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whether he wants to be issued stock certificates, and a stockholder may opt not to be issued a certificate. In *Won vs. Wack Wack Golf and Country Club, Inc.*, 104 Phil. 466 (1958), we held that considering that the law does not prescribe a period within which the registration should be effected, the action to enforce the right does not accrue until there has been a demand and a refusal concerning the transfer. In the present case, petitioner's complaint for *mandamus* must fail, not because of laches or estoppel, but because he had alleged no cause of action sufficient for the issuance of the writ.

WHEREFORE, the petition is *DENIED* for lack of merit. The decision of the Court of Appeals, in CA-G.R. SP No. 46692, which set aside that of the Securities and Exchange Commission *En Banc* in SEC-AC No. 545 and reinstated the order of the Hearing Officer, is hereby *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Austria-Martinez, and *Callejo, Sr., JJ.*, concur.

EN BANC

[G.R. Nos. 146452-53. December 10, 2002]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARTEMIO D. OCHEA,** *appellant.*

SYNOPSIS

For automatic review by the Supreme Court is the decision of the Regional Trial Court which found Artemio D. Ochea guilty beyond reasonable doubt of one act of rape in its qualified form,

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and imposed upon him the penalty of death. In convicting appellant, the court *a quo* gave full faith and credence to the testimony of private complainant.

The automatic review was partly meritorious. Because the prosecution failed to prove the minority of private complainant when the rape was committed, the proper penalty should be *reclusion perpetua*, not death. The court found that the clear and convincing testimony of private complainant, narrating how she was raped by the accused, had the ring of truth. Bare denial of the accused cannot prevail over the direct, positive and categorical assertion of private complainant. Hence, appellant was convicted of simple rape only, and the penalty of death was reduced to *reclusion perpetua*.

SYLLABUS

1. **CRIMINAL LAW; RAPE; PRINCIPLES WHICH GUIDE THE COURT IN REVIEWING CASES THEREOF.**— This Court has always been guided by a number of precepts in reviewing cases of rape. *First*, an accusation of rape can be made with facility. It may be difficult to prove, but it is even more difficult for the accused, though innocent, to disprove. *Second*, the complainant's testimony must be scrutinized with extreme caution. This principle finds its basis in the very nature of the crime, where usually only two persons are involved. *Third*, the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. **ID.; ID.; MINORITY OF THE VICTIM AS QUALIFYING CIRCUMSTANCE, NOT ESTABLISHED IN CASE AT BAR.**— When the minority of the victim is alleged in the information as a qualifying circumstance in an incestuous rape, it must be proved with as much certainty and clearness as the crime itself. The failure to show it sufficiently is fatal to a prosecution for rape in its qualified form and consequently bars the imposition of the death penalty. The prosecution must establish the minority of the victim at the time of the rape by presenting independent proof, such as her duly authenticated certificate of live birth, baptismal certificate or any other authentic document proving her age.

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3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; STRENGTHENED, NOT DESTROYED BY HONEST INCONSISTENCIES OF MINOR SIGNIFICANCE.**— Errorless testimonies cannot be expected from witnesses, especially when they are recounting details of a harrowing experience. Because of the lapse of time and the treachery of human memory, those who tell the truth are not always expected to give perfectly concise testimonies. Honest inconsistencies in matters of minor significance are in accord with human nature and experience and should serve to strengthen — not destroy — the credibility of the complainant of such a shocking crime.

4. **ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, NOT DISTURBED BY THE APPELLATE COURT, AS A RULE.**— As a general rule, the factual findings of the trial court will not be disturbed by an appellate court absent any clear showing that the lower court has overlooked certain substantial and valuable facts which, if considered, might affect the outcome of the case.

5. **ID.; ID.; DENIAL; CANNOT OUTWEIGH POSITIVE TESTIMONY; CASE AT BAR.**— Bare denial cannot prevail over the direct, positive and categorical assertion of private complainant. It is inherently a weak defense that cannot outweigh positive testimony. An affirmative testimony, especially when it comes from the mouth of a credible witness, is far stronger than a negative one. Moreover, when a woman, more so if she is a minor, says she has been raped, she says in effect all that is necessary to show that rape has been committed. And if her testimony meets the test of credibility, the accused may be convicted on that sole basis.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

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DECISION

PANGANIBAN, *J.*:

The failure of the prosecution to prove beyond reasonable doubt the minority of the victim at the time the crime happened bars a conviction for rape in its qualified form. Thus, the proper penalty is *reclusion perpetua*, not death.

