

EN BANC

[G.R. NO. 147750, September 29, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERRY EBIO Y
HERMIDA, APPELLANT.**

DECISION

PER CURIAM:

A. PREFACE

On October 14, 2002, appellant Gerry Ebio was convicted by this Court of qualified rape and sentenced to suffer the death penalty.^[1] The Public Attorney's Office moved for reconsideration on the ground that the Court lacked a quorum when the case was deliberated as it appears that the Decision was signed only by seven (7) justices.^[2] In a Resolution dated September 7, 2004, the Court granted the Motion for Reconsideration, ruling as follows:

x x x

There is no question that the Court's Decision in this case was concurred in by majority of the members of the Court who actually took part in the deliberations. It was in fact unanimously signed by the seven Justices who were present during the deliberations. The issue now is whether the seven constitute a quorum of the 14-member Court.

The term "quorum" has been defined as "that number of members of the body which, when legally assembled in their proper places, will enable the body to transact its proper business, or, in other words, that number that makes a lawful body and gives it power to pass a law or ordinance or do any other valid corporate act."^[3] The question of the number of judges necessary to authorize the transaction of business by a court is as a general rule to be determined from the Constitution or statutory provisions creating and regulating the courts, and as a general rule a majority of the members of a court is a "quorum" for the transaction of business and the decision of cases.^[4]

The Constitution is clear on the quorum when the Court meets by Division. There should be at least three members present for the Division to conduct its business. This may be deduced from paragraph 3 of Section 4 Article VIII. There is no similar pronouncement, however, when the Court meets *en banc*. The second paragraph of Article VIII Section 4 of the 1987 Constitution does not expressly state the number of Justices required to be present to constitute a quorum of the Court *en banc*. The deliberations of the 1987 Constitution are also silent on what constitutes a quorum when the Court is composed of only fourteen

members. In case of doubt in a criminal case, especially where the death penalty is imposed, the doubt should be resolved in favor of the accused.

Thus, in this case, considering that the life of the accused is at stake, we deem it wise to resubmit the case to the Court *en banc* for re-deliberation.

IN VIEW WHEREOF, the Court resolves to **RECALL** the Decision dated October 14, 2002 and **RESUBMIT** the case to the Court *en banc* for **RE-DELIBERATION**.

The case at bar is now the subject of re-deliberation by the Court.

B. FACTS

The appellant, GERRY EBIO, was charged with rape before the Regional Trial Court of Sorsogon, Sorsogon. The private complainant is his 11-year old daughter, DORY EBIO. The Information^[5] dated May 2, 2000 reads:

The undersigned Government Prosecutor, upon the complaint of DORY EBIO, accuses GERRY EBIO y HERMIDA, a resident of Tughan, Juban, Sorsogon, of the crime of STATUTORY RAPE defined and penalized under the Revised Penal Code as amended by RA 7610 (Anti-Child Abuse Act), and further amended by RA 7659 (Death Penalty for Heinous Crimes) and RA 8353, otherwise known as the Anti-Rape Law of 1997, committed as follows:

That sometime in (*sic*) **April 21, 2000** at more or less (*sic*) 10:00 o'clock in the evening, at Barangay Tughan, Municipality of Juban, Province of Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, with **force and intimidation**, with lewd designs and taking advantage of his moral ascendancy and the tender age of the child, did then and there, willfully/unlawfully and feloniously, had (*sic*) **carnal knowledge** of DORY EBIO, **his own 11-year old daughter**, against her will and **without her valid consent**, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the natural ascendant of the private offended victim.

ACTS CONTRARY TO LAW.

May 1, 2000. Sorsogon, Sorsogon, Philippines.
NO BAIL RECOMMENDED

(SGD.) REGINA COELI
F. GABITO
Prosecutor II
Officer In-Charge

When arraigned on June 8, 2000, the appellant, assisted by counsel *de officio*, pled "not guilty."^[6] However, at the first hearing of the case on January 11, 2001, the

appellant, through counsel, withdrew his plea of “not guilty” and changed it to “guilty.” To avoid an improvident plea, the trial court inquired on the voluntariness of his plea, informed him of the meaning of his admission of the crime charged and the penalty for it. The appellant, however, persisted on his plea of guilty,^[7] thus, a new Certificate of Arraignment,^[8] dated January 11, 2000, was issued. On the same day, the evidence for the prosecution was received.

The prosecution evidence shows that the private complainant, Dory Ebio, is the daughter of spouses Cristina Daquio and appellant Gerry Ebio.^[9] The private complainant is the third in a brood of six (6) children.^[10] She was born on March 24, 1989, as shown in her Certificate of Live Birth.^[11]

The Ebios are residents of Tughan, Juban, Sorsogon. Their house has one bedroom where Cristina and Gerry sleep, together with private complainant’s youngest sister. The private complainant, her other sisters and their grandmother sleep in the *sala*.

The private complainant testified that in the evening of April 21, 2000, she was preparing to sleep in the *sala*. Her three (3) younger sisters and their grandmother were also in the *sala*, sleeping. Her elder sister, Donna, their aunt and their cousin, went to church earlier that night, while her mother, Cristina, was in Manila together with her sister, Dina. The appellant was not yet home at that time.

The appellant arrived in their house at about 10:00 p.m. He proceeded to the room and fixed the bed. Thereafter, he approached the private complainant and told her to transfer to the bedroom because they were already crowded in the *sala*. She obeyed him because she was afraid he would scold her. The appellant was drunk.

