995 and raffled to Branch 273 of the Regional Trial Court of Marikina.[1] The information in Criminal Case No. 95-546-MK reads as follows:

The undersigned Assistant Provincial Prosecutor upon prior sworn statement of the complainant to form part of the Information charges ARMANDO ALICANTE Y DAVID with the crime of Rape, committed as follows: That on or about the month of August 1994 in the Municipality of Marikina, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, with lewd designs and by means of force, threats and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with Richelle C. Alicante, a 13 year old girl, who is his own daughter against the latter's will and consent.[2]

The other fourteen informations are virtual reproductions of the above-quoted information; they only differ as to the dates.[3]

On 23 August 1995, accused-appellant was arraigned and entered a plea of not guilty to all the charges.[4] On 20 May 1996, the case was transferred to Branch 272 of the Regional Trial Court of Marikina, as said court was designated as a special court to try cases classified as heinous crimes.[5]

Joint trial on the merits then ensued.

The Office of the Solicitor General's summary of the evidence for the prosecution,[6] with references to the pages of the stenographic notes and exhibits deleted, is as follows:

Sometime in August 1994, noontime, Richelle had just finished taking a bath outside their house. Her brother Richard and sister Racquel were still in school at that time. As she entered the house to change her clothes, her father Armando grabbed her breasts. She slapped him. He got a knife, pointed it to her neck, and pushed her down on the bed. He removed her shorts and panty, laid on top of her and inserted his penis into her vagina. She felt pain and saw something whitish coming out of his penis which he later placed on top of her stomach. He threatened to kill her and the other members of her family should she tell anyone of the incident. After ordering her to wash her vagina, he went out of the house. Left alone, she cried in one corner. She did not attend her class at Barangka Elementary School because of the excruciating pain in her sex organ and her headache.

Three (3) days thereafter, the incident was repeated. She was outside their house when he called her. After

coming in, he locked the door and pushed her against the wall. He took a knife and pointed it to her face. He said: "before anyone else, I should be first." He removed her shorts and panty as he pressed her against the wall. Armando masturbated and inserted his penis into her vagina. She felt pain in her sex organ. After the act, he repeated his threat to kill her and her family. She could not do anything but cry.

Within the same month, her ordeal continued. One day, while leaving for school to play softball, she was ordered by Armando to stay. Sensing that he was going to rape her again, she started crying. He slapped her. She ran towards the door but he closed it. While he was looking for a knife, Richelle tried to open the door. He then grabbed and pressed her against the wall. While pinning her, he pulled her shorts down and took out his penis. He masturbated and mashed her breasts. A whitish substance came out of his penis which he again placed on her stomach.

She was thereafter raped by her father once a week in September 1994. During the first week, she was lying on bed together with her siblings, Richard and Racquel. She was at the edge. Her father was on another bed. Her mother was not home. He then approached her and laid on top of her. He inserted his penis into her vagina. She was frightened and nervous, her body shaking. She tried to shout for help but he covered her mouth and slapped her. He started pushing and pulling and she saw a white substance oozing from his penis. She felt pain in her vagina and was nauseated at the act.

In the second week, he summoned her inside the house to wash the dishes. She did not obey. He then humiliated her and she was forced to go inside. He took a knife and pointed it to her. While so doing, he pulled her dress and removed her shorts. He then inserted his penis into her vagina. She felt weak and lost all her strength. Her head was throbbing.

During the third and fourth weeks, she was raped again.

In October 1994, she was raped three times. In all these instances, he threatened to kill her. She was prevented from shouting because he covered her mouth. She kept these incidents a secret because she feared his threat.

In November 1994, she was again raped. Her brother and sister were playing outside the house while her mother was at work. As she was preparing for school, her father called her to their house. She did not obey him. He berated her and forced her to get inside. He locked the door. He started hitting her head with his fists. She fought back. He slapped her twice and grabbed her clothes. While she was being undressed, she pleaded "tama na po!" He ignored her plea and continued removing her shorts and panty. He laid her on the "papag." He then mashed her breasts, kissed her lips, masturbated and inserted his penis into her vagina. She felt pain in her breasts and in her sex organ. Her head was aching. After the act, he put on his shorts and laid down on the bed. Due to shame, she did not inform anyone of the incident.

She was raped three times by her father in January 1995. One Thursday morning, he ordered her brother and sister to go outside while she was preparing for school. He then closed the door. He hit her on the nape, pulled her hair and warned her not to scream. Threatening her with a knife, he caressed her and ordered her to undress. She could only cry.

She graduated from Barangka Elementary School on March 24, 1995. As she was attending the commencement exercises, Richelle felt dizzy and fainted. In May of the same year, she and her family transferred residence to No. 16, Blk. 37, Lot 1, Phase 2-A, Katatagan St., Karangalan Village, Pasig City. She was enrolled in secondary school in Pasig City. While attending her classes, Ms. Presto, her teacher noticed her bulging abdomen. When Ms. Presto asked her about it, she told her what her father did to her.

She was physically examined on July 6, 1995. Per Medico-Legal Report No. M-846-95, she was found to be on the 26th-27th week of pregnancy. On the same day, she and her mother gave their respective sworn and signed statements to the Criminal Investigation Division of the Eastern Police District.

Subsequently, on July 11, 1995, Pacita Alicante executed her "Salaysay ng Pag-uurong ng Demanda." On July

24, 1995, she gave birth to twin boys who later died.

