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SECOND DIVISION

[G.R. No. L-38309. October 23, 1978]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANGELITO DE JESUS,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.** — Where the accused was definitely identified by his nine-year old rape victim, his alibi is not sufficient to exculpate him, it appearing that his alleged presence in the basketball court did not render it impossible for him to commit the rape in the haystack about fifty meters away.

2. **ID.; ID.; CONFESSION; EVIDENCE OF SIMILAR ACT.** — A confession voluntarily executed in another case by an accused, containing detailed recitals which could not have been fabricated, where he admitted that before he was arrested in the case at bar, he became obsessed with another child whom he raped (thereby revealing that he has paedophiliac tendencies because he prefers young girls as sexual objects, a sexual deviation or perversion belonging to the category of paedophilia erotica), may be admitted as an evidence of similar conduct on the part of the accused which lends credibility to the declaration of the 9-year old victim in the case at bar that she was sexually abused by the accused. (Sec. 48, Rule 130, Rules of Court)

3. **CRIMINAL LAW; RAPE; PENALTY; INDEMNITY.** — Where the victim is a nine-year old child, the crime committed is simple rape falling under paragraph 3 of Article 335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111. It is punished by *reclusion perpetua.* The idemnity of ₱165 imposed by the trial court should be raised to ₱12,000.00.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Octavio R. Ramirez and *Solicitor N.P. de Pano, Jr.* for plaintiff-appellee.

Fausto S. Arce for defendant-appellant.

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DECISION

AQUINO, *J.*:

Angelito de Jesus appealed from the decision of the Court of First Instance of Bulacan, convicting him of rape, sentencing him to life imprisonment and ordering him to indemnify Lualhati Landayan in the sum of ₱165 (Criminal Case No. 0560-M).

The spouses, Feliciana Nuguid and Rogelio Landayan, residents of Barrio Santol, Balagtas (Bigaa), Bulacan, have a daughter named Lualhati who was born on January 22, 1963 (she was in the fourth grade in 1972). In the evening of Sunday, May 21, 1972, on the occasion of a *Flores de Mayo* procession, Feliciana gave Lualhati permission to follow the procession in the company of their neighbor, Josie Garcia, a twenty-five-year old woman. Josie and Lualhati watched the procession which ended at around midnight in the barrio chapel. They did not go home immediately because Josie stayed in the chapel and recited the prayers of the rosary. As Lualhati was sleepy and tired, Josie told her to sleep on the bench inside the chapel and informed her that she would go to the basketball court behind the chapel and wake her up after the championship game was over. Josie left the nine year old girl sleeping on the front bench in the chapel and watched the basketball game. The game was concluded at around two-thirty in the morning.

As testified by Lualhati and as recounted in appellant's brief, shortly after midnight, or in the early morning of May 22, 1972, she experienced the sensation of being bodily lifted and carried by someone because her head was swaying. She demonstrated to the court how her head swayed. When she woke up, she found herself lying on a haystack or "*mandala ng giniikan*" which was near the ricefields or about fifty meters away from the chapel and which was also near the compound of the Rice and Corn Administration (RCA) in that locality.

She noticed that a man was on top of her. She instinctively pushed him back and, in doing so, she touched his mustache and perceived his facial features. The haystack received

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illumination from four electric bulbs a few meters away, from the lamps attached to two electric posts nearby, and from the revolving searchlight of the RCA compound. (See sketch, Exh. D).

After having been pushed back, the man boxed Lualhati on the face and she became unconscious. She regained consciousness when the man was withdrawing his organ from her vagina and she felt the pain caused by the sexual assault. He sat on her legs. Then, she asked his permission to go back to the chapel. He allowed her to leave the haystack but he warned her that he would kill her and her parents in case she would reveal that he had ravished her. Lualhati returned to the chapel and looked for her Nanang Josie. She could not find Josie. Lualhati went home in the company of other children named Boy Oding, Merle, Elsa and Ines. Josie had gone home after the basketball game when she did not find Lualhati in the chapel.

At seven o'clock in the morning, while Lualhati was asleep, her mother noticed that her left cheek was swollen. She woke up her daughter and inquired what had happened to her. Lualhati did not answer and just gave her mother a blank stare. The mother brought her to the chapel and verified whether there was a haystack near the chapel. Lualhati had told her that it was in that place where she woke up.

