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EN BANC

[G.R. No. 148821. July 18, 2003]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JERRY FERRER,** *appellant.*

SYNOPSIS

Appellant herein was charged with the rape of his 11-year-old stepdaughter of his common-law wife. After arraignment, he was temporarily released for medical treatment to the custody of Ustadj Sinoding Langcoa, a trusted member of the society. During the pre-trial, appellant and his lawyer failed to appear. Trial *in absentia* followed. The trial court considered appellant as having jumped bail since he did not show up in court. Thus, the trial court rendered a decision finding appellant guilty beyond reasonable doubt of the crime charged and imposed upon him the death penalty. In his appellant's brief, appellant assailed the decision as violative of the Constitution. He argued that the decision failed to distinctly point out the applicable law on which it was based and that there was nothing in the decision that would show how the court arrived at its conclusion convicting him of the crime charged.

The Supreme Court set aside the decision of the trial court. The records of the case were remanded to said court for further proceedings and for proper rendition of judgment. The court found that the decision of the trial court failed to comply with the rudimentary requirements of due process and the constitutional provisions that vouchsafe the same. The five-page decision failed to express therein clearly and distinctly the facts and the law on which it was based. After a summation of the evidence presented, which consisted only of the prosecution's evidence, considering that the defense failed to adduce evidence in its behalf, the trial court immediately declared, in a most sweeping manner, the guilt of the appellant. The Court also found that the appellant was deprived of his constitutional right to counsel.

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SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO COUNSEL; VIOLATED IN CASE AT BAR.** — Appellant was deprived of his constitutional right to counsel as enshrined in Section 14, Article III, of the 1987 Constitution, *viz.*: In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. This constitutional requirement is also reflected in the Revised Rules of Criminal Procedure particularly in Section 1(c), Rule 115 thereof, which provides that it is a right of the accused at the trial to be present and defend in person and by counsel at every stage of the proceedings, from the arraignment to the promulgation of the judgment.

2. **ID.; ID.; ID.; ID.; ID.; PROCEEDS FROM THE FUNDAMENTAL PRINCIPLE OF DUE PROCESS.** — The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily. . . . It may be stressed that the right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer

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of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.

3. **LEGAL ETHICS; ATTORNEYS;COUNSEL *DE OFICIO*; DUTIES; CONSTRUED.** — No lawyer is to be excused from this responsibility except only for the most compelling and cogent reasons. While Atty. Alonto and Atty. Macabanding faced the daunting task of defending an accused who had jumped bail, this unfortunate development is not a justification to excuse themselves from giving their hearts and souls to the latter's defense. The exercise of their duties as *counsel de oficio* meant rendering full meaning and reality to the constitutional precepts protecting the rights of the accused. A counsel *de oficio* is expected to do his utmost. A mere *pro-forma* appointment of a counsel *de oficio* who fails to genuinely protect the interests of the accused merits disapprobation. The exacting demands expected of a lawyer should be no less than stringent when one is a counsel *de oficio.* He must take the case not as a burden but as an opportunity to assist in the proper dispensation of justice. We stressed that Canon 18 of the *Code of Professional Responsibility* requires every lawyer to serve his client with utmost dedication, competence and diligence. He must not neglect a legal matter entrusted to him, and his negligence in this regard renders him administratively liable. In said case, the defense lawyers did not protect, much less uphold, the fundamental rights of the accused. Instead, they haphazardly performed their function as counsel *de oficio* to the detriment and prejudice of the accused, however guilty he might have been found to be after trial. Inevitably, we advised them to adhere closely and faithfully to the tenets espoused in the *Code of Professional Responsibility*; otherwise, commission of any similar act in the future will be severely sanctioned.

APPEARANCES OF COUNSEL

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

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DECISION

DAVIDE, JR., *C.J.*:

Before us for automatic review[1] is the decision[2] of 28 November 2000 of the Regional Trial Court of Lanao del Sur, Branch 9, Marawi City, in Criminal Case No. 2969-98, finding appellant Jerry Ferrer guilty beyond reasonable doubt of the crime of rape committed against Mary Grace Belonio and sentencing him to suffer the penalty of death and to pay the sum of ₱100,000 as moral damages and ₱30,000 as attorneys fees, as well as the costs.