The defense put up by accused-appellant is one of denial. Appellant insists that such charges are mere fabrications and that his wife and daughter filed said charges in order to get him out of their lives:

xxx that his daughter could have filed the charges against him because they wanted him out of their lives; that this is so because his wife Pacita, has another man in her life whom he only know by the name "Bangkil"; that his wife admitted to him their relationship when he was already detained; that he was so confused when he learned about it; that his wife Pacita and his daughter Richelle visited him in jail on December 25 and January 1 and told him they are withdrawing the case.[7]

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

WHEREFORE, in the light of the foregoing, accused ARMANDO ALICANTE Y DAVID is found guilty beyond reasonable doubt for seven (7) counts of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 and is sentenced to suffer the extreme penalty of DEATH in each of the case above mentioned.

The accused is further ordered to pay the private complainant Richelle Alicante the amount of ONE HUNDRED THOUSAND (P100,00.00) PESOS as moral damages and the amount of TWENTY FIVE THOUSAND (P25,000.00) PESOS as exemplary damages and the costs of the suit.

SO ORDERED.[8]

Hence, this automatic review, where the accused-appellant through counsel raises the following assignment of errors:

FIRST ASSIGNED ERROR: THE TRIAL COURT ERRED IN CONSIDERING THE TESTIMONY OF THE PRIVATE COMPLAINANT WHEN IT WAS NEVER OFFERED IN EVIDENCE BY THE PROSECUTION. ASSUMING ARGUENDO NO REVERSIBLE ERROR WAS COMMITTED, STILL THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT WHICH WAS HIGHLY INCONSISTENT, DUBIOUS, DONE BY ROTE, APPEARED TO BE COACHED.

SECOND ASSIGNED ERROR: THE TRIAL COURT ERRED IN APPLYING THE PRESUMPTIONS THAT (1) A YOUNG FILIPINA WILL NOT CHARGE HER FATHER WITH RAPE IF IT IS NOT TRUE AND (2) THAT A MOTHER WILL NOT SACRIFICE HER DAUGHTER TO TELL A STORY OF DEFLOURATION AND IN HOLDING THAT THESE PRESUMPTIONS OUTWEIGHED THE CONSTITUTIONAL PRESUMPTIONS OF INNOCENCE.

THIRD ASSIGNED ERROR: THE TRIAL COURT ERRED IN REJECTING THE COMPLAINANT'S AFFIDAVITS OF DESISTANCE AS NOT AMOUNTING TO AN EXPRESS PARDON MADE BEFORE THE FILING OF THE INFORMATIONS IN VIOLATION OF ARTICLE 344 OF THE REVISED PENAL CODE.

FOURTH ASSIGNED ERROR: THE LACK OF A DEFINITE ALLEGATION OF THE DATE OF THE COMMISSION OF THE OFFENSE IN THE COMPLAINT AND INFORMATIONS FILED, AND THROUGHOUT THE TRIAL, PREVENTED THE ACCUSED-APPELLANT FROM PREPARING AN ADEQUATE DEFENSE AND VIOLATED HIS RIGHT TO A FAIR TRIAL AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM.

FIFTH ASSIGNED ERROR: THE FAILURE OF THE TRIAL COURT TO RULE ON THE OFFERS OF EVIDENCE OF THE PROSECUTION AND THE DEFENSE SUBSTANTIALLY IMPAIRED THE RIGHT OF THE ACCUSED-APPELLANT TO A FAIR TRIAL SINCE IT ALLOWED THE COURT TO CONSIDER BOTH ADMISSIBLE AND INADMISSIBLE FACTS IN ARRIVING AT ITS DECISION.

SIXTH ASSIGNED ERROR: THE DEATH PENALTY LAW, INsofar AS IT ORDERS THE AUTOMATIC AND MANDATORY JUDICIAL KILLING OF APPELLANT AND OTHERS SIMILARLY SITUATED, AS PUNISHMENTS FOR ACTS WHICH DO NOT INCLUDE THE TAKING OF ANOTHER PERSON'S LIFE, IS REPUGNANT TO THE CONSTITUTION AND AMOUNTS TO A BARBARIC, EXCESSIVE, CRUEL AND UNUSUAL PUNISHMENT.[9]

We will deal with these issues in seriatim.

Accused-appellant assails the trial court's reliance on the testimony of the private complainant on two grounds: (1) failure on the part of the prosecution to formally offer it in evidence in accord with Rule 132, Sections 34 and 35 of the Revised Rules of Evidence; and (2) said testimony is full of inconsistencies and appears to be coached.[10]

On the issue of the prosecution's failure to formally offer in evidence the testimony of the victim, the applicable provisions are Sections 34 and 35 of Rule 132 of the Revised Rules of Evidence:

SEC. 34. Offer of evidence. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

SEC. 35. When to make offer. - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

The above-quoted requirement is explained in Vicente J. Francisco's book on Evidence:[11]

xxx The introduction of evidence is intended to inform the court what the party making the offer intends to prove, so that the court may rule intelligently upon the objections to questions which have been asked, and may be necessary in order to preserve an exception to a ruling of the trial court excluding evidence. As a general rule, a party offering evidence must show its relevancy, materiality, and competency, and when he seeks to introduce evidence which does not appear to be relevant or competent, or propounds to his witness an interrogatory which appears to call for an irrelevant or incompetent answer, he should make a formal offer of proof showing what testimony he proposes to adduce, and when necessary, his intention to prove other facts which will render the evidence relevant or competent; the purpose for which apparently irrelevant or incompetent evidence is offered should be disclosed.