Then, Feliciana brought her daughter to the clinic of Doctor Mario Puatu. He found that Lualhati (1) had fresh bleeding lacerations in her hymen at the "three o'clock and nine o'clock" positions, (2) ecchymosis on the left cheek and (3) an abrasion in the corner or canthus of her left eye.

After Feliciana had been assured by Doctor Puatu that her daughter had been raped, she and Lualhati went to the residence of Feliciana's grandmother which was near the chapel. There, she made inquiries as to whether after midnight some persons had seen a child being carried and brought to the haystack. Later, she took Lualhati to the clinic of the municipal health officer, Doctor Roberta S. Regalado.

That official examined Lualhati and found that a slight opening of her introitus or vaginal orifice caused bloody oozing from a

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laceration of the hymen at the six o'clock position, A strand of hair and bits of hay were found in the labia majora. Lualhati's thighs and legs had violaceous discolorations and she had abrasions and hematoma on the left cheek and hematomas in the left corner of her lip and on the left zygomatic region.

Doctor Regalado was unable to make an internal examination because Lualhati was uncooperative and could not endure the pain. So, Feliciana Landayan brought her daughter to Doctor Nieto M. Salvador, a medico-legal officer of the National Bureau of Investigation (NBI), who at ten o'clock in the evening of that same day, May 22, 1972, examined the victim. His findings are contained in a report signed by him and by Doctor Ernesto G. Brion, the NBI assistant director, and by Lorenzo Sunico, the NBI deputy director for technical services (Exh. G).

In that report, Doctor Salvador found a gaping labia majora, a coaptated labia minora, a fresh bleeding laceration in Lualhati's fourchette extending to the posterior commissure and base of the hymen at the six o'clock position. He also found a contused vestibular mucosa and a narrow, thin hymen with fresh bleeding lacerations "compound at 3 o'clock and deep at 9 o'clock positions" with contused hymenal edges. The hymenal orifice admitted a tube five millimeters in diameter with moderate resistance. No bigger tube could be inserted due to extreme pain. The vaginal walls were moderately tight with prominent rugosities.

Doctor Salvador concluded that Lualhati "could have had sexual intercourse" with a man on or about the alleged date of the commission of the rape and that the injuries on her left cheek and corner of her left eye could have been inflicted at the same time. The doctor recovered bits of hay from the labia majora (Exh F). As advised by the doctor, Lualhati was confined at the provincial hospital on May 23 to control the bleeding in her vagina. She stayed in the charity ward for five days. Her mother spent ₱165 for medicines and incidental expenses.

At four o'clock in the afternoon of May 22, 1972, Feliciana Landayan reported to the police that Lualhati had been raped. Feliciana's statement was taken by Lieutenant Leonardo B.

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Feliciano, the investigator of the Balagtas Police Department and a resident of Barrio Borol 1st, Balagtas. The next day, Lieutenant Feliciano went to Barrio Santol to investigate the incident. He made an ocular inspection of the scene of the crime and made inquiries. Florante Dizon, a nine-year old boy, told him that he saw a man wearing red pants who was inside the chapel in the evening of May 21, 1972. Feliciano learned that the man wearing red pants was Angelito de Jesus (pp. 17-18, Record).

Lieutenant Feliciano picked up De Jesus and brought him to the office of the chief of police. De Jesus refused to give a statement. Feliciano also picked up two other suspects, Raymundo (Reynaldo) Castro and Teodoro Libiran, who were seen in the vicinity of the chapel on the night of the rape and who were both mustachioed (page 17 of the Record). The three suspects were detained. Other suspects, who were investigated and later released, were Diosdado Estrella and Pablo Lopez (Exh. 6).

On May 25, 1972, Lieutenant Feliciano took the statement of Florante Dizon who declared that he saw a man in white, short-sleeved polo shirt and dark pants, using yellow Japanese sandals, sleeping on the second bench in the chapel in the evening of May 22, 1972 after the procession had entered the chapel. De Jesus was brought before Florante Dizon for identification. Florante, who was told by his brother that the man's name was Lito de Jesus, identified him as the man whom he saw sleeping inside the chapel. (See pp. 9-10, Record).