Appellant was tried under an information[3] for rape which was filed on 17 February 1998. Its accusatory portion reads:

> That on or sometime in October 1995 and continuously thereafter in the Municipality of Wao, Province of Lanao del Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd design, did then and there willfully and feloniously and by means of force, violence and intimidation and taking advantage of his ascendancy as stepfather of an eleven (11) years [*sic*] old and studying Grade V [*sic*] at the Katutungan Elementary School by the name of Mary Grace Pataksil Belonio by pointing [to] her a scythe (garab) and ordering her to remove her clothes and then to lay down, remove her panty and successfully have [*sic*] sexual intercourse with her against her will and consent and continuously repeated the same thereafter when she is alone at home and while her mother is out.
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> CONTRARY to and in violation of Article 335, par. 3 of the Revised Penal Code.

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[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659, entitled *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, other Special Penal Laws, and for Other Purposes*, which took effect on 31 December 1993 (*People v. Simon*, G.R. No. 93028; 29 July 1994, 234 SCRA 555.)

[2] Original Record (OR) 174-178; *Rollo*, 11-55 Per Judge Abdulhakim Amer R. Ibrahim.

[3] OR, 1.

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When arraigned on 16 June 1998, appellant pleaded not guilty.[4]

Subsequently, appellant, through counsel Atty. Moh'd Hassan Macabanding of the Public Attorney's Office (PAO), filed an undated Urgent Motion for Medical Treatment. He alleged that he was suffering from an unknown internal sickness which had already claimed the life of another detention prisoner. Afraid that he would suffer the same fate, appellant prayed for his immediate medical treatment at the Provincial or City Hospital.[5]

On 22 June 1998, the trial court granted appellant's Urgent Motion for Medical Treatment and ordered his temporary release to the custody of Ustadj Sinoding Langcoa, a trusted member of the society, who has the responsibility of bringing the former to any government physician or to the clinic of Dr. Saprola Dipatuan. The court also ordered appellant to submit to the court the findings and record of his treatment by Dr. Dipatuan. It likewise set the pre-trial and the trial of the case on 21 and 22 July 1998,[6] respectively.

On the scheduled 21 July 1998 pre-trial hearing, appellant and his PAO counsel, Atty. Moh'd Hassan Macabanding, failed to appear in court. Assistant Provincial Prosecutor Abubakar Barambangan vigorously opposed the motion for postponement[7] which was filed by Atty. Macabanding the previous day, 20 July 1998. In denying the motion for postponement, the trial court took into consideration of the fact that Prosecutor Barambangan was not notified of the motion, the failure of appellant and Atty. Macabanding to appear at the pre-trial despite due notice and appellant's blatant disregard of its order dated 22 June 1998, requiring him to submit the medical findings of Dr. Dipatuan. The trial court then ordered the immediate issuance of a warrant to arrest appellant and allowed the prosecution to present evidence *in absentia*.[8]

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[4] *Id.*, 27.

[5] *Id.*, 30.

[6] OR, 31-32.

[7] *Id.*, 38.

[8] *Id.*, 38-39.

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Trial *in absentia* followed. The prosecution presented as witnesses Glorita Tugade, Mary Grace Belonio, Felipa Pataksil Belonio and Dr. Benjamin B. Bajarla. Their testimonies tended to establish the facts we now narrate.

Mary Grace was born on 6 July 1984 to spouses Felix Belonio and Felipa Pataksil Belonio at Banisilan, North Cotabato. [9] The Belonio spouses were lawfully married sometime in 1978 [10] and out of such union, four (4) children were born, one of whom is Mary Grace. The couple, however, separated. When Mary Grace was barely one (1) year and six (6) months old, Felipa Belonio started to live-in with appellant at Mother Catutungan, Wao, Lanao del Sur. [11] She brought her children with her.

From then on, life for Felipa Belonio started at 3:00 a.m. to peddle her *sari-sari* items and ended at 7:00 p.m. when she returned home. In contrast, appellant was a freelance blacksmith who usually stayed home.[12]

Sometime in October 1995, a Monday, when Mary Grace was already 11 years old, she was to experience the first of a series of sexual abuses from appellant. Around 2:00 p.m., appellant called Mary Grace to go upstairs at their house. With appellant's previous lascivious acts etched in her mind, Mary Grace hesitated but she had no choice except to obey because appellant had placed a scythe on her neck. Against Mary Grace's pleas of "don't kill me daddy," appellant ordered her to undress. Mary Grace did not remove her clothes. Furious by her disobedience, appellant pulled down her shorts and panty. She resisted and covered her private parts with her hands. Her efforts, however, proved futile. Still threatening her with the scythe, appellant pushed her to lie down, pulled out his penis, placed himself on top of her and then inserted his penis into her vagina. Thereafter,

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[9] Birth Certificate, Exhibit "A", OR, 92.

