

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO ROQUE, ACCUSED-APPELLANT.***G.R. Nos. 130659 & 144002. August 14, 2002*

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-130659/>**VITUG, J.:**

Nine-year old Analiza and twelve-year old Arcely were the only daughters of Shirley Roque and herein appellant Antonio Roque. The couple had not been living together for sometime but it did not prevent appellant from occasionally visiting his family at their house in San Luis, Tarlac. Left alone with a brood to feed, Shirley eked out a living as a cook, doubling as a waitress, at the Ihaw-Ihaw del Mar restaurant. Daughter Arcely stayed with her paternal grandparents at nearby barrio Carangian, where she attended grade school, leaving her sister Analiza often alone in the family house with only her brothers for company. Weekends at the Roque household were livelier when Arcely would come home from Carangian to be with the family. And so it was until one day when Arcely, during one of her periodic visits, was seen lying beside her father under a blanket. Movements beneath the blanket aroused the suspicion of Analiza but Shirley dismissed her daughter's complaint as just the child's fancy. The second time Analiza reported a similar incident to her, Shirley questioned Arcely who finally confirmed that, indeed, her father had been sexually abusing her. Shirley, however, was afraid to confront her husband but when she later learned that Analiza herself was not spared from sexual molestation by appellant, Shirley reported the matter to the barangay captain of San Luis and then to the police. Analiza narrated how her father, at the point of a knife, had forced her to have sex with him. Medical examination conducted by Dr. Rosario Fider showed that twelve-year old Arcely Roque had been sexually molested but that her younger sister, Analiza Roque, was still a virgin.

On 26 October 1994, two Informations, docketed Criminal Case No. 8684 and Criminal Case No. 8685, were filed with the Regional Trial Court of Tarlac, Tarlac, against appellant; viz:

IN CRIMINAL CASE No. 8684–

“The undersigned Provincial Prosecutor, upon sworn complaint originally filed before the Municipal Trial Court of Tarlac, Tarlac by the offended party, Analiza P. Roque accuses ANTONIO ROQUE of Barangay San Luis, Tarlac, Tarlac of the crime of Rape, committed as follows:

“That sometime in 1992 and subsequent thereto in 1994, in the Municipality of Tarlac, province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused Antonio Roque who is the father of the complaining witness, did then and there willfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with his daughter Analiza P. Roque, 9 years of age, in their house, without her consent.”[1]

IN CRIMINAL CASE No. 8685 -

“That sometime in 1992 and subsequent thereto in 1994, in the Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused Antonio Roque who is the

father of the complaining witness, did then and there willfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with his daughter Arcely P. Roque, 11 years of age, in their house without her consent.”[2]

Following the arraignment of the accused, the two criminal cases were tried jointly.

Analiza Roque testified that, one night, when she was still in the second grade, the accused had knocked at the door of their house. As her brother Aldwin was already asleep, she opened the door herself. After letting her father in, she went upstairs to the second floor. Moments later, the accused ordered her to come down. When she did, he held her hands, pushed her to the sofa bed, removed her panty, held her vagina and licked it. Next, he touched her breasts and sucked them. He then placed himself on top of her and had sexual intercourse with her. The young girl felt pain. The accused, however, was not able to completely insert his organ into her vagina.

According to Arcely Roque, she had been staying at Carangian, Tarlac, with her grandmother. In her case, she recalled that the accused had first raped her during a school break when she went home to San Luis. At the time of the incident, only her sister Analiza was around. Arcely was sleeping on the sofa bed when she was suddenly awakened to see herself without her underwear and the accused, stripped off his trousers, already on top of her. He made push and pull movements with his penis inside her. Arcely decided to continue sleeping despite the pain in her vagina. The following day, and on subsequent and countless incidents, the exact dates of which she could no longer remember, the accused would similarly get back to her. At one time, while staying at Carangian, her father, who appeared to be drunk, arrived at her grandmother’s house and told her that they were going to San Luis to pay her mother and sister Analiza a visit. He took the route traversing the rice field. At a deserted path, the accused sexually molested Arcely while she helplessly lay against the dried rice stalks. The next incident occurred at their house in San Luis. Arcely was lying on the bed with her sister Analiza, when the accused again came visiting and told her that if she did not want to do “it,” he would kill her mother. Arcely testified that the accused did not spare her younger sister, then in grade one, from sexual abuse, and said that she saw appellant twice rape Analiza.

