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WHEREFORE, the petition is hereby *DENIED* for lack of merit. The assailed Decision dated July 18, 1997 and Resolution dated September 12, 1997 of the Court of Appeals in CA-G.R. CV No. 44211 are *AFFIRMED in toto*.

SO ORDERED.

Bellosillo (Chairman) and *Quisumbing, JJ.*, concur.

Austria-Martinez, J., on official leave.

SECOND DIVISION

[G.R. No. 139332. June 20, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NOLI NOVIO** *y* **AYASO,** *appellant.*

SYNOPSIS

Appellant was charged with rape of a thirteen-year old girl (Maricel). He denied having raped the girl and insisted that they were sweethearts. He also claimed that when Maricel's mother chanced upon them, they were having consensual intercourse. The trial court found that the prosecution was able to establish that appellant raped Maricel. Maricel clearly and positively identified appellant as the perpetrator of the crime and her testimony was corroborated by her mother. The trial court overruled appellant's defense that he and Maricel were sweethearts and had consensual intercourse. The trial court rendered a decision finding appellant guilty beyond reasonable doubt of rape and meted on him the penalty of thirty years of *reclusion perpetua*. Aggrieved, appellant appealed from the decision of the trial court.

The Supreme Court agreed with the trial court that when a woman, more so a minor, says that she was raped, she says in

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effect all that it was necessary to prove that rape was committed. Even if the Court assumed that indeed Maricel and the appellant had agreed to meet, there was no showing that she consented to have sex with the appellant. However, the penalty imposed by the trial court is void. Although under Article 27 of the Revised Penal Code, as amended by Republic Act 7659, *reclusion perpetua* has a range of twenty years and one day to forty years, by nature, the penalty remains a single and indivisible penalty. It cannot be divided into periods or equal portions. The trial court is not authorized to vary the penalty provided by law either in the character or the extent of punishment inflicted. There was no need for the trial court to specify the duration of thirty years of *reclusion perpetua* whenever it is imposed as a penalty in any proper case. The decision of the trial court was affirmed with modification that the penalty imposed is *reclusion perpetua*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF IS ACCORDED GREAT WEIGHT; RATIONALE.—** It is stressed that when the credibility of the witness is in issue, the trial court's assessment is accorded great weight because it has a unique opportunity to hear the testimony of witnesses and observe their deportment and manner of testifying. It has the unique advantage of monitoring and observing at close range the demeanor, deportment and conduct of the witnesses as they regale the trial court with their testimonies.

2. **ID.; ID.; ID.; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH ESPECIALLY IN RAPE CASES; PRESENT IN CASE AT BAR.—** This Court agrees with the trial court that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to prove that rape was committed. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out details of an assault on her dignity, cannot easily be dismissed as mere concoction. Youth and immaturity are generally badges of truth.

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3. **CRIMINAL LAW; RAPE; PRINCIPLES WHICH GUIDED THE COURT IN REVIEWING RAPE CASES.**— In reviewing rape cases, this Court had always been guided by three (3) well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) 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.

4. **ID.; ID.; SWEETHEART THEORY AS DEFENSE; NOT VALID WHEN NOT SUPPORTED BY PHOTOS OR MEMENTOS AS PROOF; APPLICATION IN CASE AT BAR.**— The Court cannot give credence to the testimony of the appellant that he and Maricel were sweethearts. His sweetheart theory is not supported by any photos or mementos to prove their alleged love relationship. If, as the appellant testified, he and Maricel had been having an amorous relationship a month after April of 1994 or approximately four (4) months before the incident, tokens or mementos of their affair could have been exchanged, taken and kept.

5. **REMEDIAL LAW; EVIDENCE; NON-FLIGHT IS NOT AN INDICATION OF INNOCENCE; CASE AT BAR.**— The case for the prosecution was not enfeebled by evidence that the appellant did not flee from the store but remained on top of Maricel, even as Nenita forcibly opened the door and gained entry into the store. The appellant's non-flight cannot be weighed in his favor. There is no established declaration that non-flight is, in every instance, an indication of innocence. The Court is convinced that the appellant remained on top of Maricel instead of scampering out of the store because he thought that Nenita would go away after Maricel had failed to respond to her mother's questions. The appellant felt sure that Nenita would not be able to open the door, as it was locked from the inside.