The Supreme Court has held that any evidence which a party desires to submit for the consideration of the court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. The offer may be made in any form sufficient to show that the party is ready and willing to submit the evidence to the court.

Admittedly, the transcripts of the testimonies reveal that the prosecution failed to declare the purpose for which the testimony of Richelle Alicante was being offered. However, this error will not prevent said testimony from being appreciated and made part of the evidence for the prosecution. This is so because counsel for the accused-appellant failed to seasonably raise an objection thereto. Said objection could have been done at the time when the victim was called to the witness stand, without proper explanation thereof or at anytime before the prosecution rested its case. Thus, this Court has ruled:

In *People vs. Java*, this Court ruled that the testimony of a witness, although not formally offered in evidence, may still be admitted by the courts, if the other party does not object to its presentation. The Court explained:

"Section 36 of [Rule 132] requires that an objection in the course of the oral examination of a witness should be made as soon as the grounds therefor shall become reasonably apparent. Since no objection to the admissibility of evidence was made in the court below, an objection raised for the first time on appeal will not be considered. In the present case, a cursory reading of the stenographic notes reveals that the counsel for the appellants did not raise any objection when said witnesses testified on the matters now being impugned. Moreover, they repeatedly cross-examined the witnesses, which shows that they had waived their objections to the said testimonies of such witnesses.[12]

Moreover, it should be noted that the witness whose testimony is sought by the accused-appellant to be disregarded is that of the victim herself. As explained earlier, the purpose of a formal offer is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. As it is the victim herself who testified, to state the reason for the presentation of said witness is to state the obvious. Hence, even without the formal offer, the judge was assumed to already know the purpose of her testimony.

Accused-appellant argues that Richelle's testimony should be rejected since it is highly inconsistent, dubious and appears to be coached as shown by the following inconsistencies:

- (a) While Richelle Alicante testified that at least seven rapes occurred from August 1994 to April 1995, she only mentioned two in her sworn statement [Exh. "F", par. 6] - once in August 1994 and once in April 1995;
- (b) While Richelle said on direct examination that she was raped twice in August 1994 [TSN, 7/2/96, pp. 7-8, 18], she only mentioned one incident in her statement, Exh. "F";
- (c) While Richelle testified that she was raped four times in September 1994 [TSN, 7/3/96, p. 8], she made no mention of such rapes in her statement, Exh. "F"; and later changed her statement regarding the fourth incident in September when she claimed that actual penetration took place [TSN, 7/9/96, p. 17];
- (d) While Richelle testified at one point that she was raped four times in September 1994 [id.], she later changed her testimony and said she was raped only three times [TSN, 7/3/96, p. 12]; and at another point in her testimony alleged that her father did not do anything wrong to her in September 1994 [TSN, 7/2/96, p. 19];
- (e) While Richelle claimed when she testified on July 15, 1996 that she did not read the affidavit of desistance that she signed [Exh. "3", TSN, 7/15/96, pp. 15-16], she said the exact opposite when she testified as a hostile witness for the defense on September 9, 1996 [see TSN, 9/9/96, p. 6];
- (f) While Richelle testified on direct that the consequences of signing the affidavit of desistance were not explained to her [TSN, 7/15/96, pp. 15-16, 19], when she testified as a hostile witness for the defense she admitted that a lawyer who prepared the affidavit of desistance talked to her in private and explained the consequences of her signing the affidavit [TSN, 9/9/96, p. 7];
- (g) While Richelle said that physical violence was repeatedly inflicted on her by appellant, the medico-legal report (Exh. "I") concluded that no external signs of application of any form of violence were found on Richelle;
- (h) While Richelle testified that all the rapes occurred while their family was residing in Marikina, she told SPO2 Balitao (as related by the latter on the stand) that she was only raped once in Marikina and the rest of the rapes took place in their new residence Pasig [TSN, 7/30/96, p. 37];
- (i) While Richelle said on her first day on the witness stand that after the second rape she could no longer remember the other incidents [TSN, 7/2/96, p. 30], when she took the stand on the subsequent days she was suddenly able to remember the other incidents;

(j) While Richelle claimed that she told the police on July 6, 1996 that she was raped in August, September, October, November and December 1994 [TSN, 7/15/96, pp. 10-11], her statement, Exh. "F", only mentioned a rape which allegedly occurred in August 1994 and no others for remainder of 1994; and

(k) While Richelle alleged on initial direct that she was raped a total of five times (twice in August 1994, twice in September, 1994 and once around all Saints Day of 1994), when Richelle testified a few days later she said she was also raped thrice in October 1994, thrice in January 1995; and once in February 1995 [TSN, 7/9/96, pp. 20-32].^[13]

Basically, accused-appellant attacks Richelle's testimony on the ground that in her sworn statement, the young girl only mentioned a single rape incident that occurred in the month of August, 1994. Such claim is baseless for it is clear in the narration of Richelle in her sworn statement that she was raped by her father several times: "Bandang alas 12:00 ng Tanghali ng nangyari na nasundan pa ng maraming beses sa loob ng dati naming bahay x x x."^[14]

The other inconsistencies refer to minor details such as how many times she was raped during a certain month. These do not create a reasonable doubt as to whether or not accused-appellant raped his daughter. It must be remembered that the victim is a girl of tender age who was sexually attacked by her father several times during a period of less than a year. It is not expected that Richelle would remember every single detail of every single rape. It is understandable, even anticipated, that there would be minor lapses and inaccuracies when a young girl is made to recount, detail by detail her frightful ordeal under the hands of her father.^[15] Considering the age of the victim, she is more prone to error than an adult person.^[16] The grueling experience of testifying in public, face to face with her perpetrator and being questioned by hostile lawyers would undoubtedly intimidate and confuse a young girl. Despite these circumstances, Richelle remained steadfast in her claim that her father raped her.