The Case

For automatic review by this Court is the October 24, 2000 Decision[1] of the Regional Trial Court (RTC) of Naval, Biliran (Branch 37-Caibiran) in Criminal Case Nos. CB-99-101 and CB-99-103. The RTC found Artemio D. Ochea guilty beyond reasonable doubt of one act of rape in its qualified form (in Criminal Case No. CB-99-101) and imposed upon him the penalty of death. The decretal portion of the Decision reads:

"WHEREFORE, judgment is hereby rendered finding the accused ARTEMIO D. OCHEA, *alias* Yutem, guilty beyond reasonable doubt of only one count of Rape committed on June 12, 1999 as charged him under Criminal Case No. CB-99-101 and, as such, is hereby sentenced to an indivisible penalty of death; to indemnify the offended party the amount of Fifty Thousand (₱50,000.00) Pesos; and to pay the costs. For want of evidence in Criminal Case No. CB-99-103, he is ordered acquitted.

"SO ORDERED."[2]

Appellant was indicted in two Informations for rape worded as follows:

Criminal Case No. CB-99-101

"That on or about the 12th day of June 1999, at about 11 o'clock in the evening, more or less at their residence at Sitio Kapayas, Brgy. Bunga, Cabucgayan, Biliran Province, Philippines, and within the jurisdiction of this Honorable Court, said accused, being an uncle of

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[1] *Rollo*, pp. 10-19; written by Judge Pepe P. Domael.

[2] RTC Decision, p. 10; *rollo*, p. 19.

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the victim, with lewd designs, force, and intimidation, did then and there poke a knife at a 12-year old APOLONIA O. DADOL's throat, box the head and forehead and [then] and there wilfully and unlawfully succeeded in having sexual intercourse with the said Apolonia O. Dadol against her will to her damage and prejudice."[3]

Criminal Case No. CB-99-103

"That on or about the 13th day of June 1999, at about 11:00 o'clock in the evening more or less at their residence at Sitio Kapayas, Brgy. Bunga Cabucgayan, Biliran, Province, Philippines, and within the jurisdiction of this Honorable Court, said accused, being an uncle of the victim, with lewd designs, force and intimidation, did then and there poke a knife at a 12 year old APOLONIA O. DADOL's throat, box the head and forehead and there and there willfully and unlawfully succeeded in having sexual intercourse with the said Apolonia O. Dadol against her will to her damage and prejudice."[4]

When arraigned on September 8, 1999, appellant, with the assistance of his counsel,[5] pleaded not guilty[6] After pre-trial and trial, the RTC rendered the assailed Decision.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"*Apolonia O. Dadol*, private complainant, at the time of the rape, was a 14-year old Grade IV student. Accused-appellant, *Artemio D. Ochea, alias Yutem*, is her uncle, being the brother of her mother, Julita. The three lived together in the same house at Sitio Kapayas, Brgy. Bunga, Cabu[cg]ayan, Biliran. Apolonia's father is already dead. Her mother had some mental relapses when she gave birth to Apolonia. Appellant is the one supporting private complainant and her mother.

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[3] Records, p. 1; *rollo*, p. 4; signed by Provincial Prosecutor Victorino J. Salloman. This was dated August 11, 1999.

[4] *Rollo*, p. 43.

[5] Atty. Clemencio S. Sabitsana Jr.

[6] See Order dated September 8, 1999; records, p. 27.

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"On June 12, 1999 at 11:00 o'clock in the evening, more or less, Apolonia (private complainant) was sleeping with her mother, Julita, and her uncle, appellant Artemio, in their one room house. Artemio, with a knife on his right hand poked it [at] Apolonia's throat, removed her shorts and panty, and had sexual intercourse with her. Apolonia's effort to ward off the sexual advances of her uncle, who was continually pointing the knife at her, proved futile, even as she sustained wounds in her left palm and right thigh. The rape was repeated by the accused the following night, June 13, 1999.

"On June 14, 1999, appellant again wanted to have sex with Apolonia but as she shouted, 'Enough because that is already painful,' his attempt was unsuccessful. Her shouts were heard by her relative, Caridad Bohol Genoguin, who lived nearby. Upon hearing Apolonia, Caridad went out of her house and saw people carrying *bolos* and torches. She then instructed these persons to follow the person dragging someone and to identify him. She was later told by her neighbors that it was appellant Artemio dragging Apolonia.

"Early the following morning, Caridad, together with the chief *tanod* and another *tanod*, went to the house of one Maming Lacaba where appellant was having a drinking spree. Apolonia was also there. Caridad inquired from Apolonia about what had happened to her the previous night, whether appellant tried to have sex with her. Apolonia told her that appellant raped her on June 12 and 13, 1999.