[10] TSN, 22 July 1998, 16.

[11] TSN, 22 July 1998, 18.

[12] *Id.*, 13-14; 18-19.

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he released her. She felt pain in her vagina when she was dressing up.[13]

Friday night of the same week, while Felipa Belonio was visiting her sister Glorita Tugade, appellant again had carnal knowledge of Mary Grace. She felt excruciating pain in her vagina.

Thus, from October 1995 to 11 December 1997, appellant sexually abused Mary Grace, repeatedly and continuously. He imposed his lechery on her three to four times a week whenever her mother was out of the house.[14]

Mary Grace initially kept to herself the sexual abuses as she was afraid that appellant might make good his threat to kill her mother.[15] But Mary Grace finally found the courage to reveal to her Aunt Glorita Tugade what appellant had done to her. It was on 14 December 1997 when Glorita Tugade and her brother-in-law Pablito Malagamba confronted Felipa Belonio about Mary Grace's revelation. Thereafter, they reported the incident to the Wao Police Headquarters as a result of which appellant was immediately arrested. [16]

On 17 December 1997, Dr. Benjamin Bajarla, Medical Officer IV of the Wao District Hospital, Lanao del Sur, physically examined Mary Grace. He found in Mary Grace's hymen old and healed lacerations at 3, 6 and 9 o'clock positions [17] which he opined could have been caused by sexual intercourse. He said that Mary Grace told him that the last sexual abuse took place on 11 December 1997.[18]

On 23 August 1999, the prosecution made its formal offer of evidence.[19] Thereafter, the trial court set the dates for the

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[13] *Id.*, 9-11.

[14] *Id.*, 12.

[15] TSN, 22 July 1998, 12.

[16] *Id.*, 4-6.

[17] Medical Certificate, Exhibit "C", OR, 94.

[18] TSN, 9 August 1999, 5-15.

[19] OR, 89-91.

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presentation by the defense of its evidence. Notices were sent for the following scheduled hearing dates: 23 September 1999,[20] October 1999,[21] 29 November 1999,[22] 31 January 2000,[23] 7 April 2000,[24] 24 April 2000,[25] 23 May 2000,[26] June 2000,[27] and 24 July 2000.[28] However, neither appellant nor his counsel appeared on said dates. Thus, at the hearing of 24 July 2000, the trial court granted the prosecution's motion to submit the case for decision, since the prosecution had long rested its case and the defense had no witnesses to present. The trial court also considered appellant as having jumped bail since he did not show up in court.[29]

Thus, the trial court rendered on 28 November 2000, a decision which consisted of a five-page summary of the testimonial and documentary evidence and which abruptly concluded, that based on said evidence, the prosecution proved the guilt of appellant beyond reasonable doubt requiring the imposition of the death penalty.

In his Appellant's Brief,[30] appellant assails the decision of the trial court as *res ipsa loquitor* violative of Section 14, Article VIII of the Constitution. He argues that the decision failed to distinctly point out the applicable law on which it is based and that there is nothing in the decision that would show how the trial court arrived at its conclusion convicting him of the crime charged.

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[20] *Id.*, 98.

[21] *Id.*, 100.

[22] *Id.*, 101.

[23] *Id.*, 102.

[24] *Id.*, 103.

[25] *Id.*, 104.

[26] *Id.*, 105.

[27] *Id.*, 106.

[28] *Id.*, 107.

[29] OR, 108.

[30] *Rollo*, 30-42.

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Appellant also asserts that granting without admitting that he committed the alleged rape, the trial court erred in imposing the death penalty. He claims that while the prosecution may have proved that Mary Grace was 11 years old at the time of the rape, it failed to prove that he was her stepfather as alleged in the information.

In the Appellee's Brief,[31] the Office of the Solicitor General (OSG) contends that the evidence on record support appellant's conviction for statutory rape. It maintains that the prosecution successfully proved that in October 1995, appellant had carnal knowledge of Mary Grace who was then 11 years old.