6. **CRIMINAL LAW; PENALTIES; TERM OF PENALTY SHOULD NOT BE ALTERED BY THE TRIAL COURT.**— Although under Article 27 of the Revised Penal Code as amended by Republic 7659, *reclusion perpetua* has a range of twenty years and one day to forty years, by nature, the penalty remains

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a single and indivisible penalty. It cannot be divided into periods or equal portions. If the law prescribes *reclusion perpetua* as a single and indivisible penalty for a felony, the trial court is mandated to impose said penalty, absent any privileged mitigating circumstances, conformably with Article 63 of the Revised Penal Code. The trial court is not authorized to vary the penalty provided for by law either in the character or the extent of punishment inflicted.

APPEARANCES OF COUNSEL

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

DECISION

CALLEJO, SR., *J.*:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 6, Tacloban City, in Criminal Case No. 94-09-447 finding appellant Noli Novio *y* Ayaso guilty beyond reasonable doubt of rape, sentencing him to thirty years of *reclusion perpetua* and ordering him to pay ₱50,000 to the victim, as civil indemnity.

The appellant was charged with rape under the Information which reads:

That on or about the 24th day of September, 1994, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with one MARICEL B. TALISAY, a minor, while the latter was deprived of reason or otherwise unconscious, as she was then asleep, against her will, with the aggravating circumstance of dwelling.[2]

On May 17, 1985, Noli was arraigned, assisted by counsel and offered to plead guilty to the lesser offense of acts of

[1] Penned by Judge Santos T. Gil.

[2] Records, p. 1.

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lasciviousness. The trial court asked the offended party, Maricel Talisay, whether she was in conformity with Noli's plea. Maricel did not give her assent, thus, the plea was rejected. The trial court then entered a plea of not guilty to the crime charged.[3]

The Evidence of the Prosecution

The spouses Wilberto and Nenita Talisay owned a sari-sari store located at Barangay 88, Costa Brava, in San Jose, Tacloban City. Their young daughter, Maricel, tended the store whenever she was free from school and had no homework. The spouses earned additional income as caretakers of the Zamora beach house, about one hundred meters away from their store.

Noli was the younger brother of the husband of Maricel's older sister. When Noli first met then 13-year-old Maricel, he was instantly enamored with her that he began frequenting the store owned by the spouses Talisay.

In the evening of September 23, 1994, Maricel, together with her brothers — Jun, aged 11, and Joey, aged 9 years — slept side by side in the store while their parents slept in the beach house. Maricel was wearing a red duster and panties.

The next day, at about 3:00 a.m., Maricel felt some ticklish sensation, as if somebody was kissing her. But she also felt stabs of pain in her vagina. She opened her eyes and was horrified to see Noli completely naked on top of her. Immediately, Noli covered her mouth with his right hand and held both her hands with his left. He warned her not to make any noise. She noticed, too, that her red duster had been rolled up to her neck and her legs were being separated by Noli with the use of his legs. She struggled, but to no avail. Noli then inserted his penis in Maricel's vagina.

In the meanwhile, Wilberto and Nenita were awakened by a male neighbor who reported to them that he had heard the voice of a man inside their store. Nenita and Wilberto immediately got up. Nenita got a flashlight and bolo while

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[3] *Id.*, at 20.

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Wilberto and their neighbor sought help from other neighbors. When she reached the store, Nenita beamed the flashlight on the store and found a pair of sandals by the door. She frantically knocked at the door, called out to Maricel and asked who was inside the store: "*Maricel, hin-o iton tawo dinhi ha sakob?*" (Who is in the store with you?) Hearing no reply, Nenita knocked again and said, "*Maricel, hin-o iton tawo dinhi ha sakob?*" When she received no response from Maricel, Nenita tried but failed to open the door of the store. Exasperated, Nenita forcefully pushed the door open and beamed the flashlight inside. She was aghast when she saw Noli completely naked on top of Maricel, with his right hand over the girl's mouth. He was raping Maricel. Nenita noticed that her daughter was pale and terrified. Nenita pulled Noli from Maricel and attempted to hack him, but Noli held on to Maricel, using her as a shield. Nenita then ordered Maricel to free herself from Noli. As the girl was finally able to do this, Noli, sensing danger, hurriedly took his jogging pants, tucked the same under his left armpit and jumped over the window of the store. He fled, leaving his blue t-shirt, black underwear, black wallet and sandals inside the store. Nenita pursued Noli and hacked him on his left ankle with the bolo. Maricel was left inside the store, demeaned and distraught.