The accused put up the defense of denial and of alibi. A driver and a mechanic, Antonio Roque, was a stay-in employee of the Marsing Tongol Trucking Services at San Miguel, Tarlac, Tarlac, working from Monday through Saturday. He would go home to his family in San Luis three times a month, usually on a Sunday. On these occasions, he would also drop by Carangian to briefly see his daughter Arcely but only to hand over her allowance. In San Luis, he would spend Sunday nights with his family and would leave for work the next morning. He recalled having visited his family - his wife, Analiza and his two sons Arnold and Aldwin - only once in September 1994. In August 1994, he was not able to go home as he had to stay in Sta. Lucia for the entire month hauling “lahar.” The accused insisted that he could not have raped his daughters whom he loved very much, and that the criminal cases were filed against him at the instigation of his wife so that she could live freely with her paramour. Although he did not know the man’s name, he was certain of his wife’s philandering. Once, on a Sunday night he said, her lover arrived at their house in San Luis aboard an owner-type jeepney, and he later saw them kissing inside the vehicle. He repeatedly warned his wife that if she did not stop her illicit relationship, he would take the children away from her. Shirley ignored him as well as his advice against working at the restaurant and to instead tend to their children.

Aldwin Roque, a son of the accused, discounted the charges against his father, saying that he was always home and could have easily noticed any unusual incident thereat had there really been one. Elizabeth Danganan, a sister of the accused, testified that Arcely Roque had used to stay with them since she was a year old. The accused would visit Arcely once or twice a month on weekends. In August 1994, appellant came to see his daughter but he immediately had to leave for San Luis. On that occasion, Elizabeth was certain that her brother did not bring

Arcely with him to San Luis, and the claim that he raped her niece while crossing the rice field on the way to San Luis was preposterous. The witness viewed the charges as having been maliciously concocted by her sister-in-law.

On 19 June 1997, the trial court rendered its decision finding Antonio Roque guilty beyond reasonable doubt of the accusations against him and sentencing him to suffer the penalty of death -

“IN VIEW OF THE FOREGOING, this Court finds the accused Antonio Roque guilty of the crime of rape as charged in the two informations and is hereby sentenced to suffer the penalty of death in each case, and to indemnify both Arcely and Analiza Roque in the amount of P50,000.00 each, as damages. Accused is hereby ordered to pay the costs of these proceedings.”[3]

In this automatic review of the decree of conviction, accused-appellant raised the following assignment of errors -

“I.

“THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE IN CRIMINAL CASES NOS. 8684 AND 8685 DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION

“II.

“ASSUMING IN ARGUENDO THAT THE ACCUSED IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY DESPITE THE FACT THAT THERE WAS NO CLEAR INDICATION ON THE EXACT DATE OF COMMISSION OF THE OFFENSE.” [4]

Unfortunately, for appellant, there is nothing much that the Court can do to sustain his plea of innocence.

Analiza Roque, still in her tender years, recounted before the trial court, with such forthrightness and clarity as a young girl possibly could, what her father had done to her -

“Q. Would you tell us what did your father do after 1992?

“A. At first, he knocked at the door. Then I opened the door. Then I ran upstairs. After that, I went to bed, but my father ordered me to come down. So I went down because he was pointing aiming at me a knife, sir.

“Q. When your father asked you to go down, what did he tell you?

“A. ‘You come down or if you will not come down, I will stab you.’

“Q. And when your father told you that, what did you do, if any?

“A. I went down because I was afraid, sir.

“Q. That incident which you are now relating, at what time did it happen?

“A. In the evening, sir.

“Q. So, when your father asked you to go down of your house, were you with anyone else or were you alone then?

“A. My brothers were already sleeping, sir.

“xxx xxx xxx

“Q. When your father told you that he still stab you if you will not go down, what did you do?

“A. I came down, sir.

“Q. And, what did your father do?

“A. He held my hands and pushed me to the sofa bed, sir.

“Q. After that, what else (happened)?

“A. He removed my panty, he held my vagina and licked it.

“Q. And, after that, what else did he do?

“A. He held my breast and sucked it, sir.

“Q. When he held your breast, did he not remove your dress?

“A. No, sir. He just raised it up.

“Q. How about your panty, did he not remove your panty?

“A. He removed it, sir.

“Q. After licking your vagina, what else did he do?

“A. He had sexual intercourse, sir.

“Q. Could you tell us how he did have sexual intercourse with you?

“A. He was making push and pull movements.

“Q. When he did it, did he not go on top of you?

“A. He went on top of me, sir.

“Q. When he made push and pull movements, did you not experience any injury or pain?