The OSG submits, however, that the trial court erred in imposing the death penalty. While the information alleged that appellant was Mary Grace's stepfather, the evidence adduced however showed that he was merely the common-law spouse of Mary Grace's mother. Under these circumstances, the penalty of *reclusion perpetua* and not the death penalty should be imposed upon him.

Similarly, the OSG asserts that the trial court failed to award civil indemnity in the amount of ₱50,000 and exemplary damages in the amount of ₱20,000. The OSG insists that exemplary damages should be awarded considering that the generic aggravating circumstance of abuse of confidence is present as seen in the relation of trust and confidence between Mary Grace and appellant. While abuse of confidence could not have been properly appreciated in the determination of the appropriate penalty, it was nonetheless proven at the trial. As such, it should be the basis of the award for exemplary damages. As to the award of ₱100,000 as moral damages, the OSG proposes its reduction to ₱50,000.

Upon careful examination of the records of the case, we find that the decision of the trial court failed to comply with the rudimentary requirements of due process and the constitutional provisions that vouchsafe the same.

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[31] *Id.*, 54-74.

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Let us first quote in full the trial court's decision.

Accused Jerry Ferrer is charged of the commission of the crime of Rape committed as follows:

xxx [Information is quoted] xxx

On arraignment, the accused assisted by his counsel pleaded not guilty.

In the trial after the termination of the pre-trial, the prosecution presented both testimonial and documentary evidences consisting of the testimonies of Mrs. Glorieta Tugade, Mary Grace Belonio, Felipa Belonio and Dr. Benjamin Bajarla as well as Exhibits "A" (Certificate of Live Birth of the victim); "B" (Baptismal Certificate); "C" (Medical Certificate showing laceration of hymen; "D" (Microbiological result of such examination; and "E" (Sketch of the Female External Genetalia).

Trial was conducted *in absentia* in view of the escape from confinement of the accused.

From the evidence, it appears that Mary Grace Belonio was born on July 6, 1984, at Banisilan, North Cotabato. Her father is Felix Belonio while her mother is Felipa Pataksil Belonio. Said spouses were lawfully married to each other in 1978 and out of such union, four (4) children were born one of whom is Mary Grace (the victim in this case). The couple were however separated and when Mary Grace was barely one (1) year and six (6) months old, Felipa started living as a common law wife of the accused Jerry Ferrer together with Mary Grace and her other children in one house at Mother Catutungan, Wao, Lanao del Sur. Felipa was a "*sari-sari*" item vendor and normally left home as early as 3:00 o'clock in the morning for said business and return home at 7:00 o'clock in the evening. Jerry Ferrer (common law husband) is a blacksmith and stay home with the child victim Mary Grace.

In October of 1995 while the mother (Felipa) was away attending to her business, the accused Jerry started his criminal design to have carnal knowledge by committing rape on Mary Grace. It was Monday afternoon at 2:00 o'clock in October 1995 that Jerry called his step-daughter Mary Grace [to] go upstairs of their house at Catutungan, Wao, Lanao del Sur. With the use of his scythe in intimidating the girl, Jerry started touching the girl who was resisting but was no match to the strength of her step-father who was at the same time placing his scythe at the neck of the girl to prevent

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resistance. The accused undressed the girl by pulling the latter's short pant[s] down and her panty. The accused pushed the girl to lie down. The accused, then pulled down his short pant[s] and took out his penis into the girl's vagina. The girl felt the pain that day. On Friday of that same week in the evening while his common law wife Felipa (mother of the victim) was away, the accused succeeded in consummating the crime of rape upon Mary Grace. The accused repeatedly did the sexual assault upon Mary Grace until in 1977, the victim got the courage to reveal the said rape to her mother that resulted in the filing of this case. The Medical Certificate issued by Dr. Benjamin Bajarla following [the] medical and physical examination on the victim on December 17, 1997 showed laceration of the girl's hymen at 3:00 o'clock; 6 o'clock and 9 o'clock positions.

It further appears from the evidence that Mary Grace was born on July 6, 1984 and [that] the crime of rape was committed upon her by the accused in 1995 and [the] subsequent year. The victim was therefore 11 years old at the time of the commission of rape upon her.

This Court was constrained to decide this case after trial in absentia for reason of the accused escaping from imprisonment after arraignment. From all the foregoing evidences, the prosecution proved the guilt of the accused beyond reasonable doubt.