Armed with a six-inch long bladed instrument, the appellant ordered her to undress and threatened to kill her if she would not comply. Afraid of the threat, she took off her shorts and panty. Appellant also took off his shorts, mounted her and had carnal knowledge of her. She felt pain and cried. The private complainant was silent during the sexual assault because he threatened to kill her if she would talk or shout. After the assault, she put on her shorts and panty and again lay down. She remained inside the room, crying.

The following day, April 22, the private complainant reported the incident to her grandmother. Her grandmother accompanied her to the police authorities. She executed a sworn statement ^[12] and a written complaint,^[13] both dated April 27, 2000, charging the appellant with rape.

The private complainant revealed that the April 21, 2000 incident was the third occasion that she was raped by the appellant. The first two (2) defilements happened when she was ten (10) years old. She was then a Grade II elementary pupil. She related the incidents to her mother who told her that they would file a complaint against the appellant. However, they were not able to report the matter to the police.

The private complainant was brought to Dr. Erlinda B. Olondriz-Orense, Municipal Health Officer of Sorsogon, for medical examination. The lady doctor’s findings are as follows:^[14]

To Whom It May Concern:

This is to certify that I have examined Dory Ebio, 11 years old, resident of Tughan, Juban, Sorsogon.

Findings:

- *labia majora* and *minora* in close contact
- Internal exam. - vaginal wall admits one finger with resistance
- With healed hymenal lacerations at 4 o'clock and 6 o'clock (positions)

ERLINDA B. OLONDRIZ-ORENSE, M.D., CFP
Municipal Health Officer
Juban, Sorsogon

Leonisa Ebio, 12 years old, cousin of the private complainant, lives with the Ebios in Tughan, Juban, Sorsogon. She testified that in the evening of April 21, 2000, after going to church, she returned to the house of the Ebios to sleep. She was about to sleep when she heard someone crying inside the room of her *Tiyo* Gerry, the appellant, and *Tiya* Cristy. Curious, she slowly entered the room. She saw the appellant on top of the private complainant. Both were naked and the appellant was raping the private complainant. Afraid that the appellant might kill her, she retreated and went back to sleep. She did not relate the incident to anyone out of fear.

Cristina Ebio testified that she is legally married to the appellant. The victim is their daughter. Dory was born on March 24, 1989. On April 27, 2000, she (Cristina) was in Manila for a medical check-up. She received a phone call from a relative, informing her that the appellant had raped their daughter. She cried and immediately headed back to Sorsogon.

Upon reaching their town, she proceeded to the municipal building where she found the private complainant. They both cried when they met. The private complainant told her about the April 21, 2000 rape incident.

Cristina claimed that she confronted the appellant about the rape committed on April 21, 2000. He admitted the dastardly act and explained that he was drunk at the time.

After the prosecution had rested its case, the defense opted not to present any evidence. Hence, the case was deemed submitted for decision.

On February 19, 2001, the trial court rendered its judgment, finding the appellant guilty of qualified rape. The appellant was sentenced to suffer the penalty of death and ordered to pay the private complainant the amounts of ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages. The dispositive portion of the decision^[15] reads:

In view of the foregoing, the Court finds the accused Gerry Ebio y Hermida **GUILTY beyond reasonable doubt of the offense of RAPE**

under R.A. 7610 as amended by R.A. 7659 and further amended by R.A. 8353, otherwise known as the ANTI-RAPE LAW of 1997, and accordingly sentences him with the penalty of **DEATH under Art. 266-8 of R.A. 8353**; and to pay the victim civil indemnity of ₱75,000.00 and moral damages of ₱50,000.00.

Considering however the open repentance of the accused in Court in accepting the crime he has done, this Court is recommending to Her Excellency, the President of the Republic of the Philippines, thru the Department of Justice, an EXECUTIVE CLEMENCY as the penalty imposed to (*sic*) the accused is to the Court excessive if we are to administer justice in a manner that is fair and just but compassionate and merciful as well.

SO ORDERED.

Given this 19th day of February 2001 at Sorsogon, Sorsogon, Philippines.

(SGD.) JOSE L. MADRID
Judge

Hence, the automatic review of the case.

The Appellant's Brief assigns a single error:

THE COURT A QUO GRAVELY ERRED ON (*sic*) CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE HIS IMPROVIDENT PLEA OF GUILTY.

C. RULING

We again affirm the judgment of conviction.

Appellant contends that his plea of guilty was improvident because the trial court did not strictly observe Section 3, Rule 116 of the Revised Rules on Criminal Procedure. The rule provides that when an accused pleads guilty to a capital offense, the courts should perform the following tasks: (1) it shall conduct a **searching inquiry** into the **voluntariness** and **full comprehension** of the consequences of his plea, and (2) it shall require the prosecution to prove his guilt and the precise degree of culpability. Thereafter, the trial court will allow the accused to present evidence, if he so desires.

It is alleged that the appellant did not fully understand the consequences of his plea because when the appellant was re-arraigned on January 11, 2001, the trial court told the appellant that he would be sentenced to "**reclusion perpetua to death**" if he pled guilty. Allegedly, the penalty could not have been understood by the appellant.

Appellant is clutching on straws. He was convicted on the basis of the evidence presented by the prosecution and not on his guilty plea. The private complainant testified as follows:^[16]