“A. Slightly, sir.

“Q. When your father was doing this to you, did you not tell anything to your father.

“A. ‘Father, I am being hurt,’ sir.

“COURT TO WITNESS:

Was he able to put his private organ inside your vagina?

“A. No, sir. Slightly.

“FISCAL TO WITNESS:

How long was he doing this to you, the push and pull movement?

“A. For a short time only, sir.

“Q. Now for how many times did he do this to you?

“A. I cannot remember, sir.”[5]

Appellant would place much reliance on the testimony of examining physician Dr. Rosario Fider who found no hymenal laceration on the person of Analiza Roque. The trial court, nevertheless, concluded that there was penetration although, concededly, it was merely “slight.” In her sworn statement before the authorities, introduced in evidence and affirmed by her at the witness stand, Analiza herself attested that appellant was able to penetrate, but not “completely,” her vagina.[6]

In *People vs. Tirona*,[7] this Court has explained that a “broken hymen is not an essential element of rape, not even where the victim is an innocent child x x x [where] the penetration of the male organ could go only as deep as the labia. In any case, for rape to be committed, full penetration is not required. It is enough that there is proof of entrance of the male organ within the labia or pudendum of the female organ. Even the slightest penetration is sufficient to consummate the crime of rape. Perfect penetration, rupture of the hymen or laceration of the vagina are not essential for the offense of consummated rape. Entry, to the least extent, of the labia or lips of the female organ is sufficient. Remaining a virgin does not negate rape.”[8]

Arcely Roque, in her case, was unequivocal on how appellant had defiled her not just once but a number of times—

“Q. Could you tell the Honorable Court what your father did to you in 1992?

“A. In 1992, I was abused by my father, sir.

“Q. Do you still recall the month?

“A. I cannot remember the month, sir.

“Q. What hour was it, was it in the morning, afternoon or evening?

“A. It was nighttime, sir.

“Q. Now at that time according to you when your father abused you, were you living with him?

“A. I was in Carangian, sir.

“xxx xxx xxx

“Q. At that time when it happened, was it vacation (time) or were you still going to school?

“A. It was vacation, sir.

“Q. At that time when according to you your father abused you, were there other persons present at that time?

“A. One, my sister only, sir.

“Q. According to you, it happened at nighttime, do you still recall what time it happened?

“A. I do not remember but it was nighttime, sir.

“Q. Could you tell the Honorable Court, how did your father abuse you that night?

“A. At that time, sir, I was on bed downstairs, sir.

“xxx xxx xxx

“Q. When your father abused you, you were sleeping on the ground floor?

“A. Sofa bed, sir.

“Q. How about your father, where did he sleep on that night?

“A. On the sofa bed, sir.

“Q. Beside you?

“A. He was sleeping beside me, sir.

“Q. Aside from you, were there any other persons sleeping [in] the house [at] that time?

“A. Yes, sir.

“Q. Could you tell us who are the other persons sleeping with you at that time?

“A. My sister Analiza, sir.

“Q. Aside from Analiza, were there any other persons?

“A. No more, sir.

“Q. As I have asked you earlier, could you tell us how your father abused you on that day?

“A. I was sleeping that night and I was awakened and my father was on top of me, sir, and he was abusing me.

“Q. At that time that you were awakened according to you, your father was abusing you, how did your father abuse you?

“A. When I woke [up], my panty was already taken.

“Q. How about your father, was he nude at that time? Or was he wearing anything at that time?

“A. He had no trousers, sir.

“Q. How about [the] upper part of his body?

“A. He was dressed up, sir.

“Q. When he was on top of you, what did he do if anything?

“A. He was abusing me sir.

“Q. How did he abuse you?

“A. He was making in and out action, sir.

“Q. What was he, what do you mean by in and out?

“A. His sexual organ, sir.

“Q. Do we understand from that, he inserted his private organ on your private organ and then he pulled it out?

“A. Yes, sir.

“Q. Did you feel anything when he did that?

“A. I was hurt, sir.

“Q. How long did your father do that?

“A. A little bit long, sir.

“Q. Did you not talk to your father while he was doing that?

“A. When he was doing that, I told him, ‘No father.’

“Q. And did he tell you anything?

“A. He was not saying anything, sir.

“JUDGE:

Was this the first time that he did it to you?

“A. That was the first time, sir.

“Q. Now according to you, he did that for sometime. After finishing the act, what did you notice on your private part?

“A. It was aching, sir, but I did not do anything. I just slept.

“xxx xxx xxx

“Q. And the second time he did that, where did he do it?