WHEREFORE, judgment is hereby rendered:

1. Convicting the accused JERRY FERRER of the crime of Rape committed upon the person of his stepdaughter Mary Grace Belonio who was only 11 years old at the time of the commission of said crime.

2. Sentencing the said accused JERRY FERRER of the supreme penalty of death under Art. 335 of the Revised Penal Code.

3. Ordering the accused JERRY FERRER to pay to the victim the sum of One hundred thousand (₱100,000) Pesos in moral damages; and the further sum of Thirty thousand (₱30,000) Pesos as Attorney's fee and the costs.[32]

Violating the Constitutional requirements, the five-page decision failed to express therein clearly and distinctly the facts and the

[32] OR, 174-178.

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law on which it is based. After a summation of the evidence presented, which consisted only of the prosecution's considering that the defense failed to adduce evidence in its behalf, the trial court immediately declared, in a most sweeping manner, the guilt of appellant.

In *Yao v. Court of Appeals*, [33] we had occasion to caution magistrates to be more circumspect and diligent in heeding the demand of Section 14, Article VIII of the Constitution which states:

Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

and its statutory expression in Section 1, Rule 120 of the Rules of Court, *viz.*:

Section 1. Judgment; definition and form. — Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

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[33] G.R. No. 132428, 24 October 2000, 344 SCRA 202. See cases cited therein: *People v. Bongahoy*, 367 Phil.662 [1999]; *People v. Landicho*, G.R. No. 116600, 3 July 1996, 258 SCRA 1; *People v. Sandiosa*, G.R. No. 107084, 15 May 1998, 290 SCRA 92; *People v. Gastador*, 365 Phil. 209 [1999]; *Francisco v. Permskul*, G.R. No. 81006, 12 May 1989, 173 SCRA 324; *Romero v. Court of Appeals*, No. L-59606, 8 January 1987, 147 SCRA 183; *Oil and Natural Gas Commission v. Court of Appeals*, 373 Phil. 928 [1999]; *ABD Overseas Manpower Corporation v. NLRC*, G.R. No. 117056, 24 February 1998, 286 SCRA 454; *Nicos Industrial Corporation v. Court of Appeals*, G.R. No. 88709, 11 February 1992, 206 SCRA 127; *Anino v. NLRC*, G.R. No. 123226, 21 May 1998, 290 SCRA 489; *Saballa v. NLRC*, 329 Phil. 511 [1996]; *Spouses Yu Eng Cho and Francisco Tao Yu v. Pan American Airways*, G.R. No. 123560, 27 March 2000, 328 SCRA 717; *People v. Viernes*, 331 Phil. 146 [1996]; *Caltex Refinery Employees Association v. Brillantes*, 344 Phil. 324 [1997]; *People v. Bugarin*, 339 Phil. 570 [1997]; *De Vera v. Sancho*, 369 Phil. 470 [1999]; *People v. Ortiz-Miyake*, 344 Phil. 598 [1997].

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We reiterate our ruling in *Yao v. Court of Appeals*,[34] thus:

> We have sustained decisions of lower courts as having substantially or sufficiently complied with the constitutional injunction notwithstanding the laconic and terse manner in which they were written and even if "there (was left) much to be desired in terms of (their) clarity, coherence and comprehensibility" provided that they eventually set out the facts and the law on which they were based, as when they stated the legal qualifications of the offense constituted by the facts proved, the modifying circumstances, the participation of the accused, the penalty imposed and the civil liability; or discussed the facts comprising the elements of the offense that was charged in the information, and accordingly rendered a verdict and imposed the corresponding penalty; or quoted the facts narrated in the prosecution's memorandum but made their own findings and assessment of evidence, before finally agreeing with the prosecution's evaluation of the case.
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> We therefore reiterate our admonition in *Nicos Industrial Corporation v. Court of Appeals*, in that while we conceded that brevity in the writing of decisions is an admirable trait, it should not and cannot be substituted for substance; and again in *Francisco v. Permskul*, where we cautioned that expediency alone, no matter how compelling, cannot excuse non-compliance with the constitutional requirements.
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> xxx xxx xxx
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> This is not to discourage the lower courts to write abbreviated and concise decisions, but never at the expense of scholarly analysis, and more significantly, of justice and fair play, lest the fears expressed by Justice Feria as the *ponente* in *Romero v. Court of Appeals* come true, *i.e.*, if an appellate court failed to provide the appeal the attention it rightfully deserved, said court deprived the appellant of due process since he was not accorded a fair opportunity to be heard by a fair and responsible magistrate. This situation becomes more ominous in criminal cases, as in this case, where not only property rights are at stake but also the liberty if not the life of a human being.
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> Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process

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[34] *Supra* note 33.