On May 30, 1972, or after the discharge of Lualhati from the hospital, Lieutenant Feliciano arranged a confrontation in the municipal building between her and the three suspects. They were separately brought to Lualhati two times by Feliciano. She declared that Castro and Libiran were not the persons who had raped her. When she saw De Jesus, she identified him twice as the rapist.

The identification of De Jesus as the rapist was made while Lieutenant Feliciano was taking Lualhati's statement in the office of the chief of police in the presence of Corporal Wilfredo M. Cortan. On the basis of the sworn statements of Lualhati,

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her mother and Florante Dizon and the medical certificates issued by Doctors Puatu and Regalado and the living case report submitted by Doctor Salvador (Exh. G), Feliciana N. Landayan filed against De Jesus in the municipal court a complaint for rape dated May 30, 1972.

During the preliminary examination the municipal judge took down the sworn declarations of Lualhati, her mother, Lieutenant Feliciano, Josie Garcia and Santos Manabat. Lualhati repeated what she stated in her sworn statement that the man who was on top of her at the haystack had a mustache and wore red pants. Lieutenant Feliciano declared before the municipal judge that De Jesus admitted that he was wearing red pants in the evening of May 21, 1972. In fact, Lieutenant Feliciano got from him his red pants and they were shown to Lualhati. She identified the same as the red pants which De Jesus was wearing at the haystack (pp. 17-18 of the Record). Santos Manabat declared that he saw De Jesus near the chapel after the basketball game had ended.

The municipal judge, having found reasonable ground to believe that De Jesus had raped Lualhati, issued on June 8, 1972 a warrant for his arrest. He posted bail and was released on June 9, 1972. This would explain why De Jesus, according to his confession (Exh. H), was able *to commit another rape on June 4, 1972*. He was still at liberty on that date.

De Jesus waived the second stage of the preliminary investigation. The case was elevated to the Court of First Instance where on August 9, 1972 the provincial fiscal filed against him an information for rape, After trial, the court rendered the judgment on conviction already mentioned.

De Jesus, a twenty-eight year old carpenter, married with three children, all girls, was a resident of Barrio Santol. He finished the fourth grade. His residence was adjacent to the chapel. "After the wall of the chapel, then my house. About one arm's length from the wall of the chapel," De Jesus testified (25 tsn February 22, 1973).

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He declared that from eight o'clock in the evening of May 21, 1972 to three o'clock the following morning, he was in the basketball court behind the chapel. On that occasion, which was the last day of the *Flores de Mayo* celebration, there was a procession, which was followed by a band concert and a basketball championship game which was finished at three o'clock in the morning. De Jesus said that he left the basketball court only once and that was at eight-thirty when he took supper. He returned to the place at nine o'clock. He was the captain of the white team, one of the five teams that participated in the contest but which did not play that evening. At three o'clock, he went home and slept.

He said that he was detained as a suspect in the evening of May 23, 1972 and he was investigated by Fiscal Vidal M. Tombo, a state prosecutor of the Department of Justice, residing at Balagtas and functioning as the adviser of its police department. De Jesus said that he met Fiscal Tombo during election time when he went to De Jesus' house to convince him to join Tombo's party.

De Jesus testified that after the investigation, he was brought to the second floor of the municipal hall where Sergeant Rogelio Carvana and other policemen removed his pubic hair. Then, he was taken downstairs where two young girls were asked to identify him. They said that he was not the rapist, Sergeant Caravana denied this testimony of De Jesus.

De Jesus declared that, for fear of maltreatment, he signed a waiver of his right under Article 125 of the Revised Penal Code not to be arbitrarily detained. From May 23 to 30, 1972 he was investigated daily by Fiscal Tombo and by Vice Mayor Simplicio Landayan, the acting mayor, who happens to be Lualhati's grandfather.

De Jesus said that on May 30, 1972, he was brought form the jail to the mayor's office, where he saw Fiscal Rombo, Vice-Mayor Landayan and Lualhati. The vice-mayor convered the mouth of De Jesus and then he asked Lualhati if De Jesus was the culprit and she said that he was not the one. De Jesus said that he was brought back and forth from the jail to the

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mayor's office five times and at the fifth time Lualhati identified him as the rapist. When he complained that for four times Lualhati did not point to him as the culprit, Fiscal Tombo pushed him and ordered that he be returned to jail. He said that he signed a six-page statement before Fiscal Tombo.