When Nenita returned, she gathered the personal things that Noli left behind as he fled. When she asked Maricel how Noli was able to enter the store, Maricel could not respond as she was crying profusely and trembling with fear.

Nenita reported the incident to Barangay Chairman Segundino Edara, saying that her daughter had been raped by Noli and sought the immediate arrest of the latter. The *barangay* chairman went to the store and saw Maricel crying. Noli was invited by the *barangay* chairman to the police station for investigation. Nenita brought Maricel to the police station, where the two executed their respective affidavits. Nenita turned over Noli's t-shirt, underwear and wallet to the police investigator. Both Noli and Maricel were brought to the Eastern Visayas Regional Medical Center, where Noli was treated for his wound on the left ankle, while Maricel was subjected to surgical and genitalia

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examination. Dr. Irene Dacut and Dr. Morris Alve conducted the examination and found the following:

FINDINGS

-Abrasions, posterior aspect, (L) thigh.

OB-GYNE Findings: Menarch — June 1st Week '94

LMP — Sept. 5, 1994 x 3 days

PMP — Aug. 1st Week, 1994

Ext. genitalia — Grossly normal

Introitus — Nulliparous, hymen intact, elastic, positive

Abrasions both inner aspects of labia minora, 2.5 cms. (R) side, 2.0 cm (L) side

Speculum exam — Vagina admits virginal speculum with slight difficulty, cervix pinkish, small, smooth with scanty whitish mucoid discharge.

Internal exam — Vagina admits one examining finger with slight difficulty, Cervix firm closed non tender.

Uterus — small

Adnexae — (-) masses/tenderness

Vaginal smear for presence of spermatozoa — No spermatozoa seen.[4]

The Evidence of the Accused

Noli denied having raped Maricel. He insisted that he and Maricel were sweethearts. He testified that it was sometime in April 1994 when he met Maricel, the sister of his older brother's wife. Attracted, appellant frequented the store she tended and started courting her. After a month, Maricel finally accepted his offer and they became sweethearts. Maricel, however, pleaded to Noli for their relationship to be kept from her mother. Noli agreed.

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[4] Exhibit "D," Records, p. 13.

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On September 23, 1994, Noli suggested that they meet in the store for a date. Maricel assented. When he arrived at the store, Maricel opened the door. They then talked, and kissed. He removed his clothes and Maricel's as well, including her panties. He went on top of her and touched her womanhood. Noli was flabbergasted when he heard knocks on the door of the store. Worse, he heard Nenita calling Maricel. However, Maricel ignored her mother's call. Unable to get any answer, Nenita forced open the door and found him on top of Maricel. Nenita ordered Noli to dismount, to which he obliged. Noli then got his jogging pants and left the store. In his hurry, he did not notice that he was hacked on the leg by Nenita with her bolo until he reached his house. It was only then that he felt pains on his left leg. Noli claimed that when Nenita chanced upon him and Maricel, they were having consensual sexual intercourse.

On March 17, 1999, the trial court rendered a decision[5] finding Noli guilty beyond reasonable doubt of rape and meted on him the penalty of thirty years of *reclusion perpetua.*

WHEREFORE, premises considered, the Court hereby finds the accused Noli Novio guilty beyond reasonable doubt of the crime of consummated rape provided for in paragraph one (1), Article 355 (*sic*) of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 and without the Indeterminate Sentence Law applicable and neither any mitigating nor aggravating circumstance present, this court hereby sentences accused Noli Novio to indivisible penalty of *reclusion perpetua* with imprisonment of thirty (30) years. Full credit to the days of his liberty has been restrained or under preventive imprisonment is granted provided he had voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The accused is also condemned to indemnify the victim the sum of Fifty Thousand (₱50,000.00) pesos without subsidiary imprisonment in case of insolvency and to pay the cost of these proceedings.[6]

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[5] Records, p. 206.