“A. At the rice field, sir.

“Q. What time, was it in the morning, in the evening or in night time? Why were you in the rice field at that time?

“A. Because it was at that time my father was drunk and according to him that my mother was in the house and I told him that we would go to San Luis but he brought me to a rice field.

“Q. Where is that rice field?

“A. Carangian, sir

“Q. When your father went to you, was it in Carangian or San Luis?

“A. Carangian, sir.

“xxx xxx xxx

“Q. On that particular night, why did you pass on that rice field?

“A. I was taken by my father on that rice field and I asked him why he was taking me on that rice field, sir, and he did not say anything.

“Q. To simplify matters, from the house in Carangian, did you pass by that rice field? In that rice field, could you tell us what happened there?

“A. He abused me again, sir.

“Q. How did he abuse you?

“A. I was lying on dried stalks and he abused me again and I was asking why he was doing that and he did not say anything, sir.

“Q. Why did you lie on that dried rice stalks?

“A. He made me lie down, sir.

“Q. When your father abused you at the rice field was it long or short?

“A. It was long, sir.

“xxx xxx xxx

“Q. After 1993, your father abused you again?

“A. Yes, sir. The last time was when I was in Grade V, sir, around August 1994.

“Q. Where did this third time happen?

“A. In our house in San Luis, sir.

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“Q. Could you tell us how did he abuse you on that third time?

“A. Inside our house and our house was no longer up and down then, sir. I was lying down and he told me that if I don’t like, he would kill my mother.

“Q. Was that at the upper portion of your house or at the lower portion?

“A. Upstairs, sir.

“Q. But the third time when, according to you, your father abused you, were there other persons in that house?

“A. Yes, sir, my sister

“Q. Your sister, and what is the name of your sister?

“A. Analiza, sir.

“xxx xxx xxx

“JUDGE:

Do you understand that your father raped you in 1992-1993 and 1994? When he was raping you the first time and you say your sister was present what was Analiza doing when your father raped you?

“A. She was lying down but she was awakened, sir. The last time, she was sleeping beside us, sir.”[9]

The two victims, despite being still in their tender years, were able to give convincing accounts of the bestial acts committed against them by their father. It would be difficult to accept appellant’s claim that the twin narrations were all simply made up.

The two Informations against appellant, in Criminal Case No. 8684 and Criminal Case No. 8685, indicted him for having had carnal knowledge of his own daughters Analiza and Arcely Roque against their will “sometime in 1992 and subsequent thereto in 1994.”

Section 11, Rule 110 of the Rules of Court provides -

“Section 11. Time of Commission of the offense. - It is not necessary to state in the complaint or information

the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.”

The requirement that the date of the commission of the crime be sufficiently definite or certain is in consonance with the constitutional demand for due process and to fully apprise the accused of the charge in order to allow him to amply prepare for his defense. The time averred in the Information would only need, unless the precise time of commission of the offense is an essential element thereof, to meet two criteria - 1) it is as near to the actual date of commission of the offense as the complaint or information of the prosecuting officer will permit; and 2) the time ultimately proved should be as so alleged in the complaint or information.[10]

In *People vs. Bugayong*,[11] this Court grappled with the issue of sufficiency of the information which had expressed the time of the commission of the rape against an 11-year old girl as having occurred “sometime before and until October 15, 1994.” In resolving the controversy, the Court took into consideration that date was not an essential element of rape; that the gravamen of the offense would be carnal knowledge of the woman; and that proof would not need to exactly correspond to the allegation in the Information as long as the offense was committed within the period of the statute of limitations and before the commencement of the action. Significantly, the Court determined that there was no surprise on the part of the accused because the victim, in her sworn statement which was made part of her testimony, categorically said that she had been raped by appellant in 1993 when she was in the third grade. This Court there concluded -

“In effect, the Sworn Statement substantiated the averments in the Information. Hence, appellant was sufficiently apprised that the ‘several’ instances of rape committed ‘before and until October 15, 1994’ which were asserted in the body of the Information, included the sexual assault on the victim in 1993 as alleged in the Statement.

“Furthermore, appellant could not have been oblivious to the victim’s Sworn Statement, for he requested and was given an opportunity to rebut the same in his Motion for Reinvestigation.