De Jesus testified that he was released only on May 31, or after the expiration of the seven-day period fixed in Section 15, Rule 112 of the Rules of Court and only after his lawyer threatened to file a petition for *habeas corpus* but it was made to appear in the police blotter that he was released in the afternoon of May 30 or within the seven-day period. He said that, when he was leaving the detention cell, Fiscal Tombo approached him and warned him: "*Lito, hindi ka makakalayo. Ipakukuha kitang muli.*"

He declared that after he had posted bail, he saw Fiscal Tombo who told him: "Do you believe me now, Lito? *Talagang matigas ka, Lito, nakapiyansa ka pa. Hayaan mo, titingnan ko ang tigas mo at isasaksak kita sa isang asuntong walang piyansa.*"

On July 1, 1972, he was again arrested in connection with the case for rape and homicide involving *Aurora Santos*. At the municipal hall, he saw Fiscal Tombo with some NBI agents who took him to Manila for investigation.

When De Jesus was asked by his counsel as to the truth of Lualhati's charge that he had sexually abused her, he replied that he could not have done such a thing because he has three daughters, who are young like Lualhati, and because he is a married man living peacefully in Barrio Santol. De Jesus admitted that there was a haystack about sixty meters away from the RCA compound and that the vicinity was well-lighted. A defense witness testified that the RCA compound was about fifty meters away from the chapel (17 tsn February 16; 1973).

Narciso Diamzon, a pharmacist, a resident of Barrio Santol, the chairman of the basketball league, and a friend of De Jesus, testified that he saw De Jesus in the basketball court in the evening of May 21, 1972 and in the following morning up to

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three o'clock. He had asked De Jesus and the other team captains to guard the trophies. As already stated, the team of De Jesus did not play that night. At about three o'clock, De Jesus received the prize of his team which placed third and was awarded a ball as the sportsmanship prize. Diamzon admitted that after midnight he hardly noticed the presence of De Jesus in the basketball court because he (Diamzon) was very busy. According to Fiscal Tombo, De Jesus denied that he saw Diamzon in the basketball court (3 tsn March 15, 1973).

The issue is the credibility of the nine-year old victim, Lualhati Landayan, or whether appellant's guilt was established beyond reasonable doubt.

We have painstakingly studied the evidence and appellant's arguments in his brief in order to ascertain whether there is any reasonable doubt as to his guilt. We agree with the trial court that he was definitely identified by the nine-year old rape victim and that his alibi is not sufficient to exculpate him. His presence in the basketball court after midnight did not render it impossible for him to commit the rape in the haystack about fifty meters away.

One piece of evidence of the prosecution is pregnant with significance and dissipates any doubt as to the guilt of De Jesus in this case. That evidence is his confession to an NBI agent dated July 2, 1972 (Exh. H). The agent identified the confession during the trial in this case. De Jesus did not assail its voluntariness. In that confession, he admitted that before he was arrested in this case, he became obsessed with *another child, named Aurora Santos*, whom he had met at the Lacson Underpass in Quiapo, Manila and who, coincidentally, resided near *a basketball court and a chapel in Makati, Rizal*. After gaining Aurora's confidence, he raped and killed her on the evening of June 4, 1972 (thirteen days after the rape in this case) in one of the buildings of the University of Santo Tomas (UST) near Dapitan Street, Manila.

For that brutality, he was indicted in the Circuit Criminal Court of Manila but the indictment was later dismissed by Judge

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Manuel Pamaran on the technicality that his confession was inadmissible. That confession reads in full as follows:

"*SINUMPAANG SALAYSAY NI* ANGELITO DE JESUS Y LIBIRAN *KINA* LUIS MARCAIDA *AT* PEDRO RIVERA *MGA AHENTE NG NBI, DITO SA TANGGAPAN NG* DEPUTY DIRECTOR FOR INVESTIGATIVE SERVICES, NBI *NGAYONG IKA 2 NG JULIO 1972.*

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parati pong laging nasa aking isipan, kanya sakali man po sa dahilan na ang aking isip ay kung minsan ay nagbla-blanco at manakanakang sumasakit kaya minabuti ko pong sabihin ng lahat sa inyo ang katotohanan. Kung ako man po ay nagkulang sa inyo, kayo na po sana ang bahalang magpapaumanhin sapagkat ito po ay dala ng kung minsan ay wala ako sa aking sarili. Ang tangi ko lamang hinihingi sa inyo, ako po ay inyong tulungan lalo na sa aking kondisyon sa ngayon na hindi ko malaman kung bakit ako ay wala sa aking sarili kung minsan. Ito po ay tatanawin kong utang na loob sa inyo. Isa pa nga po pala, kung maaari po ay gusto ko sana na ako ay inyong patingnan sa doctor.