[6] *Id.*, at 224-225

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The trial court found and declared that the prosecution was able to establish that Noli had raped Maricel. She clearly and positively identified Noli as the perpetrator of the crime. Her testimony was corroborated by Nenita. The trial court overruled Noli's defense that he and Maricel were sweethearts and had consensual sexual intercourse in the early morning of September 24, 1994. The court stated that Noli failed to adduce in evidence pictures, letters or tokens to prove his and Maricel's love affair. It stressed that if indeed they were sweethearts and had agreed to meet, Maricel should have asked her brothers Jun and Joey not to sleep with her in the store. She should have shielded Noli from the hacking blows of her mother. The evidence on record, however, showed otherwise. Maricel had slept with her brothers and did not shield Noli from her mother's blows. The foregoing facts and circumstances, and Dr. Dacut's medical findings of abrasions in both the *labia minora* and *majora* of her vagina, fully substantiated the claim of Maricel that she had, indeed, been raped by Noli.

Aggrieved, Noli, now the appellant, appealed from the decision of the trial court and asserts that:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONIES OF PRIVATE COMPLAINANT AND THAT OF HER MOTHER AND IN NOT CONSIDERING THE DEFENSE INTERPOSED BY ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[7]

The appellant puts in issue the credibility of Nenita and Maricel Talisay and the probative weight of their collective testimonies. He avers that if, as claimed by Maricel and her

[7] Brief for the Accused-appellant, *Rollo*, p. 79.

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mother, he had raped Maricel, his natural reaction upon hearing Nenita calling Maricel, demanding to know who she was with, would have been to immediately stand up, dress himself and leave the store. He asserts that the mere fact that he remained on top of Maricel when Nenita opened the door belied the charge against him. The appellant also avers that it was uncommon and unnatural for Nenita, a woman, who heard from a male neighbor that a man was inside their store, to proceed to the said store and confront the intruder while her husband and their male neighbor sought help from neighbors. Noli insists that the prosecution resorted to suppression of evidence when it failed to present as witness the male neighbor of the spouses Talisay who had informed the couple that he heard a male voice inside their store. Noli also insists that the prosecution was not able to prove beyond reasonable doubt that he had raped Maricel. He contends that he was able to prove by clear and convincing evidence that he and Maricel were sweethearts.

The Office of the Solicitor General (OSG), for its part, contends that the prosecution was able to prove beyond reasonable doubt that Noli had raped Maricel. When she testified, Maricel clearly and positively identified the appellant as the one who laid on top of her, held her hands, and covered her mouth as he inserted his penis inside her vagina despite her struggles. Her testimony was corroborated by her mother Nenita, who caught the appellant on top of Maricel, raping her, and Dr. Irene Dacut who testified that when she examined Maricel, she found abrasions on the inner aspect of the *labia minora* of her sex organ which were indicative of forced sexual intercourse, thus belying the appellant's defense. He miserably failed to adduce as evidence letters, tokens or pictures evidencing his relationship with Maricel. Moreover, even if they were indeed sweethearts, the appellant could not force Maricel to have sex with him as love is not a license for lust.

The contention of the appellant does not persuade. It is stressed that when the credibility of the witness is in issue, the trial court's assessment is accorded great weight because it has a unique opportunity to hear the testimony of witnesses and observe

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their deportment and manner of testifying.[8] It has the unique advantage of monitoring and observing at close range the demeanor, deportment and conduct of the witnesses as they regale the trial court with their testimonies.[9]

In reviewing rape cases, this Court had always been guided by three (3) well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) 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.[10]

In this case, the Court is convinced beyond cavil, as the trial court was, that Nenita and her daughter Maricel were credible witnesses and their collective testimonies entitled to full probative weight.

Maricel vividly recounted before the court her harrowing experience. She testified that she was roused from her sleep when at or about 3:00 a.m. of September 24, 1994, she felt pain in her vagina, opened her eyes and saw the appellant completely naked and on top of her. The appellant held both her hands with his left hand, covered her mouth with his right hand and warned her not to make any noise. The appellant, using his legs, separated Maricel's legs and inserted his penis in her vagina. She struggled to free herself from the appellant's clutches to prevent him from raping her, but to no avail. Noli was too strong for her.

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[8] *People v. Layoso*, G.R. No. 141773-76, 22 January 2003.

[9] *People v. Ramos*, G.R. No. 142577, 27 December 2002.