In any case, these inconsistencies go into the credibility of Richelle as a witness. Well-settled is the rule that this Court will not disturb the findings of the trial court as to the credibility of a witness. This is so because the trial court has a better vantage point in observing the candor and behavior of the witness. Hence, the trial court's characterization of Richelle as a witness:

x x x

During the trial, the court observed that the complainant, as a witness, possessed the necessary competence and intelligence of making known her perceptions and had narrated it with sincerity and truthfulness, though interrupted with some temporary emotional breakdowns. Her categorical, spontaneous, candid and straightforward testimonies have sufficiently established her credibility. It is noted, however, that there were inconsistencies and discrepancies, like on the occasions of the commissions of the rapes and on the circumstances as to how they were committed but such would have been caused by the natural fickleness of memory due to the tender age of the complainant-witness which tends to strengthen rather than to weaken her credibility as it erases suspicion of rehearsed testimony. Besides, the precise date when the complainant was sexually abused is not an element of the crime. x x x.^[17]

The fact that Richelle's testimony is uncorroborated is of no moment. As this Court has held, the accused may be convicted on the basis of the lone uncorroborated testimony of the rape victim, provided that her testimony is clear, positive, convincing and otherwise consistent with human nature and the normal course of things.^[18] We agree with the trial court that Richelle's testimony meets this criterion.

Accused-appellant, likewise, has failed to come out with any plausible reason why Richelle would fabricate a story of rape. As we have so held in the past, a young girl would not publicly disclose a humiliating and shameful experience of being sexually abused by her father if such were not the truth,^[19] especially so in this case where there has been no showing of bad blood between father and daughter prior to the charges of rape.^[20]

Accused-appellant, however, argues that the application of the presumption by the trial court that a young Filipina

will not charge a person with rape if it is not true goes against the constitutional presumption of innocence. In *People vs. Godoy*,^[21] this Court explained the proper approach of courts when confronted by this situation:

The trial court, in holding for conviction, relied on the *presumptio hominis* that a young filipina will not charge a person with rape if it is not true. In the process, however, it totally disregarded the more paramount constitutional presumption that an accused is deemed innocent until proven otherwise.

It frequently happens that in a particular case two or more presumptions are involved. Sometimes the presumption of conflict, one tending to demonstrate the guilt of the accused and the other his innocence. In such case, it is necessary to examine the basis for each presumption and determine what logical or social basis exists for each presumption, and then determine which should be regarded as the more important and entitled to prevail over the other. It must, however, be remembered that the existence of a presumption indicating guilt does not destroy the presumption against innocence unless the inculcating evidence, together with all of the evidence, or the lack of any evidence or explanation, is sufficient to overcome the presumption of innocence by proving the defendant's guilt beyond a reasonable doubt until the defendant is shown in this manner, the presumption of innocence continues.

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In rape cases, especially much credence is accorded the testimony of the complaining witness, on the theory that she will not choose to accuse her attacker at all and subject herself to the stigma and the indignities her accusation will entail unless she is telling the truth. The rape victim who decides to speak up exposes herself as a woman whose virtue has not been not only violated but also irreparably sullied. In the eyes of a narrow-minded society, she becomes a cheapened woman, never mind that she did not submit to her humiliation and has in fact denounced her assailant. At the trial, she will be the object of lascivious curiosity. People will want to be titillated by the intimate details of her violation. She will squirm through her testimony as she described how her honor was defiled, relating every embarrassing movement of the intrusion upon the most private parts of her body. Most frequently, the defense will argue that she was not forced to submit but freely conjoined in the sexual act. Her motives will be impugned. Her chastity will be challenged and maligned. Whatever the outcome of the case, she will remain a tainted woman, a pariah because her purity has been lost, albeit through no fault of hers. This is why in many a rape victim chooses instead to keep quiet, suppressing her helpless indignation rather than denouncing her attacker. This is also the reason why, if a woman decides instead to come out openly and point to her assailant, courts are prone to believe that she is telling the truth regardless of its consequences. xxx^[22]

The presumption that a young Filipina will not charge a person with rape if it is not true vis-a-vis the application of the presumption of innocence has been explained in this wise:

The presumption of innocence, on the otherhand, is founded upon the first principle of justice, and is not a mere form but a substantial part of the law. It is not overcome by mere suspicion or conjecture; a probability that the defendant committed the crime; nor by the fact that he had the opportunity to do so. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt. This is in consonance with the rule that conflicts in evidence must be resolved upon the theory of innocence rather than upon a theory of guilt when it is possible to do so.^[23]

Further, as elaborated by Father Joaquin Bernas, one of the framers of the 1987 Constitution, under the principle of presumption of innocence, it is merely required of the State to establish a *prima facie* case, after which the burden of proof shifts to the accused.^[24] In *U.S. v. Luling*,^[25] the Court said:

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No rule has been better established in criminal law than that every man is presumed to be innocent until his

guilt is proved beyond a reasonable doubt. In a criminal prosecution, therefore, the burden is upon the State to prove every fact and circumstance constituting the crime charged, for the purpose of showing the guilt of the accused.