"Caridad brought Apolonia to the Rural Health Unit, but since there was no doctor available at that time, they proceeded to the house of one Mrs. Cordeta of the DSWD. Later that afternoon, Apolonia was physically examined by Dr. Romana Atok, the Medical Health Officer of the Municipality of Cabu[cg]ayan. The incident was also reported to the Police station of Cabucgayan, Biliran for the filing of a case in court."[7] (Citations omitted)

Version of the Defense

Appellant, on the other hand, narrates his version of the facts thus:

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[7] Appellee's Brief, pp. 5-8; *rollo*, 86-89; signed by Assistant Solicitors General Carlos N. Ortega and Rodolfo G. Urbiztondo and by Solicitor Encebrin E. Javier-Inanuran.

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"Accused **ARTEMIO OCHEA**, testifying on his behalf, flatly denied that he had raped Apolonia Dadol on the nights of June 12 and 13, 1999 respectively. The accused, however, admitted x x x having whipped and hurt Apolonia with a piece of wood on the night of June 14, 1999, when the latter failed to follow his instruction of washing the dishes after supper."[8] (Citations omitted)

Ruling of the Trial Court

In convicting appellant, the court *a quo* gave full faith and credence to the testimony of private complainant. According to the trial court, when the alleged rape victim — most especially if she is still a minor — testifies that she has been raped, she says in effect all that is necessary to prove the commission of the crime. Thus, it gave no significance to the slight inconsistencies in the testimony of herein private complainant as to the exact dates when the rapes were committed. It added that her failure to recall some minor details of the crime suggested spontaneity and negated any fabrication on her part.

Hence, this automatic review.[9]

The Issues

Appellant submits for our consideration the following alleged errors committed by the trial court:

"I.

The court *a quo* gravely erred in finding the accused guilty beyond reasonable doubt of the crime of rape despite the glaring inconsistencies and improbabilities in the testimony of the alleged victim.

"II.

The court *a quo* erred in not giving credence to the testimonial evidence of the defense.

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[8] Appellant's Brief, p. 6; *rollo*, p. 47; signed by Attys. Arceli A. Rubin, Amelia C. Garchitorena, Marvin R. Osias and Nestor P. de los Reyes — all of the Public Attorney's Office.

[9] This case was deemed submitted for resolution on April 30, 2002, upon this Court's receipt of appellee's Brief. Appellant's Brief was received by this Court on December 7, 2001. The filing of a Reply Brief was deemed waived.

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"III.

The court *a quo* gravely erred in imposing the supreme penalty of death upon the accused despite the failure of the prosecution to prove the real age of the alleged victim and her relationship to the accused."[10]

The Court's Ruling

The automatic appeal is partly meritorious. Because the prosecution failed to prove the minority of private complainant when the rape was committed, the proper penalty is *reclusion perpetua*, not death.

First Issue:
Alleged Inconsistencies

Appellant claims that the trial court gravely erred in convicting him of qualified rape despite various inconsistencies in the testimony of private complainant.

We do not agree.

This Court has always been guided by a number of precepts in reviewing cases of rape. *First*, an accusation of rape can be made with facility. It may be difficult to prove, but it is even more difficult for the accused, though innocent, to disprove. *Second*, the complainant's testimony must be scrutinized with extreme caution. This principle finds its basis in the very nature of the crime, where usually only two persons are involved. *Third*, the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[11]

Based on these principles, we have carefully reviewed the evidence, and found that the inconsistencies alluded to are minor and insignificant. They do not impinge upon the assertion of complainant that she was raped. Errorless testimonies cannot be expected from witnesses, especially when they are recounting

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[10] Appellant's Brief, p. 1; *rollo*, p. 42. Original in upper case.

[11] *People v. Restoles*, 339 SCRA 40, August 25, 2000; *People v. Gabris*, 258 SCRA 663, July 11, 1996.

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details of a harrowing experience.[12] Because of the lapse of time and the treachery of human memory, those who tell the truth are not always expected to give perfectly concise testimonies. Honest inconsistencies in matters of minor significance are in accord with human nature and experience and should serve to strengthen — not destroy — the credibility of the complainant of such a shocking crime.[13]

The clear and convincing testimony of private complainant, narrating how she was raped by the accused on June 12, 1999, had the ring of truth. She testified thus:

"PROS. JOBOCO:
DIRECT EXAMINATION

x x x x x x x x x

Q At about 11:00 o'clock of June 12, 1999, while you were sleeping [side by side,] how did Yutem, you said[,] fucked you?
A He removed my clothes.