[10] *Ibid.; People v. Dalandas*, G.R. No. 140209, 27 December 2002; *People v. Sambrano*, G.R. No. 143708, 24 February 2003; *People v. Bagaua*, G.R. No. 147943, 12 December 2002.

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Q: Now, while you were asleep do you remember having been awakened at around three o'clock in the early morning of September 24, 1994?[11]

. . . . . .

WITNESS:

A: When I woke up he was already on top of me; I did not wake up when he got inside the store.[12]

. . . . . .

Q: When you woke up, where was Noli Nobio (*sic*), when you opened your eyes?
A: He was on top of me.

Q: What was Noli Nobio (*sic*) wearing at the time he was on top of you?
A: He was not wearing anything; he was naked.

Q: Now, how did you know that it was Noli Nobio (*sic*) who was on top of you?
A: I learned that he was already on top of me because it was painful; I felt pain.

COURT:

That is not the question asked; you listen to the question very well and understand it before giving your answer.

Interpret again the question.

WITNESS:

A: I recognized his face because there was light inside the store.

PROS. TALAPIERO:

Q: When you opened your eyes and you saw Noli Nobio (*sic*), did Noli Nobio (*sic*) say anything to you?
A: Yes ma'am.

Q: What did he say?

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[11] TSN, 24 July 1995, p. 8.

[12] *Id.*, at 9.

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A: He placed his hand over my mouth and said 'do not make any noise.'

Q: After he covered your mouth with hand, what did you do?
A: He was already lying on top of me and he was trying to inserted (*sic*) his penis into my vagina.

Q: Was he able to insert his penis into your vagina?
A: Yes, ma'am/ (*sic*)

Q: And what did you feel?
A: It was painful.

Q: What were you wearing when you went to bed that night of September 24, 1994?
A: I was in my red duster.

Q: What else, if any, aside from the red duster?
A: My panty.

Q: When you opened your eyes at round three o'clock early in the morning of September 24, 1994 and you saw Noli Nobio (*sic*) on top of you, do you know what happened to the clothes you were wearing that night?
A: Yes, ma'am.

Q: What, please tell the Court.
A: My duster had already been pulled up to my neck and my panty already gone.

Q: What happened after Noli Nobio (*sic*) inserted his penis into your vagina, what happened after that? What did he do after his penis was already inside your vagina?
A: My mother arrived.[13]

. . . . . .

Q: What did you do when you woke up and had still that ticklish sensation?
A: I wanted to push him away from me but I could not do so because he was holding my hand and he was covering my mouth with his hand.[14]

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

[14] TSN, 25 July 1995, pp. 32-33.

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. . . . . .

ATTY. CINCO:

Q: For how many minutes did the accused have his penis stayed in your vagina?

WITNESS:

A: For about five (5) minutes.

Q: Dyring (*sic*) this five minutes that the the (*sic*) penis of the accused was inside your vagina, did you struggle to free yourself from that situation?

A: I struggled.

COURT:

Q: Were you able to free yourself?

WITNESS:

A: No, sir.

COURT:

Q: Why?

WITNESS:

A: Because he was holding my hands and he was spreading my legs with his legs.

COURT:

Proceed.

ATTY. CINCO

Q: Your hands were held by Noli Nobio (*sic*)?

WITNESS:

A: Yes, ma'am.

Q: Your left and (*sic*) your hands?

A: Yes, ma'am.

Q: So your mouth was not covered at that time when Noli Nobio (*sic*) was inserting his penis into your vagina?

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A: His right hand was covering my mouth while his left hand was holding my hands.[15]

Nenita corroborated Maricel's testimony. When she forced open the door to the store, she saw the appellant on top of Maricel, completely naked, holding Maricel's hands, covering her mouth and raping her.

The Court cannot give credence to the testimony of the appellant that he and Maricel were sweethearts. His sweetheart theory is not supported by any photos or mementos to prove their alleged love relationship.[16] If, as the appellant testified, he and Maricel had been having an amorous relationship a month after April of 1994 or approximately four (4) months before the incident, tokens or mementos of their affair could have been exchanged, taken and kept.