While that is the rule, many of the States have established a different rule and have provided that certain facts only shall constitute prima facie evidence, and that then the burden is put upon the defendant to show or to explain that such facts or acts are not criminal.

It has been frequently decided, in case of statutory crimes, that no constitutional provision is violated by a statute providing that proof by the State of some material fact or facts shall constitute prima facie evidence of guilt, and that then the burden is shifted to the defendant for the purpose of showing that such act or acts are innocent and are committed without unlawful intention.

xxx The State having the right to declare what acts are criminal, within certain well defined limitations, has a right to specify what act or acts shall constitute a crime, as well as what proof shall constitute prima facie evidence of guilt, and then to put upon the defendant the burden of showing that such act or acts are innocent and are not committed with any criminal intent or intention.[26]

In like manner, this Court can adjudge certain evidence, such as a young Filipina's statement that she was raped, in addition to the fact that she gave a premature birth to a twins six or seven months after the commission of one of the rapes, as prima facie proof of the guilt of the accused, as in the case at bar, and if unrebutted is enough to warrant a conviction, without going against the constitutional presumption of innocence.

Accused-appellant's assertion that the trial court erred in applying the presumption that a mother will not sacrifice her daughter to tell a story of defloration deserves no consideration. A careful examination of the assailed decision reveals that the trial court never applied this presumption.

The third assignment of error raised by the accused-appellant is the rejection by the trial court of the affidavit of desistance executed by the victim and her mother allegedly constitutes an express pardon. The document[27] referred to reads as follows:

Salaysay ng Pag-uurong ng Demanda

AKO, si PACITA ALICANTE, may sapat na gulang, may asawa at sa kasalukuyan ay naninirahan sa No. 16 Katatagan St., Karangalan Village, Pasig City, matapos manumpa ng ayon sa batas ay malayang nagsasabi ng mga sumusunod:

1. Na ako ang nagdidimanda ng salang "rape" laban sa aking asawa na si ARMANDO ALICANTE dahil sa panggagahasa niya sa aming anak na si RICHELLE ALICANTE, 13 taong gulang na ngayon ay iniimbestigahan sa Piskalya ng Pasig City na may IS. NO. 95-4739;
2. Na matapos kaming mag-usap-usap ay napagkasunduan naming iurong na ang demanda at patawarin siya sa nagawa niyang kasalanan...ginawa namin ang paguurong na ito upang mabuhay kami ng mapayapa at matiwasay;
3. Na ipinaabot ko sa may kapangyarihan na hindi ko na nais pang ipagpatuloy ang reklamo ko laban sa kanya at iyon ay iniaatras ko na sa pamamagitan ng salaysay na ito at hindi na kami tetestigo sa kasong ito;
4. Na ginawa ko ang salaysay na ito upang patotohanan ang lahat ng nasasaad dito sa itaas.

PASIG CITY, July 11, 1995

(sgd)

RICHELLE ALICANTE (sgd.)

PACITA ALICANTE

Nagsasalaysay

In order to determine the legal effect of the above-quoted document an examination of the following provisions of the Revised Penal Code and the Rules of Court is necessary. Article 344 of the Revised Penal Code states:

x x x

ART. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. - The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the abovementioned crimes.

Section 5, Rule 110 of the Rules of Court expounds on the application of Article 344 of Revised Penal Code:

Sec. 5. Who must prosecute criminal actions. xxx

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. xxx

The offended party, even if she were a minor, has the right to initiate the prosecution for the above offenses, independently of her parents, grandparents or guardians, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the immediately preceding paragraph.

As pointed out by the Office of the Solicitor General, a careful scrutiny of the Salaysay ng Pag-uurong ng Denanda reveals that while the victim Richelle signed the said document, the intent to pardon the accused-appellant was only on the part of Pacita, the victim's mother and not the victim herself. The actor in the document, as so worded, was Pacita. It involved the sole person of Pacita. This is demonstrated by the personal pronouns she used, pointing to herself as the one who was extending the pardon. Thus, the first paragraph starts with "Na ako ang nagdidimanda x x x." The second paragraph says, "Na matapos kaming nag-usap-usap x x x" indicates that only Pacita and her husband talked, excluding the victim who, at thirteen, could not have intelligently participated in her parents' conversation. The third paragraph of the Salaysay opens with the words "Na ipinaabot ko sa may kapangyarihan, x x x," signifies her personal involvement, not that of her daughter. Finally, the last paragraph goes "Na ginawa ko ang salaysay x x x," demonstrating that it was only Pacita alone that executed the affidavit.

Besides, this Court looks with disfavor on affidavits of desistance. The reason for this is enunciated in the case of *People vs. Junio*:^[28]

The appellant's submission that the execution of an Affidavit of Desistance by complainant who was assisted by her mother supported the 'inherent incredibility of prosecution's evidence' is specious. We have said in so many cases that retractions are generally unreliable and are looked upon with disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the

process of having the accused-appellant arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, Maryjane would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule would make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable.

This was reiterated by the Court of late in the case of *Alonte vs. Savellano, Jr.*[29] where we further ruled that an affidavit of desistance by itself, even when construed as pardon in so-called "private crimes," is not a ground for the dismissal of the criminal case once the action has been instituted. The affidavit, nevertheless, may, as so earlier intimated, possibly constitute evidence whose weight or probative value, like any other piece of evidence, would be up to the court for proper evaluation.