"6. T: Ano itong iyong sasabihin sa amin?

S: Gaya na nga po ng nasabi ko sa inyo kagabi sa harap ng Chief of Police *na ako ay bigyan ng pagkakataon na makapagisip-isip at dahil dito ay aking hiniling na ngayon ko na ibigay ang aking salaysay kaya po pagkatapos kong mapagisip-isip ang aking mga kasalanan, minabuti ko pong kayo ay makausap at ipagtapat lahat ang tungkol sa pagkamatay ni* AURING.

"7. T: O, sige, ipagpatuloy mo, ano ang sasabihin mo sa amin?

S: Bago po ako magsimula, puwede po bang ako ay makapagsinde ng sigarilyo at makainum ng tubig sapagkat ang lalamunan ko po ay nanunuyo (Declarant after this request was given a stick of cigarette and a glass full of water). *Hindi ko po malaman kung saan ko uumpisahan ang aking salaysay tungkol sa pagkamatay ni* AURING.

"8. T: Umpisahan natin ang iyong salaysay sa unang pagkakataon na iyong makilala si AURING. *Isalaysay mo sa amin ang buong pangyayari ng inyong pagkikilala ni* AURING *sa unang pagkakataon?*

S: Ganito po iyon. Isang araw po habang ako ay naglalakad sa may Quiapo *underpass sa hindi inaasahang pagkakataon ako po ay nagkatama po ang tingin namin ni* AURING *at siya ay parang napangiti sa akin at siya ay nginitian ko rin. Dahil po dito, para pong ako ay nagkaroon ng pagtingin sa kanya sa unang pagkakataon at siya po ay aking sinundan hanggang sa makarating po kami sa kanilang bahay sa may* Makati. *Ang hindi ko po maintindihan sa aking sarili ay ako ay masyadong magigiliwin sa mga batang babae.*

"9. T: Nuong sundan mo siya, saan ka sumakay?

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S: Nakita ko po siyang sumakay sa jeep kaya ako man po ay sumakay din sa kanyang jeepney na pampasahero sumakay. Kami po ay nagkatabi sa upuan ng jeepney.

"10. T: Pagdating ninyo sa Makati, ano ang nangyari?

S: Pagkasakay po namin ng jeepney ay sumakay po kami ng isang jeepney pa para makarating sa Makati at siya nga po ay aking sinundan hanggang makarating ng bahay at tiningnan ko kung saan siya nakatira.

"11. T: Mga anong buwan ito noong nakita mo si AURORA *sa* Quiapo *underpass?*

S: Mga pangalawang linggo ng buwan ng Abril 1972.

"12. T: Pagkatapos mong masundan si AURING *at matandaan mo ang kanilang bahay, nagkausap ba kayong muli ni* AURING?

S: Hindi pa po. Noong paghuling linggo ng Abril ako ay nagbalik at namasyal sa Makati *malapit sa bahay ni* AURING *mga anim na ulit. Sa mga panahong ito ay tinitingnan ko lamang siya at sinusundan ko lamang siya samantalang si* AURING *ay naglalaro.*

"13. T: Saan ba ang bahay nina AURING?

S: Sa may Pasig Line *po malapit sa* Bisita at Basketball court *sa* Makati.

"14. T: Ano pa ang ibang dahilan at ikaw ay madalas pumunta sa Makati, Rizal*?*

S: Namamasyal at tinitingnan ko nga po si AURING.

"15. T: Sino ba nag mga kamaganak mo kung mayroon ka man sa Makati?

S: Wala po.

"16. T: Kung ikaw ay pumupunta sa Makati, saan ka ba namamalagi doon?

S: Doon po sa may basketball at ako ay nanonood ng mga batang naglalaro ng basketball. Sumasandal po ako sa may poste ng goal.