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clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit*. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision.

Thus the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution.

Thus, we nullified or deemed to have failed to comply with Section 14, Article VIII of the Constitution, a decision, resolution or order which: contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions; contained nothing more than a summary of the testimonies of the witnesses of both parties; convicted the accused of libel but failed to cite any legal authority or principle to support conclusions that the letter in question was libelous; consisted merely of one (1) paragraph with mostly sweeping generalizations and failed to support its conclusion of parricide; consisted of five (5) pages, three (3) pages of which were quotations from the labor arbiter's decision including the dispositive portion and barely a page (two [2] short paragraphs of two [2] sentences each) of its own discussion or reasoning; was merely based on the findings of another court *sans* transcript of stenographic notes; or failed to explain the factual and legal bases for the award of moral damages.

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Tested against these standards, we withhold approbation on the trial court's decision at bar for its palpable failure to comply with the constitutional and legal mandates. Except for the narration of the prosecution's evidence, there is nothing to indicate the reason for the decision. There is no evaluation of the evidence and no reason given why it concluded that said evidence proved the guilt of the accused beyond reasonable doubt. The trial court's decision is brief, starkly hallow, vacuous in its content and trite in its form. It achieved nothing and attempted at nothing. Its inadequacy speaks for itself.

Inevitably, we agree with the appellant that the trial court decision *res ipsa loquitur* violates both Section 14, Article VIII of the Constitution and Section 1, Rule 120 of the Rules of Court.

While this transgression by itself justifies the remand of the case to the trial court, there is another and equally important reason why we are bent on taking that course of action. Appellant was deprived of his constitutional right to counsel as enshrined in Section 14, Article III, of the 1987 Constitution, *viz.*:

> In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

This constitutional requirement is also reflected in the Revised Rules of Criminal Procedure[35] particularly in Section 1(c), Rule 115 thereof, which provides that it is a right of the accused at the trial to be present and defend in person and by counsel at every stage of the proceedings, from the arraignment to the promulgation of the judgment.

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[35] This became effective on 1 December 2000.

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We find and must hold, most regrettably, that appellant Jerry Ferrer was not properly and effectively accorded the right to counsel. The records reveal that appellant's counsel of record was PAO's Atty. Moh'd Hassan Macabanding. The earliest pleading he filed and signed as counsel was a Motion for Re-investigation for which he requested the Regional Trial Court of Marawi City to set the hearing thereof on 12 March 1998 at 9:00 p.m.[36] The hearing did take place on 13 April 1998 with notices to the provincial prosecutor and Atty. Macabanding. A notation was made on the back of the notice by the process server that Atty. Macabanding was served on 13 April 1998 and that return was made on the same day.[37] He did not appear at the scheduled hearing; hence, the trial court denied the motion in its order of 13 April 1998. The trial court thereafter sent Atty. Macabanding a notice for the arraignment of appellant.[38] Again, Atty. Macabanding did not appear, but appellant was assisted by another PAO lawyer, Atty. Wenida Papandayan.[39]

Atty. Macabanding then filed an "Urgent Motion for the Medical Treatment of the Accused."[40] As already narrated, the motion was granted by the trial court in its order of 22 June 1998 which also set the pre-trial on 21 July 1998. But, Atty. Macabanding filed a motion to postpone the pre-trial because allegedly he was subpoenaed to appear on the same date before the COMELEC.[41] This was the last act and appearance of Atty. Macabanding. He did not appear at the hearing he requested for the motion for reinvestigation, on the arraignment, on the pre-trial and all the subsequent hearings of the case against appellant. He did not inform the court of his whereabouts. For all intents, purposes and appearances, Atty. Macabanding abandoned his client, an accused who stands to face the death penalty.

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[36] OR, 19-20.

[37] *Id.*, 22.

[38] OR, 25.

[39] *Id.*, 27.

[40] *Id.*, 30.

[41] *Id.*, 35.