In any case, when asked on the witness stand whether or not she wanted the case dismissed, Richelle answered in the negative. She explained that she did not read the contents of the document and only signed it because her aunt, Virginia Alicante, forced her to do so. She further stated in her testimony that she intended to pursue the present case against her father.[30] Thus:

It must be stressed that during the trial proceedings of the rape case against the accused-appellant, it appeared that despite the admission made by the victim herself in open court that she had signed the Affidavit of Desistance, she, nevertheless, "strongly pointed out that she is not withdrawing the charge against the accused because the latter might do the same sexual assaults to other women." Thus, this is one occasion where an affidavit of desistance must be regarded with disfavor inasmuch as the victim, in her tender age, manifested in court that she was pursuing the rape charges against the accused-appellant.[31]

As to when the pardon is to be made, this Court had long ruled that the pardon must be granted before the criminal case has been instituted:

In *People vs. Infante*, G.R. No. 36270, an adultery case, the first division of this court, interpreting article 344 with reference to that crime, declared in a decision rendered by Justice Malcolm, promulgated on August 31, 1932, that in order that the pardon of the aggrieved party may prevent the prosecution of the adulterers, it must be granted before and not after the penal action has been instituted.

In view of the foregoing considerations, we are of the opinion and so hold, that the offended party's pardon of the offender in a seduction case after the criminal action has been instituted does not extinguish said action according to paragraph 3, article 344, of the Revised Penal Code. x x x.[32]

Likewise in the *Junio* case, we held:

While "[t]he offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted, except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor in any case, if the offender has been expressly pardoned by the above named persons, as the case may be," the pardon to justify the dismissal of the complaint should have been made prior to the institution of the criminal action. Hence the motion to dismiss to which the affidavit of desistance is attached was filed after the institution of the criminal case. And the affiant did not appear to be serious in "signifying (her) intention to refrain from testifying" since she still completed her testimony notwithstanding her earlier affidavit of desistance.[33]

Accordingly, the prosecution of the case continues even if the offended party pardons the offender after the case has been instituted. While the second affidavit of desistance was signed by Richelle, this was executed only on 5 December 1995,[34] after the criminal information had already been filed in the trial court. No error can then be imputed to the trial court, for continuing on with the trial despite the presentation of these two so-called affidavits of desistance.

Accused-appellant also attacks the alleged lack of a definite allegation of the dates of the commission of the offense not only in the complaint and informations filed but also throughout the trial. He argues that this deficiency prevented him from preparing an adequate defense and violated his right to be informed of the nature and cause of the accusation against him.

In addition, accused-appellant questions the basis of the informations. According to him, a review of the records will show that the only document in the possession of the investigating prosecutor when he filed the information was the sworn complaint of Richelle Alicante. Nowhere in her sworn complaint did Richelle allege the number of times she was raped except for her declaration that she had been raped "(m)any times." Hence, the filing of fifteen (15) separate Informations was mere speculation on the part of the prosecution without any factual basis. Further, while the offended party could not recall the exact dates of each and every alleged rape, it was incumbent upon the prosecution to file charges only for those rapes in which they were fairly certain of the dates when these sexual assaults occurred.

We are not persuaded.

Section 11, Rule 110 of the Rules of Court is in point:

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

On numerous occasions, this Court has pronounced that the precise time of the commission of the crime is not an essential element of rape:

It is settled that even a variance of a few months between the time set out in the indictment and that established by the evidence during trial has been held not to constitute an error so serious as to warrant a reversal of a conviction solely on that score. The failure of the complainant to state the exact date and time of the commission of rape is a minor matter and can be expected when the witness is recounting the details of a humiliating experience which are painful and difficult to recall in open court and in the presence of other people. Moreover, the date of the commission of the rape is not an essential element of the crime.[35]

The Court finds that the informations filed against herein accused-appellant state all the facts and ingredients that would, with sufficient definiteness and clarity, fully apprise him of the nature and cause of the accusation against him in compliance with his constitutional right to be informed of the nature and the charges against him.

As to the factual basis of the informations, while the records of the prosecution[36] may be sketchy as bases of the other thirteen informations except for those charging rapes for the months of August 1994 and April 1995, it is too late in the day to question such. Accused-appellant had adequate remedies during the investigation and trial but he failed to avail of them. In any case, such seeming defect is not fatal because as has been mentioned earlier, the informations filed comply with the constitutional mandate.

We agree with the accused-appellant that there was failure on the part of the trial court judge to rule on the formal offer of evidence and the objections thereto. It should be noted that this failure pertains to the documentary and

object evidence only, for as earlier discussed, testimonial evidence is offered, objected to and admissibility ruled on when the witness is called to the stand. However, this deficiency will not result in the reversal of accused-appellant's conviction. The purpose of the requirement is to ensure that the judge will not consider inadmissible evidence in making his decision. After a careful scrutiny of the decision and the records, it is our view that the judge did not consider any inadmissible evidence. As pointed out by the Office of the Solicitor General, the testimony of Richelle, which, as has been discussed, is deemed formally offered without any objections thereto, has been accepted as admissible by the trial court. Said testimony alone, to the mind of this Court, is sufficient to sustain the conviction of the accused-appellant.