Q What was removed from you, what in particular attire?
A He removed my shorts and my panty.

Q Who removed, you or Yutem?
A Yutem.

Q When Yutem was able to remove your short[s] and panty, how about Yutem what was he doing or was he still with pants or anything else?
A Yutem was already undressed.

Q Did you allow yourself to be fucked by your uncle without any resistance?
A He got mad.

Q When he got mad, did you just accept?
A Yes sir.

Q Was he with bare hands only or anything else[?]
A He had.

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[12] *People v. Ibay,* 233 SCRA 15, June 8, 1994.

[13] *People v. Paule*, 261 SCRA 649, September 11, 1996.

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Q What was he having at that time?
A He was holding a knife.

Q Where was the knife held by Yutem?
A He was holding the knife at the right hand.

Q And where was this knife directed to?
A It was pointed at me.

Q Where in what particular part of your body?
A Yutem pointed the knife at my throat.

COURT INTERPRETER:

The witness pointing to her throat.

PROS. JOBOCO:

Q When the knife pointed to your throat, what did you do?
A I tried to ward off the knife.

Q When you tried to ward off the knife, what happened to your hands?
A My hands got wounded.

Q Can you still show to the Court which parts of your hands were wounded?

COURT INTERPRETER:

A The witness is pointing to the left forefinger showing the three scars.

PROS. JOBOCO:

Q Aside from those three scars that you have shown, were you wounded in other parts of your body?
A There is still one more.

Q Will you please describ[e] the scar?

COURT INTERPRETER:

The witness is pointing [to] the right lower thigh, the scar is about 1 inch in length and about 1/4 of an inch in width.

PROS. JOBOCO:

Q Why did Yutem must result to wound you?

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ATTY. PONFERRADA:

Objection Your Honor, [s]he [is not] competent.

PROS. JOBOCO:

She is answering already, Your Honor.

ATTY. PONFERRADA:

Yes, I am objecting because [s]he cannot read in the mind why is it necessary that Yutem wounded the victim.

COURT:

It is also possible that she was wounded because she was resisting. That may be a possible answer from the witness, but, generally, when she [was] asked why Yutem wounded her, this witness is incompetent. But [for] the purposes of the record, let the witness to answer the question? If she can.

COURT INTERPRETER:

Q Why is it that Yutem wounded you before he fucked you?
A I did not acced[e] to his advances, so, he wounded me."[14]

x x x x x x x x x

ATTY. PONFERRADA:
CROSS-EXAMINATION

"Q What you can remember here is that the first time with the accused had sexual intercourse was on June 12, 1999?
A Yes sir.

Q How did you feel when Yutem had sexual intercourse?
A I felt pain.

Q Pain in what part?
A I felt pain in my vagina.

Q Did you observe if there was blood that came out from your vagina?
A Yes sir.

Q By the way, how long did this Yutem had sexual intercourse?

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[14] TSN, October 21, 1999, pp. 7-9.

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x x x x x x x x x

COURT INTERPRETER:

Q On that June 12, how many minutes or seconds when Yutem fucked you?
A I was fucked until 12:00.

ATTY. PONFERRADA:

Q After Yutem had sexual intercourse with you, what did you do?
A I cried.

Q You cried because?
A Because I felt pain."[15]

As a general rule, the factual findings of the trial court will not be disturbed by an appellate court absent any clear showing that the lower court has overlooked certain substantial and valuable facts which, if considered, might affect the outcome of the case.[16] Appellant has not given us sufficient reason to depart from this principle.

Second Issue:
The Defense of Denial

During his testimony, appellant denied raping his niece. However, he admitted that he had whipped her with a piece of wood on the night of June 14, 1999, because of her failure to follow his instruction to wash the dishes after supper.

Bare denial cannot prevail over the direct, positive and categorical assertion of private complainant. It is inherently a weak defense that cannot outweigh positive testimony.[17] An

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[15] *Id.*, pp. 17-18.

[16] *People vs. Barrozo*, G.R. Nos. 138726-27, July 3, 2002; *People v. Baybado*, 335 SCRA 712, July 14, 2000; *People v. Tundag*, 342 SCRA 704, October 12, 2000; *People v. Librando*, 335 SCRA 232, July 6, 2000.

[17] *People v. Acabo*, 259 SCRA 75, July 17, 1996.