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True, Atty. Macabanding was substituted by Atty. Avecina Alonto at the hearings when the prosecution presented its witnesses. But Atty. Alonto professed that she was merely representing Atty. Macabanding. She even claimed that she has to consult Atty. Macabanding when she reserved her right to cross-examine prosecution witnesses Mary Grace Belonio, Felipa Belonio and Glorita Tugade.[42] But neither Atty. Alonto nor Atty. Macabanding cross-examined these witnesses upon whose testimonies hinged the determination of whether the incidents of rape were indeed committed. While Atty. Alonto cross-examined the physician who conducted the medical examination on Mary Grace, said testimony was at best corroborative. Further, a reading of the transcript of stenographic notes revealed her overall lackadaisical performance as defense counsel.

Indeed, the right to confrontation, of cross-examination and presentation of evidence may be waived expressly or impliedly by conduct amounting to a renunciation of such right;[43] the circumstances of the case at bar, however, highlight a transgression of the more fundamental right to counsel.

The presence and participation of counsel in the defense of an accused in criminal proceedings should never be taken lightly. Chief Justice Moran in *People vs. Holgado*,[44] explained:

> In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it so

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[42] TSN, 22 July 1998, 6, 23; TSN, 8 February 1999, 4-7.

[43] *People v. Seneris*, No. L-48883, 6 August 1980, 99 SCRA 92; see also *Moslares v. Rosario*, 353 Phil. 631 [1998].

[44] 85 Phil. 752 [1949].

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implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one *de oficio* for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own.

In the oft-cited *William v. Kaiser*,[45] the United States Supreme Court, through Justice Douglas, has rightly observed that the accused needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity or of his own ignorance or bewilderment. An accused must be given the right to be represented by counsel for, unless so represented, there is great danger that any defense presented in his behalf would be inadequate considering the legal perquisites and skills needed in the court proceedings. The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.[46]

In the end, even Atty. Alonto followed Atty. Macabanding in his uncaring, insensitive and cavalier attitude towards an accused who had placed his life in their hands and whose protection and defense they have sworn to do. The notices sent to both Atty. Alonto and Atty. Macabanding on the succeeding hearings during which it should have been their turn as defense counsels to present evidence were received by the PAO as shown by the notations made by the process server on the back of the return of service. But, the records glaringly show that they neither moved for postponement of these hearings nor explained to the court their inability to present evidence.

It may be stressed that the right to counsel must be more than just the presence of a lawyer in the courtroom or the mere

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[45] 323 US 471.

[46] *People v. Bermas*, 365 Phil. [1999]. See also *Delgado v. Court of Appeals*, 229 Phil. 362 [1986].

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propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.[47]

No lawyer is to be excused from this responsibility except only for the most compelling and cogent reasons. While Atty. Alonto and Atty. Macabanding faced the daunting task of defending an accused who had jumped bail, this unfortunate development is not a justification to excuse themselves from giving their hearts and souls to the latter's defense. The exercise of their duties as *counsel de oficio* meant rendering full meaning and reality to the constitutional precepts protecting the rights of the accused. A counsel *de oficio* is expected to do his utmost. A mere *pro forma* appointment of a counsel *de oficio* who fails to genuinely protect the interests of the accused merits disapprobation. The exacting demands expected of a lawyer should be no less than stringent when one is a counsel *de oficio*. He must take the case not as a burden but as an opportunity to assist in the proper dispensation of justice.[48]

In *People v. Sevilleno*,[49] we have made known our displeasure over the manner by which three PAO lawyers discharged their duties. All three displayed manifest disinterest on the plight of their client. We stressed that Canon 18 of the *Code of Professional Responsibility* requires every lawyer to serve his client with

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[47] *People v. Bermas, supra* note 46. See also *People v. Nadera, Jr.*, 381 Phil. 484 [2000].

[48] *People v. Bermas, supra* note 46.

[49] 365 Phil. 63 [1999].

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utmost dedication, competence and diligence. He must not neglect a legal matter entrusted to him, and his negligence in this regard renders him administratively liable. In said case, the defense lawyers did not protect, much less uphold, the fundamental rights of the accused. Instead, they haphazardly performed their function as counsel *de oficio* to the detriment and prejudice of the accused, however guilty he might have been found to be after trial. Inevitably, we advised them to adhere closely and faithfully to the tenets espoused in the *Code of Professional Responsibility*; otherwise, commission of any similar act in the future will be severely sanctioned.