In a last ditch effort to escape the imposition of the death penalty, accused-appellant asks this Court to re-examine its ruling on the constitutionality of the appreciation of such an extreme penalty. In *People v. Echegaray*,^[37] we have affirmed the constitutionality of the imposition of the death penalty for crimes which are not attended by the circumstance of death on the part of the victim:

xxx We have already demonstrated earlier in our discussion of heinous crimes that the forfeiture of life simply because life was taken, never was a defining essence of the death penalty in the context of our legal history and cultural experience; rather, the death penalty is imposed in heinous crimes because the perpetrators thereof have committed unforgivably execrable acts that have so deeply dehumanized a person or criminal acts with severely destructive effects on the national efforts to lift the masses from abject poverty through organized governmental strategies based on a disciplined and honest citizenry, and because they have so caused irreparable and substantial injury to both their victim and the society and a repetition of their acts would pose actual threat to the safety of individuals and the survival of government, they must be permanently prevented from doing so. At any rate, this Court has no doubts as to the innate heinousness of the crime of rape, as we have held in the case of *People v. Cristobal*:

"Rape is the forcible violation of the sexual intimacy of another person. It does injury to justice and chastity. Rape deeply wounds the respect, freedom, and physical and moral integrity to which every person has a right. It causes grave damage that can mark the victim for life. It is always an intrinsically evil act x x x an outrage upon decency and dignity that hurts not only the victim but the society itself."^[38]

We find no cogent reason to reverse our stand on the heinousness of the crime of rape when the perpetrator of such bestial act is the father of the victim. To say that the crime of incestuous rape is not heinous simply because the victim did not die is to ignore the lifelong trauma and stigma of the victim brought about by rape. In this particular case, the psychiatrist who conducted and evaluated the test on Richelle observed that she consistently showed signs of post traumatic stress disorder common to persons who have undergone unusual traumatic events in their lives caused by natural or man-made catastrophes. The social worker from the Department of Social Welfare and Development, likewise, noted that Richelle was a greatly traumatized and emotionally injured individual.^[39] These findings are consistent with studies on the general effects of rape on a victim:

The experience of rape creates a disruption in lifestyle that realistically could last a lifetime. The physical trauma - that which is visibly noted and treated - quickly heals, creating the illusion of recovery. Unfortunately, the real trauma, because it is not of physical origin, frequently goes unnoticed and unattended.

The common pattern of public blame and skepticism encourages the victim to harbor emotional injury and pain. This process results in longterm psychological and emotional symptoms xxx xxx Previously common, comfortable situations may become fearful and phobic experiences following an assault. Certain phobias may appear to be very logical, while other may appear to the nonvictim to present little or no association. Some frequently associated phobias include: association with crowds, being left alone, previously ignored sound, poorly lit areas, seeing a man who may even vaguely resemble the rapist, odors associated with the attack, such as the smell of alcohol and gasoline, the feeling that a crowd of people knows of the rape and is talking about it, the occurrence of another disruptive experience, although unrelated, a general fear of people, the thought of

sexual relations. It must be remembered that to the victim these phobias are very real and frightening.[40]

In sum, we agree with the following findings of the trial court that accused-appellant is guilty beyond reasonable doubt of seven counts of rape since the same is ably supported by the evidence:

The record shows that the complainant took the witness stand for three (3) times on July 2, July 3 and July 9, 1996 and each and all of these trials, she consistently testified that the first time she was raped by her father was in August 1994 and the same was repeated three (3) days thereafter. There had been allegations that she was still repeatedly abused by her father but the circumstances as to how they were committed bears repetitious contentions of general tenor which created doubt except those committed in October 1994, near the all Saint's Day and those three (3) rapes committed in January 1995, due to the fact that she gave birth to a 6 to 7 months prematurely born twin baby boys in July 24, 1995, as evidenced by the clinical records of the attending physicians which were taken cognizance as judicial notice by the Court as the same was capable of unquestionable demonstration. The last memorable occasion of the series of incest was in April 1995 just before they transferred to another house from Bonifacio St., Dela Pena, Marikina, to Pasig, Metro Manila. Considerably, therefore, in holding the accused to be liable for the two crimes of rapes in August 1994 which were docketed as Criminal Case Nos. 95-546-MK and 95-547-MK, respectively; once in the last week of October 1994; docketed as Criminal Case No. 95-554-MK; three rapes committed in January 1995, docketed as Criminal Cases Nos. 95-555-MK, 95-556-MK, and 95-557 respectively; and the rape committed in April 1995 and docketed as Crim. Case No. 95-560-MK; the Court notes the well settled rule in this jurisdiction in crimes against chastity, that the exacting standard of proof beyond reasonable doubt acquires more relevance in these cases because such accusation is easily fabricated but hard to prove and harder still to defend on the part of the accused, though innocent. Such that the testimony of the complainant should be scrutinized with extreme caution and the evidence of the prosecution must fall or stand on its own merit and should not draw any strength from the weakness of the evidence of the defense.[41]

As the relationship between the accused-appellant and the victim has in the same wise been proven beyond reasonable doubt, the Court affirms the imposition of the death penalty in accordance with Republic Act No. 7659 amending Article 335 of the Revised Penal Code which provides:

x x x

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

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

In line with prevailing jurisprudence, the civil indemnity ex delicto for the victim shall be in the amount of P75,000.00 for each count of rape and moral damages of P50,000.00, likewise for each count of rape without the need of pleading or proof of the basis thereof.[42]

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless, they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed.