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affirmative testimony, especially when it comes from the mouth of a credible witness, is far stronger than a negative one.[18]

Moreover, when a woman, more so if she is a minor, says she has been raped, she says in effect all that is necessary to show that rape has been committed. And if her testimony meets the test of credibility, the accused may be convicted on that sole basis.[19] Since private complainant directly, positively and categorically asserted that she had been raped by appellant, despite his vehement denial, we affirm the RTC's factual finding affirming her testimony.

Third Issue:
Proper Penalty

Although the prosecution was able to establish that appellant had raped private complainant on July 12, 1999, it failed to prove her age at the time the crime happened. When the minority of the victim is alleged in the information as a qualifying circumstance in an incestuous rape, it must be proved with as much certainty and clearness as the crime itself. The failure to show it sufficiently is fatal to a prosecution for rape in its qualified form and consequently bars the imposition of the death penalty.[20]

The prosecution must establish the minority of the victim at the time of the rape by presenting independent proof, such as her duly authenticated certificate of live birth,[21] baptismal certificate[22] or any other authentic document proving her age.[23]

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[18] *People v. Barrozo, supra*; citing *People v. Cambi*, 333 SCRA 305, June 8, 2000.

[19] *People v. De los Reyes*, 327 SCRA 56, March 1, 2000; *People v. Lao*, 249 SCRA 75, October 6, 1995.

[20] *Ibid.*; *People v. Javier*, 311 SCRA 122, 141, July 26, 1999.

[21] *People v. Cula*, 329 SCRA 101, March 28, 2000.

[22] *People v. Veloso*, 330 SCRA 602, April 12, 2000; *People v. Vargas*, 257 SCRA 603, June 26, 1996.

[23] *People v. Bali-Balita*, 340 SCRA 450, September 15, 2000.

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Citing *People v. Remudo*,[24] the OSG argues that the birth certificate or any other official document is no longer necessary to establish minority.

We clarify. In *Remudo*, the victim's minority was indisputably proven by the prosecution and unequivocally admitted by the accused himself. On the other hand, an examination of the records of the case at bar reveals that no such admission was made by appellant.

In *People v. Pruna*,[25] the Court said that "best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party."[26] But in the absence of that certificate, similar authentic documents — such as a baptismal certificate, school records showing the victim's date of birth, or the testimony of the mother or another relative concerning the girl's age, or the testimony of the private complainant herself — will suffice to prove her age.[27]

In the case at bar, no certificate of live birth or a similar authentic document was presented by the prosecution to show the age of private complainant. Neither did she, her mother or any other relatives testify thereto. This being the case, appellant is liable for simple rape only.

We also modify the award of damages. Aside from the civil indemnity granted to victims of rape, moral damages are awarded to them without need of specific proof of their mental, physical and psychological trauma, which are already presumed from the fact of rape.[28] Also, the proven aggravating circumstance of relationship justifies the grant of exemplary damages consistent with case law.[29]

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[24] G.R. No. 127905, August 30, 2001.

[25] G.R. No. 138471, October 10, 2002.

[26] *Id.*, p. 22, per Davide, *CJ.*

[27] *Id.*, pp. 22-23.

[28] *People v. Agravante*, G.R. Nos. 137297 & 138547-48, December 11, 2001; *People v. Prades,* 293 SCRA 411, July 30, 1998.

[29] *People v. Alipar*, G.R. No. 137282, March 16, 2001.

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WHEREFORE, the automatically appealed Decision is hereby ***AFFIRMED*** with the ***MODIFICATION*** that appellant is ***CONVICTED*** of simple rape only. Thus, the penalty of death is reduced to *reclusion perpetua*. Appellant is ordered to pay the victim the amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000 as exemplary damages. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

EN BANC

[G.R. No. 146927. December 10, 2002]

MARCELO G. TUAZON, JR. and RODOLFO M. AGDEPPA, *petitioners, vs.* **GUILLERMO GODOY and ROMMEL TRINIDAD,** *respondents.*

SYNOPSIS

Petitioner Marcelo G. Tuazon, Jr. is the proprietor of Celcon Construction (Celcon), a private firm, while co-petitioner Rodolfo M. Agdeppa is Tuazon's Attorney-In-Fact. Respondents Guillermo A. Godoy and Rommel Trinidad are the Officer-In-Charge and the Principal Engineer, respectively, of the National Housing Authority (NHA) Maharlika Village Project in Taguig, Metro Manila. Petitioners alleged in their petition that during the construction of the Maharlika Project, they encountered several problems in dealing with the NHA officials, specifically respondents. Before acting on Celcon's request for a 15% advance payment, OIC Godoy made several unreasonable demands. He deliberately withheld Celcon's application for Change Order/