"17. T: Kailan at saan mo nakausap si AURING?

S: Dalawang linggo bago mag Junio 4, 1972 ay nagkita kami ni AURING *sa tindahan at siya ay bumibili ng kendi. Binayaran ko ang kendi na kanyang binili na halagang (₱0.15) at sinabi ko sa kanya ang aking pangalan.*

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"18. T: Ilang beses kayo nagkausap ni AURING *bago mag Junio 4, 1972?*

S: Dalawang beses po. Nagkita po kaming muli doon sa tindahan at binayaran ko ang kendi na kanyang binili sa halagang kinse (₱0.15). Doon po kami nagkausap ni AURING *at tinanong ko pa siya ng ganito "masarap ba ang kendi ineng?" at ang sagot niya ay "masarap" daw, at pagkatapos niyon ay umalis na siya.*

"19. T: Naalaala mo pa ba kung anong araw nagkausap kayo ni INENG *noong unang beses at pangalawang beses na nagkita kayo?*

S: Naalaala ko po na Sabado ang pangalawang beses na nagkita kaming dalawa.

"20. T: Bukod sa kendi, hindi mo ba binibigyan ng pera si AURORA?

S: Opo. Minsan po ay nabigyan ko siya ng ₱0.35 na puro tig-sisinco sentimos.

"21. T: Kailan mo binigyan siya ng ₱0.35, doon ba sa unang paguusap ninyo o sa pangalawang beses?

S: Doon po sa pangalawang beses.

"22. T: Noon Junio 4, 1972, umalis ka ba ng bahay mo sa Santol?

S: Opo, umalis po ako.

"23. T: Anong oras ka umalis ng bahay mo sa Santol?

S: Mga bandang alas dies po. Sumakay po ako ng jeep buhat Balagtas hanggang monumento. Pagdating ko sa Monumento *ay sumakay po ako ng jeep papuntang* Sta. Cruz *at buhat sa* Sta. Cruz *ako ay sumakay ng bus at ako ay bumaba ng malapit doon sa may basketball.*

"24. T: Noong dumating ka sa Makati *ng Junio 4, 1972, natatandaan mo ba kung anong oras ka dumating sa* Makati?

S: Sa pagitan po ng alas tres at alas kuwatro ng hapon.

"25. T: Sinabi mo sa iyong sagot sa aming tanong bilang 23 na alas dies ka umalis sa Santol, bakit ang tagal bago ka nakarating sa Makati *na sinasabi mong sa pagitan ng alas tres at alas kuwatro ng hapon?*

S: *Dahil po sa tumigil ako sa monumento,* Caloocan City *ng mahigit na dalawang oras bago po ako sumakay ng jeep patungong* Sta. Cruz.

"26. T: Noong ikaw ay dumating sa Makati sa pagitan ng alas tres at alas kuwatro ng hapon, nagkita ba kayo ni AURORA?

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S: Opo, nagkita po kami ni AURORA *sa tindahan. Bumili po siya ng kendi at siya ang nagbayad at tinanong ko sa kanya kung magkano. Magmula sa tindahan ay nagtuloy kami sa basketball court. Magkasabay kami pumunta sa may basketball court at mula doon ay naglakad kami papuntang karsadang sakayan ng bus. Hindi ko po alam ang pangalan ng kalye. Sumakay kami ng bus na papuntang* Quiapo. *Pagdating sa* Quiapo *ay sumakay kami ng jeepney patungong UST. Pagdating namin doon ay umakyat kami sa isang building at doon ko na nga ho siya niyari.*

"27. T: Noong kayo ay patungo sa building na nabanggit mo, mayroon bang mga taong nakita sa inyo?

S: Kasalukuyan po noon na naglalabasan ang mga tao galing sa simbahan ng UST *at maaaring nakita kami, lalo na noong kinarga ko si* AURING.

"28. T: Bakit mo kinarga si AURING?

S: Dahil po sa siya ay umiiyak at natatakot.

"29. T: Mga anong oras noon?

S: Madilim na ho, siguro mga bandang alas siete o mahigit pa roon.

"30. T: Saan lugar mismo doon sa building na binanggit mo kayo nagpunta?

S: Sa luma na building sa second floor. Doon po sa bandang sulok na madilim. Yoon pong building na kahoy at luma. Na may rehas.