We are making a similar advice to Atty. Alonto and Atty. Macabanding. Their deportment evinces an apparent disregard of their fidelity to their oaths as lawyers and responsibility as officers of the court to aid in the administration and dispensation of justice.[50] After all, the constitutional right of the accused to be heard in his defense is inviolable. If no court of justice under our system of government has the power to deprive him of that right, then neither can lawyers appointed to defend him.[51]

As we have stressed in a number of decisions, we are not espousing a "soft, bended, approach" to heinous crimes. Our unyielding stance is dictated by the policy that the State should not be given the license to kill without the final determination of this Highest Tribunal whose collective wisdom is the last, effective hedge against an erroneous judgment of a one-judge trial court. This enlightened policy ought to continue as our beacon light for the taking of life ends all rights, a matter of societal value that transcends the personal interest of a convict. The importance of this societal value should not be blurred by the escape of a convict which is a problem of law enforcement. Neither should we be moved alone by the outrage of the public in the multiplication of heinous crimes for our decisions should not be directed by the changing winds of the social weather.

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[50] *People v. Aranzado*, G.R. Nos. 132442-44, 24 September 2001, 365 SCRA 649. See also *People v. Sta. Teresa*, G.R. No. 130663, 20 March 2001, 354 SCRA 697.

[51] *People v. Lumague, Jr.*, 197 Phil. 492 [1982].

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Let us not for a moment forget that an accused does not cease to have rights just because of his conviction. This principle is implicit in our Constitution which recognizes that an accused, even if he belongs to a minority of one has the right to be right, while the majority, even if overwhelming, has no right to be wrong.[52]

The requirement that we pass upon on automatic review a case in which capital punishment has been imposed by the sentence of the trial court is one having for its object simply and solely the protection of the accused. Having received the supreme penalty which the law imposes, he is entitled under that law to have the sentence and all the facts and circumstances upon which it is founded placed before the Highest Tribunal of the land to the end that its justice and legality may be clearly and conclusively determined. Such procedure is merciful. It gives a second chance for life. Neither the courts nor the accused can waive it. It is a positive provision of the law that brooks no interference and tolerates no evasion.[53]

Ultimately, we see no other choice but to order the remand of the case to the court *a quo* for continuation of the trial.

WHEREFORE, the decision dated 28 November 2000 of the Regional Trial Court of Lanao del Sur, Branch 9, Marawi City, in Criminal Case No. 2969-98, finding accused-appellant JERRY FERRER guilty beyond reasonable doubt of the crime of rape is hereby *SET ASIDE*. The records are hereby *REMANDED* to said court for further proceedings and for the proper rendition of judgment in accordance with Section 14, Article VIII of the Constitution and Section 1, Rule 120 of the Rules of Court.

Judge Abdulhakim Amer R. Ibrahim is hereby *ADMONISHED* to observe faithfully the provisions of Article VIII, Section 14 of the Constitution and Rule 120, Section 1 of the Rules of Court (Revised Rules of Criminal Procedure as amended).

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[52] *People v. Esparas*, 329 Phil. 339 [1996].

[53] *People v. Esparas, Supra* note 52, citing *U.S. v. Laguna*, 17 Phil. 532 [1910] and *U.S. v. Binayoh*, 35 Phil. 23 [1916].

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Atty. Moh'd Hassan Macabanding and Atty. Avecina Alonto of the Public Attorney's Office of Marawi City are hereby *ADMONISHED* for having fallen short of their responsibility as officers of the court and as members of the Bar and *WARNED* that any similar infraction shall be dealt with most severely.

Costs *de oficio.*

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ .,* concur.

Quisumbing and *Sandoval-Gutierrez, JJ.,* on official leave.

EN BANC

[G.R. No. 151216. July 18, 2003]

MANUEL MILLA, *petitioner, vs.* **REGINA BALMORES-LAXA,** *respondent.*

SYNOPSIS

Petitioner herein questioned the power of the Commission on Elections (Comelec) to annul the proclamation, due to an alleged error in the tabulation of the statement of votes, of a winning candidate for municipal councilor who had taken his oath and assumed office as such.

According to the Supreme Court, following Sec. 3 of Art. IX-C of the 1987 Constitution a petition involving pre-proclamation controversy should have first been heard and decided by a division of the Comelec and then by the *En Banc* if a motion for reconsideration of the division was filed. Since in this case the Comelec sitting *en banc* acted on respondent's