

EN BANC

[G.R. No. 132364, September 27, 2002]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALFREDO ALVERO
Y TARADO, APPELLANT.**

R E S O L U T I O N

PER CURIAM:

Before us is a Motion for Reconsideration^[1] of the Court's May 23, 2001 Decision which affirmed the lower court's imposition of the death penalty on appellant for the crime of qualified rape. In his Brief, appellant claimed that he was only seventeen (17) years old at the time of the rape incident. However, the Court did not believe his assertion because, other than his bare statement, no evidence was presented to corroborate the claim of minority.

Attached to the present Motion for Reconsideration, however, is a certified true copy of appellant's Certificate of Live Birth^[2] showing that he was born on May 7, 1979. Appellant relies on the presentation of this documentary evidence to prove his claim of minority and preclude the imposition of the death penalty.

In its Comment^[3] dated October 10, 2001, the Office of the Solicitor General (OSG) alleged that the National Statistics Office (NSO) must submit a written authentication relative to the existence of the Birth Certificate presented by the appellant, because the NSO is the only government agency which can attest to the genuineness of the said document.

In a Resolution^[4] dated 12 March 2002, the Court required appellant's counsel, the Public Attorney's Office (PAO), to obtain a certification from the NSO that the Certificate of Live Birth, bearing the number 6783336, issued on March 3, 2001 was a genuine copy issued by the said agency. In compliance, the PAO submitted to this Court on May 23, 2002^[5] a Certificate of Live Birth^[6] issued by the NSO, duly marked as "Best Possible Image" and signed by Carmelita N. Ericta, Administrator and Civil Registrar General of the NSO.

In a Manifestation and Motion dated May 28, 2002, the OSG stated that the name Alfredo Parado Albero Jr., which appears on the Certificate of Live Birth issued by the NSO, is different from appellant's name, Alfredo Alvero y Tarado, as reflected in the Information charging him of rape. The OSG expressed its suspicion that Alfredo Parado Albero and Alfredo Alvero y Tarado may not be one and the same person.

In its Comment^[7] dated August 16, 2002, the PAO explained that the discrepancy in the names appearing in the Information and the Certificate of Live Birth issued by the NSO is not substantial considering that the name Albero can easily be mistaken for Alvero just as the name Parado can be erroneously be heard as Tarado. Verily, it solemnly assured the Court that Alfredo Albero y Parado is one and the same person as Alfredo Alvero y Tarado, the appellant in this case; and prayed that the duly

authenticated Certificate of Live Birth issued by the NSO be admitted in evidence, even after trial and after final Judgment has been promulgated.

The arguments of appellant are well-taken. The duly authenticated Certificate of Live Birth issued by the NSO clearly evinces that the appellant was only a minor or seventeen (17) years old at the time of the commission of the offense. The slight discrepancy in the names appearing in the Birth Certificate and the Information is quite negligible and, as argued by the PAO, is just a clerical error arising from inadvertence or oversight of persons responsible for making the entries in these documents. Moreover, considering that the PAO has given the assurance that the names Alfredo Alberio y Parado and Alfredo Alvero y Tarado refer to one and the same person, we are inclined to accept the veracity of the document presented and the contents thereof, particularly with respect to the actual age of appellant.

In any case, such variance is too trivial or insignificant to deprive appellant of an opportunity to avail of a right provided by law which he may otherwise be entitled to. This finds greater relevance considering that the supreme penalty of death has been imposed on the appellant. In the interest of justice, we shall admit in evidence the Certificate of Live Birth presented by the appellant to prove his age at the time the crime was committed.

As general rule, the presentation of evidence after the judgment of conviction has already attained finality is not allowed. However, it is well within the prerogative of the Court to admit such evidence even at this stage of the proceedings in the exercise of its power to review. Moreover, the exercise of this discretion is as much a duty of the Court especially where the reception of such evidence could save the accused from the grim and irrevocable consequences of a death sentence. Indeed, the rule on finality of judgment cannot divest the Supreme Court of its Jurisdiction to execute and enforce a judgment for such finality does not mean that the Court has lost all its powers.^[8]

Certainly, this is not the first time that the High Tribunal adopted a liberal stance with respect to decisions that have already become final. In *People vs. Gallo*,^[9] the Court granted the appellant's motion to re-open the case and modified the penalty to reclusion perpetua even after it had already affirmed with finality the trial court's decision imposing the death penalty. Thus, it gave a ratiocination of its ruling as follows:

"The Court has had the opportunity to declare in a long line of cases that the tribunal retains control over a case until the full satisfaction of the final judgment conformably with established legal processes. *It has the authority to suspend the execution of a final judgment or to cause a modification thereof as and when it becomes imperative in the higher interest of justice or when supervening events warrant it.*"^[10] (Emphasis supplied)

A perusal of the Certificate of Live Birth reveals that appellant was born on May 7, 1979, confirming his claim that he was only seventeen (17) years old at the time the crime was committed on October 7, 1996. Thus, the privileged mitigating circumstance of minority under paragraph 2, Article 68 of the Revised Penal Code^[11] should be appreciated in favor of appellant and the penalty next lower than that prescribed by law should be imposed on him. Accordingly, the penalty for the crime committed by appellant should only be reclusion perpetua.