"31. T: Ikuwento mo nga sa amin kung ano ang sumunod na pangyayari o yoong mga ginawa mo?

S: Pagdating nga ho namin doon ay niyari ko na po ang bata.

"32. T: Ano ang ibig mong sabihin ng "niyari"?

S: Inasawa ko po. Una ay inihiga ko siya, inalis ko ang kanyang pantie. At hindi ko ho matandaan ang sunod-sunod na pangyayari, basta't alam kong inasawa ko siya, dahil po sa nasabi ko sa inyo nagulo na nga ho ang isip ko at parang nawala ako sa aking sarili.

"33. T: Si AURING *ba bago mo siya inasawa ay nanlaban sa iyo?*

S: Oho. Sumisipa ho siya kaya't pinigil ko ang kaniyang mga paa, iniipit ko siya ng aking dalawang hita samantalang ako ay nakapatong sa ibabaw niya. At noong una ay hindi ko naipasok ang akin, pero noong pangalawa ay naipasok ko ang kalahati at dahil sa ibinuka ko ang kaniyang dalawang paa at isinabit sa

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paa ng dalawang bangko. *Hindi ko po matandaan lahat dahil sa magulo nga ho ang aking isip at nakalimot ako sa aking sarili.*

"34. T: Sumisigaw ba si AURORA?
S: Hindi ko na po matandaan.

"35. T: Bakit mo naman pinatay pa si AURORA, *gayong nakuha mo na ang gusto mo?*
S: Wala nga ho ako sa sarili noon, eh.

"36. T: Papaano mo ba siya pinatay?
S: Hindi ko na rin po masabi ng husto basta ang natatandaan ko ay binuhat ko ang ulo niya at ipinalo ko at iniumpog ko sa banco at sa sahig at pinagtatadyakan ko po.

"37. T: Ano pa ang mga ginawa mo?
S: Nakalimot po ako sa aking sarili noon, ang alam ko lang ay pinatay ko siya sa gulpe, tadyak at pagumpog ng kanyang ulo sa sahig.

"38. T: Ikaw ba naman ay linabasan noong yariin mo si AURORA?
S: Opo.

"39. T: Pagkatapos ano pa ang ginawa mo?
S: Umalis na po ako. Hindi ko matandaan kung saan ko nailagay ang damit niya, ang tsinelas niya ay itinapon ko sa gilid ng building.

"40. T: May kasama ka ba noong araw na kuhanin mo at patayin si AURORA?
S: Wala po.

"41. T: Bakit naman sumama sa iyo si AURORA?
S: Inaya ko nga po siya. Basta sabi ko'y "INENG HALIKA SUMAMA KA SA AKIN" at siya ay sumama naman.

"42. T: May ipinangako ka ba sa kanya upang siya ay sumama sa iyo?
S: Wala po, medio nga ho magkaibigan na kami siempre ho sumama na siya.

"43. T: Kayo ba ay mayroon ng usapan na kayo ay mayroon pupuntahan ng araw na iyon?
S: Wala ho.

"44. T: Yon bang mga taong nagturo saiyo kagabi dito ay nakita mo sa UST *noong kinarga mo si* AURING?

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S: Hindi ko ho matiyak maaaring nakita nga nila ako dahil marami ho sila.

"45. T: Bakit mo napili na doon dalhin sa UST *si* Auring?
S: Para ho hindi ako mapagbintangan dahil marami ang tao sa UST.

"46. T: Dati ka na bang nagpupunta sa UST?
S: Opo. Nagdadala po ako ng cuaderno kung pumupunta ako roon dahil sa nakagawian ko na iyon.

"47. T: Mga anong oras ng iwanan mo si AURING *na patay?*
S: Mga alas 10:00 ng gabi.

"48. T: Ikaw ba ay nakapunta sa Pandacan para makipagkita kay AURORA?
S: Hindi po.

"49. T: Bakit mo naman nagustuhan narapen si AURORA samantalang siya ay batang bata?
S: Yon ho ang ginugusto ng isip ko eh.