Even if the Court assumed for the nonce that Maricel and the appellant were, indeed, sweethearts, the appellant cannot force Maricel to have sex with him. As often stated, *love is not a license for lust.*[17] The Court does not even believe the appellant's testimony that he and Maricel had an agreement to meet at dawn on September 24, 1994. There were, as the trial court noted, tell-tale signs that the appellant was not welcome, or even expected by Maricel at the store at dawn on that fateful day. Maricel was with her two brothers Joey and Jun inside the store. Moreover, Maricel was fast asleep when the appellant helped himself inside. If, as the appellant claimed, he and Maricel had agreed to meet and talk in the store, Maricel surely would not have allowed her brothers to sleep beside her. She should have been fully awake for his arrival to welcome his amorous advances, and enjoy the ecstasy of their togetherness instead of resisting the same. Patently, the appellant's story is, as this Court said in *People vs. Lorenzo*,[18] a put-up scenario; a story

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[15] *Id.*, at 36-37.

[16] *People v. Taperla*, G.R. No. 142860, 16 January 2003.

[17] *Id., supra.*

[18] 240 SCRA 624 (1995).

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"which runs against the grain of ordinary reality, controverts logic and assails common sense."

While testifying on direct examination, appellant claimed that he and Maricel had agreed to meet on September 24, 1994.[19] However, on cross-examination Noli appeared uncertain as he testified that he did not remember the date he and Maricel had agreed to meet and talk as he was on the sea fishing, two days thenceforth.[20]

Even if the Court assumed that indeed Maricel and the appellant had agreed to meet, there is no showing that she had consented to have sex with the appellant. Maricel valiantly struggled by pushing the appellant back to prevent him from raping her.[21]

The case for the prosecution was not enfeebled by evidence that the appellant did not flee from the store but remained on top of Maricel, even as Nenita forcibly opened the door and gained entry into the store. The appellant's non-flight cannot be weighed in his favor. There is no established declaration that non-flight is, in every instance, an indication of innocence.[22] The Court is convinced that the appellant remained on top of Maricel instead of scampering out of the store because he thought that Nenita would go away after Maricel had failed to respond to her mother's questions. The appellant felt sure that Nenita would not be able to open the door, as it was locked from the inside. But the appellant underestimated Nenita's determination. She forced the door open and caught the appellant completely naked on top of Maricel, *in flagrante delicto*. Instinctively, the appellant grabbed Maricel and used her as a shield against Nenita who was about to hack him with her bolo. When Maricel was finally able to extricate herself from the appellant, he realized that his life was in peril and jumped out of the store completely

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[19] TSN, 21 June 1996, p. 6.

[20] TSN, 19 May 1997, pp. 7-9.

[21] TSN, 19 May 1997, p. 9.

[22] *People vs. Bacule*, 323 SCRA 734 (2000).

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naked, leaving his black underwear, t-shirt, sandals and wallet behind.[23]

This Court does not agree with the appellant's assertion that it is uncommon for a mother to confront an intruder in their store while her husband and neighbor sought help from other neighbors. Most mothers would give up their own lives and fortune to protect their children from harm's way and shield them from embarrassment, ridicule and any taint on their reputation.[24] In this case, upon learning that a man had gained entry into their store, Nenita believed that her daughter Maricel and her younger children, Joey and Jun, were in peril. She immediately took hold of a flashlight and a bolo, and rushed to their store to protect and save her children. There is nothing unnatural for Nenita to arm herself with a bolo and rush to the store while her husband opted to seek help from neighbors. As this Court had consistently ruled: *"the workings of the human mind under emotional stress are unpredictable such that people react differently to startling situations."*[25]

No prejudicial inference can be attributed to the failure of the prosecution to present the neighbor of the couple who informed them of the presence of a male person in the store as a witness. The testimony of the neighbor was merely corroborative of the testimony of Nenita.[26]

This Court agrees with the trial court that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to prove that rape was committed.[27] A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out details of an assault on her dignity, cannot

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[23] TSN, 28 July 1997, pp. 12-15.

[24] *People v. Ramos, supra.*

[25] *People v. Torejos*, 326 SCRA 75 (2000).

[26] *People v. Paule*, 261 SCRA 649 (1996).

[27] *People v. Galigao*, G.R. No. 140961-63, 14 January 2003.