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“In arguing that ‘before and until October 15, 1994’ could only mean ‘on October 15, 1994 or within a reasonable time before such date’ and not in 1993, appellant asks rhetorically: ‘What if the prosecution proved that the rape was committed in 1985?’ The question indeed, is academic. The Sworn Statement alleged and the appellant is here convicted of a rape committed in 1993, not in 1985. There is basis to hold him liable for the rape committed in 1993, but none for a putative crime committed in 1985.”[12]

In the case at bar, Analiza Roque executed a sworn statement wherein she had categorically stated that she was raped by accused-appellant in September 1994. Appellant hardly could feign ignorance of the statements in the sworn declaration; indeed, it was his counsel, Atty. Briones, himself who introduced the document to the court on cross-examination and asked Analiza Roque to re-affirm the due execution thereof -

“ATTY. BRIONES:

Do you remember having executed an affidavit on October 17, 1994, and I am going to show you, and do you remember whose signature is this above the typewritten name Analiza Roque?

“A. Yes, sir.

“Q. Do you know the contents of your affidavit?

“A. Yes, sir.”[13]

In her affidavit, Analiza stated in capsulized form, the sum of the charges against her father -

“T. Ano ang ginawa niya sa iyo, maari mo bang isalaysay?

“S. Noong buwan ng SEPTIEMBRE, 1994 (emphasis supplied), gabi po noon at hindi ko na matandaan ang oras, kami ng kuya Aldwin ko ay nasa itaas na ng aming bahay at matutulog na sana ng biglang mayroong tumatawag sa labas at ang Tatay ko na si ANTONIO ROQUE ay dumating. At dahil siya ang Tatay ko, ako ang nagbukas ng pintuan at siya ay nangangamoy alak at lasing, kaya ng mabuksan ko na ang pintuan ay dali-dali akong pumanhik sa bahay upang matulog na, ngunit muling tumawag ang Tatay ko at ako ay kanyang pilit na pinababa at sinabi niya sa akin ay, ‘LIZA BUMABA KA DITO, KUNG HINDI KA PUPUNTA DITO AY SASAKSAKIN KITA’ (In Pampango dialect, ‘LIZA BABA KA KENI, NUNG EKA MUNTA KENI SAKSAKAN DAKA.’) at dahil ako ay takot sa kanya, ako ay bumaba at lumapit sa kanya at ako ay kanyang hinawakan at pilit na inalis ang aking panty at nang maalis ito ay kanyang dinilaan ang aking Ari (Vagina) at kanyang hinimas-himas ang aking mga suso at pagkatapos ay kanyang sinuso ang aking mga suso at pagkatapos ay pilit na ipinapasok ang kanyang daliri sa aking Ari at ako ay nasaktan, mahapdi at ako ay umiyak at ako ay nagmamakaawa sa kanya ngunit hindi pa siya nakuntento at ako ay kanyang pinatungan at pilit na inilagay ang kanyang Ari (Penis) sa aking Ari (Vagina) ngunit hindi ito nakapasok sa akin at biglang mayroong lumabas sa kanya at nabasa ang aking Ari sa harapan na parang umihi siya. Pagkatapos po ay kumuha siya ng pamunas at ibinigay sa akin at pinapunasan niya ito. At ako ay umakyat sa taas at natulog.”[14]

In her case, Arcely Roque was a bit more specific in the criminal complaint she filed before the Municipal Trial Court, Branch I of Tarlac, Tarlac.

“That sometime(s) in 1992, and on different occasions therefrom, up to August 1994, (emphasis supplied) in the Municipality of Tarlac, Province of Tarlac, Philippines, and within the preliminary jurisdiction of this Honorable Court the above-named accused by means of threat and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with the herein ARCELY ROQUE, a girl of about 11 years of age, virgin and against her will and consent.

“The accused ANTONIO ROQUE is the legitimate father of the herein victim ARCELY ROQUE.”[15]

Although, during trial, the sisters accused their father of raping them several times within the interval of 1992 and subsequent thereto in 1994, they, however, in their similarly-worded informations in Criminal Case No. 8684 and Criminal Case No. 8685, respectively, only charged appellant with only one count each of rape. The Information for the rape committed against Analiza Roque, read together with her sworn statement, established that she was raped by appellant at least once, in September 1994, while Arcely Roque’s complaint, read together with the Information, fixed the date of at least one of the countless rapes committed against her to be in August 1994.

It might be said in passing that the investigating fiscal could have tried but might have found it difficult to extract from the young complainants the precise dates of the commission of the rape offenses. Analiza Roque was only nine years old at the time of the trial, and Arcely Roque was just slightly older.