"50. T: Ikaw ba ay mayroon pang ibang babaing nirape maliban kay AURORA?
S: Tungkol ho kay LUALHATI *na ako namay ay suspect din diyan ay como ang kasong iyan ay nasa husgado na hamong na pong husgado na ang humatol as akin.*

51. T: Nasaan ang mga damit at sapatos na suot mo noong nirape at patayin mo si AURORA?
S: Ang damit po ay nasa amin. Ang sapatos ko pong suot noon na goma ay hiniram ko sa aking bayaw na si TEOFILO PAGUIA *at nandoon po sa amin.*

52. T: Sa mga kamaganak mo mayroon na bang nagkakaso rin ng rape?
S: Wala ho.

53. T: Mabalik tayo sa kaso mo tungkol kay LUALHATI, a*no ba ito?*
S: Suspect din ho sa pagrape sa kaniya, kaya lang ho ibalato na ninyo ito sa akin at ito naman ay nasa husgado na, nakikiusap ako na huwag na ninyo akong tanungin tungkol dito.

54. T: Ano ang ayos ni AURORA *noong mapatay mo at iwanan mo siya?*
S: Kuwan ho eh, nakahiga ho siya, hubad siya at maraming dugo sa ulo at nakabuka ang kaniyang dalawang hita.

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55. T: Ikaw ba ay may nais pang sabihin sa salaysay mong ito?
S: Wala na ho siguro. Sa palagay ko'y naipagtapat ko nang lahat.

56. T: Ikaw ba ay tinakot o sinaktan o pinangakuan ng anumang kaluwagan upang magbigay ng salaysay mong ito?
S: Hindi po. Parang nagluwag ang dibdib ko ngayon matapos na masabi ko sa inyo ang buong katotohanan.

57. T: Handa ka bang pumirma sa salaysay mong ito?
S: Opo.

58. T: Nais mo bang tumawag muna ng abogado bago mo pirmahan ito?
S: Hindi na ho.

– "Wakas ng salaysay –

(Sgd.) Angelito de Jesus
(Typed) ANGELITO DE JESUS
(Nagsalaysay)
(Sgd.) Angelito de Jesus

"NILAGDAAN SA HARAP NINA:

1. Illegible ——————— 2. Illegible ———————

"SUBSCRIBED AND SWORN to before me this 2nd day of July 1972 in the Office of the National Bureau of Investigation, Taft Ave., Manila, Philippines.

(Sgd.) Illegible
JOSE F. DELOS REYES
Deputy Director for
Investigative Services
NBI
(By authority of Republic Act 157)"

The foregoing confession reveals that De Jesus, as admitted by him, has pedophiliac tendencies because he prefers young girls as sexual objects. The sexual deviation or perversion in the instant case and in the case described in the confession (Exh. H) belongs to the category of *paedophilia erotica* discussed by Krafft-Ebing in his *Psychopathia Sexualis.*

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The confession, the detailed recitals of which could not have been fabricated, is evidence of similar conduct on the part of De Jesus which lends credibility to the declaration of Lualhati in this case that she was sexually abused by De Jesus (See sec. 48, Rule 130, Rules of Court).

The NBI agent, who took the statement of De Jesus, testified in this case that De Jesus was the principal suspect in the case of Aurora Santos because of the testimonies of witnesses who saw him talking with the victim immediately prior to her disappearance as well as witnesses who saw the girl struggling to free herself from his clutches while he was carrying her in the UST campus (7 tsn January 29, 1973).

It is noteworthy that in Exhibit H, when De Jesus was asked whether he had a rape case other than that of Aurora Santos, he did not categorically deny that he raped Lualhati. His ambiguous answer was this: "*Tungkol ho kay Lualhati na ako naman ay suspect din diyan como ang kasong iyan ay nasa husgado na hamong (yaan) na po ang husgado na ang humatol sa akin*" (Question No. 50 in Exh H).

The crime committed in this case is simple rape falling under paragraph 3 of Article 335 of the Revised Penal Code, as amended by Republic Act Nos. 2632 and 4111. It is punished by *reclusion perpetua.*

The indemnity of ₱165 imposed by the trial court should be raised to ₱12,000.

WHEREFORE, the trial court's judgment is affirmed with the modification that the indemnity is raised to ₱12,000 and that the penalty imposed should be termed *reclusion perpetua.* Costs against the appellant.

SO ORDERED.

Barredo (Actg. Chairman), Antonio, Concepcion Jr., and *Santos, JJ.,* concur.

Fernando, J., on leave.