WHEREFORE, premises considered, the Court hereby AFFIRMS the appealed decision sentencing the accused-appellant ARMANDO ALCANTE y DAVID to the extreme penalty of death with the MODIFICATION that the accused-appellant shall be ordered to indemnify the victim Richelle Alicante, in the amount of P75,000.00 as civil indemnity and P50,000.00, respectively, as moral damages for each count of the offense proved.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon

finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of his pardoning power.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Davide, Jr., C.J., on official leave.

Panganiban, J., abroad “ did not participate in the deliberation.

[1] Rollo, p. 33.

[2] Records, p. 2.

[3] Id., at 34-63. The other informations refer to the following crimes: one (1) also in August, 1994 (Case No. 95-547-MK); three (3) in September, 1994 (Case Nos. 95-548-551-MK); three (3) in October, 1994 (Case Nos. 95-542-544-MK); three (3) in January, 1995 (Case Nos. 95-555-557-MK); one (1) in February 1995 (Case No. 95-558-MK); and two (2) in April 1995 (Case Nos. 95-559-560-MK)

[4] Id., at 94.

[5] Rollo, p. 34.

[6] Id., at 490-495.

[7] Id., at 60-61.

[8] Id., at 74.

[9] Id., at 369-371.

[10] Id., at 394-396.

[11] THE REVISED RULES OF COURT, Volume VII, p. 393.

[12] People vs. Cawaling, et al., 293 SCRA 256 (1998)

[13] Rollo, pp. 398-400.

[14] Original Records, folder 2, p. 38.

[15] People vs. Mandap, 244 SCRA 457, 464 (1995)

[16] People vs. Esquila, 254 SCRA 140, 145 (1996)

[17] Original Records, p. 351.

[18] People vs. Godoy, 250 SCRA 676, 703 (1995)

[19] People vs. Calayca 301 SCRA 192, 205 (1999)

[20] People vs. Matamorosa, 231 SCRA 509 (1997)

[21] See note 18.

[22] Id., at 726-727.

[23] People of the Philippines vs. Alfredo Ablaneda y Peconia, Alias "Kalahupag." G.R. No. 128075, September 14, 1999.

[24] The 1987 Constitution of the Republic of the Philippines, A Commentary, (1996), p. 447.

[25] 34 Phil. 725 (1916)

[26] Id., at 727.

[27] Original Records, Folder 2, p. 38.

[28] 237 SCRA 826, 834 (1994)

[29] 287 SCRA 245, 266 (1998)

[30] TSN, Sept. 9, 1996, 5-8, 11-12.

- [31] *People vs. Echegaray*, 267 SCRA 682, 691 (1999)
- [32] *People vs. Miranda*, 57 Phil., 274, 275-76 (1932-1933)
- [33] *Supra*, note 28.
- [34] Records, Folder 2, p. 39.
- [35] *People v. Bernaldez* 294 SCRA 317, 327 (1998), citing *People v. Bugarin*, 273 SCRA 384, 397 (1997) and *People v. Quinones*, 222 SCRA 249, 254 (1993)
- [36] The Salaysay of Richelle Alicante (Records, p. 6) reads in part:

T: kailan, saan at anong oras nangyari ang panggagahasa sa iyo?

S: Nangyari po iyong pang-gagahasa sa akin nuong buwan ng August 1994, hindi ko na po matandaan ang petsa, tanghali po iyon at bagong paligo ako dahil papasok ako sa iskwela sa Barangka Elementary School, nakasuot pon ako ng short at sando pagpasok sa aming bahay namin dahil sa likod bahay ang plaiguan, nung pumasok ako ng bahay ay nilapitan ako ng Tatay ko at hinawakan ang suso ko, ang ginawa ko ay tinabig ko ang kamay niya at hinampas ko siya sa likd, nagalit siya at kinuha iyong kutsilyo at tinutok sa aking mukha at nagsalita siya nang: "Bago ako maunahan ng iba ay ako muna", sabay patay ng ilaw at hinila ako papunta sa kama nung sumigaw ako ay tinatakpan niya ng kanyang kamay ang bibig ko, hinila niya ang paako kaya napahiga ako sa kama habang pilit niyang hinuhubad ang suot kong short, nanlalaban po ako at sumisigaw per sinampal at kinukutusan niya ako ng kanyang kamao at nakaramdam na po ako ng panghihina at panlalambot kaya puro iyak na lang po ang nagawa ko, binuksan niya ang zipper ng kanyang pantalon at dumapa sa ibabaw ko habang hawak niya ang dalawa kong kamay pataas at hinawi niya ng kanyang tuhod ang aking dalawang hita pabuka at pilit niyang pinasok sa aking ari at pakiramdam ko nuon ay hilog-hilo. Bandang alas 12:00 ng Tanghali ng nangyari na nasundan pa ng maraming beses sa loob ng dati naming bahay sa No. 190-F Bonifacio Ave., Barangat S. Dela Pena, Markina, Metro Manila.

- [37] 267 SCRA 682, 730 (1997)
- [38] *Id.*, at 730.
- [39] Exhibit "D."
- [40] *Rape and Sexual Assault*, Carmen Germaine Warner, 1980, pp. 221-223.
- [41] Original Records, pp. 357-359.
- [42] *People of the Philippines vs. Ludigario Candelario and Gerry Legarda*, G.R. No. 12550, July 28, 1999.

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