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easily be dismissed as mere concoction.[28] Youth and immaturity are generally badges of truth.[29]

Proper Penalty on the Appellant

Under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, the prescribed penalty for simple rape is *reclusion perpetua*. However, the trial court sentenced the appellant to thirty years of *reclusion perpetua*. The penalty imposed by the trial court is void.[30] Although under Article 27 of the Revised Penal Code as amended by Republic 7659, *reclusion perpetua* has a range of twenty years and one day to forty years, by nature, the penalty remains a single and indivisible penalty. It cannot be divided into periods or equal portions. If the law prescribes *reclusion perpetua* as a single and indivisible penalty for a felony, the trial court is mandated to impose said penalty, absent any privileged mitigating circumstances conformably with Article 63 of the Revised Penal Code. The trial court is not authorized to vary the penalty provided for by law either in the character or the extent of punishment inflicted.[31]

There was no need for the trial court to specify the duration of thirty years of *reclusion perpetua* whenever it is imposed as a penalty in any proper case. The Court is not impervious to Article 70 of the Revised Penal Code which pertinently provides that, in applying the so-called "three-fold rule," *i.e.*, that "(w)hen the culprit has to serve two or more penalties, . . . the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him" — "the duration of perpetual penalties (*penal perpetua*) shall be computed at thirty years." The imputation of a thirty-year duration to *reclusion perpetua* in Article 70 is, as this Court

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[28] *People v. Plurad*, G.R. No. 138361-63, 3 December 2002.

[29] *People v. Galigao, supra.*

[30] *People vs. Gatward*, 267 SCRA 785 (1997).

[31] *In Re: Graham*, 34 L. ed. 1051; *Weems v. United States*, 54 Led. 793.

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recently held, "only to serve as the basis for determining the convict's eligibility for pardon or for the application of the three-fold rule in the service of multiple penalties.[32]

The appellant testified on direct examination on June 21, 1996, that he was 17 years old when the crime was committed in 1994. However, he did not adduce in evidence his birth certificate. Neither did he state when he was born. There is thus an uncertainty as to whether the appellant was a minor at the time of the commission of the felony. Moreover, when he was asked on cross-examination if he was only sixteen years old when the crime was committed, the appellant replied that he did not know.

> Q And this incident happened in 1994, about three years ago when this incident took place. So would I be correct to presume that if you are nineteen years old now, minus three years, you were only sixteen when the incident took place?
> A I do not know.[33]

In sum, the appellant failed to prove that he was a minor at the time of the commission of the felony. Hence, the appellant is not entitled to the privileged mitigating circumstance of minority under Article 68 of the Revised Penal Code.

Civil Liabilities of the Appellant

The trial court correctly ordered the appellant to pay to the victim, Maricel Talisay, ₱50,000 as civil indemnity. In addition, the victim is entitled to the award of moral damages in the amount of ₱50,000. This is in line with the current rulings automatically granting moral damages without need of proof, the reason being that mental, physical and psychological trauma suffered by the victim is too obvious to still require proof at the trial.[34]

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[32] *People v. Tena*, 215 SCRA 43 (1992).

[33] TSN, 19 May 1997, p. 4 (Novio).

[34] *People v. Arriola*, G.R. No. 140779-80, 3 December 2002.

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WHEREFORE, the decision of the Regional Trial Court, Branch 6, Tacloban City, in Criminal Case No. 94-09-447 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Noli Novio *y* Ayaso is found guilty beyond reasonable doubt of the crime of simple rape under Article 335 of the Revised Penal Code, as amended by RA 7659 and is sentenced to *reclusion perpetua*. The appellant is ordered to pay the victim, Maricel Talisay, ₱50,000 as civil indemnity and ₱50,000 as moral damages.

Costs de officio.

SO ORDERED.

Bellosillo (Chairman) and *Quisumbing, JJ.*, concur.

Austria-Martinez, J., on official leave.

SECOND DIVISION

[G.R. No. 140698. June 20, 2003]

ROGELIO ENGADA, *petitioner, vs.* **HON. COURT OF APPEALS, Former Fourteenth Division, Manila, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYNOPSIS

The trial court found petitioner guilty of simple imprudence resulting in physical injuries and damage to property, and sentenced him to suffer one month and one day of *arresto mayor* and pay damages. The Court of Appeals increased the prison term imposed on petitioner to four months of *arresto mayor*. In this petition for review, he insisted that the Supreme Court should relax the rule that only legal questions can be raised because the Court of Appeals misapprehended the facts, and erred in its conclusion as to the proximate cause of the collision.