Testifying on the first rape in 1992, Arcely Roque stated that she was then barely nine years old, and her younger sister was seven years old,[16] a statement that would jibe with the Certificates of Live Birth of both Analiza and Arcely, indicating that Analiza Roque was born on 12 May 1985 and Arcely on 21 November 1982 to the spouses Shirley and Antonio Roque. Analiza was thus about seven years old and Arcely ten years old when first sexually abused sometime in 1992 and neither could not have been more than fourteen years of age when the last sexual abuse occurred in 1994.

Article 335 of the Revised Penal Code, as amended by R.A. 7659 provides that -

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

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

The penalty of death could thus be decreed; nevertheless, Section 22 of Republic Act No. 7659, amending Article 47 of the Revised Penal Code, recognizes that in death penalty cases the High Tribunal puts to a vote not only the issue of the guilt of an appellant but also the question on the imposition of the death sentence itself. The law provides thusly:

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

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

The Court heretofore acknowledged that circumstances could exist to warrant an exercise of such forbearance. In *People vs. Santos*,^[17] the Court considered the acts of the deceased victim, a former municipal mayor, in clearing and working on the land claimed by the Ilongots which could have been seen by the accused as an act of oppression and abuse of authority which he felt morally bound to forestall, as well as the limited schooling of the accused, as justification to reduce the penalty of death to reclusion perpetua. In *People vs. De la Cruz*,^[18] the Court took into account, in lowering the penalty to reclusion perpetua on the accused most of whom were already death row convicts, the deplorable sub-human conditions of the National Penitentiary where the crime was committed. In *People vs. Marcos*,^[19] the failure of the appellant to realize the gravity of his offense was held to justify the reduction of the penalty of death to reclusion perpetua.

In this case, appellant argued for the application of some leniency to him. Indeed, in *U.S. vs. Dichao*,^[20] although not exactly on all fours, the dismissal by the trial court on the ground that the Information charged the accused with rape committed “on or about and during the interval between October, 1910 to August 1912” was sustained by the Court, upon the thesis that allegations of the information should be sufficiently explicit as to time as to aptly inform the defendant of the accusation. The necessity that allegation in the Information be specific enough should be understandable particularly when the accused would be minded to raise the defense of alibi. The instant Information, which placed the time of the commission of the offense sometime in 1992, and subsequent thereto in 1994, concededly was widely inclusive spanning, as it so did, a period of two years. Understandably, it unduly put the accused, who raised the defense of alibi, the difficult task of accounting in detail his actions for every single day of the two-year period to prove that he could not have committed the particular offense charged.

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

The trial court ordered appellant to indemnify private complainants in the amount of P50,000.00 each by way of damages which could be taken to mean the civil indemnity. In conformity with prevailing jurisprudence, the two victims are likewise each entitled to an award of P50,000.00 moral damages, innate in crimes of rape, and P25,000.00 exemplary damages due to relationship as so explained in *People vs. Catubig*.^[21]

WHEREFORE, finding appellant Antonio Roque guilty beyond reasonable doubt of rape in Criminal Cases No. 8684 and No. 8685 is **AFFIRMED** but with **MODIFICATION** in that the penalty of death imposed by the trial

court is hereby lowered to reclusion perpetua. In addition to the civil liability Of P50,000.00 decreed to be paid to each complainant, Arcely Roque and Analiza Roque, appellant is likewise ordered to pay moral damages of P50,000.00 and exemplary damages of P25,000.00 to each victim. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, and Corona, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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- [1] Rollo, p. 9.
[2] Rollo, p. 10.
[3] Rollo, p. 28.
[4] Rollo, p. 53.
[5] TSN, Ana Lisa, Roque, 20 April 1995, pp. 8-13.
[6] Sinumpaang Salaysay, Analiza Roque, executed before the Station Investigation Division of the Tarlac Police Station, 14 October 1994; Records, p. 2.
[7] 300 SCRA 431.
[8] At pp. 439-440.
[9] TSN, 08 February 1995, pp. 5-15.
[10] US vs. Dichao, 27 Phil. 421.
[11] 299 SCRA 529.
[12] At pp. 540-541.
[13] TSN, Analiza Roque, 20 April 1995, pp. 36-37.
[14] Sworn Statement, Analiza Roque, 17 October 1994, Records, p. 2.
[15] Criminal Complaint, Arcely P. Roque, 14 October 1994, Records, p. 53.
[16] Ibid., p. 20.
[17] 19 SCRA 445.
[18] 122 SCRA 227.
[19] 147 SCRA 204.
[20] 27 Phil. 421.
[21] G.R. No. 137842, 23 August 2001.

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