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SECOND DIVISION

[G.R. No. L-41525. October 23, 1978]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO SANTOS *Y* BASA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; FAILURE OF A TWELVE YEAR OLD GIRL TO RESIST DOES NOT NEGATE COMMISSION OF RAPE. — Appellant's contention that the trial court erred in finding that the complainant was raped and that he was the rapist on the theory that the victim could have easily made an outcry and liberated herself from appellant's control is untenable. The contention would be meritorious if the victim was already of age. But she was only twelve years and two months old. A mere child, she was not even a teenager (one between the ages of thirteen and nineteen years). She could hardly be expected to use any discretion and discernment as to how she could resist the coercive power of the accused. Being young and immature, she was completely intimidated by accused-appellant.

2. ID.; PENALTY FOR RAPE COMMITTED WITH A DEADLY WEAPON. — Rape committed with the use of a deadly weapon is punished by *reclusion perpetua* to death. As no aggravating circumstances are present in this case, the trial court correctly imposed the lesser penalty upon the accused (Arts. 63(2) and 335, Revised Penal Code).

3.REMEDIAL LAW; CRIMINAL PROCEDURE; IDENTIFICATION OF THE CULPRIT; SUFFICIENCY OF. — Appellant's contention that he was not sufficiently identified as the malefactor is not well-taken. The victim identified his from among the photographs at the police station and likewise positively identified him during the confrontation as her rapist. His letter to the victim' parents, wherein he sought pardon and conveyed his longing to marry her bolstered his identity and removed any scintilla of doubt as to his guilt.

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APPEARANCES OF COUNSEL

Solitor General Estelito P. Mendoza, Assistant Solicitor General Alicia V. Sempio-Diy and *Edgardo I. Kilayko* for appellee.

Silvino B. Agudo (Counsel de Oficio) for appellant.

D E C I S I O N

AQUINO, *J.*:

Edgardo Santos appealed from the decision of the Court of First Instance of Rizal, Caloocan City Branch 33, convicting him of rape, sentencing him to *reclusion perpetua* and ordering him to pay an indemnity of ₱5,000 to the victim, Teodora Erjas. The trial court found that the charge of forcible abduction against Santos was not proven. (Criminal Case No. C-5893.)

At about nine o'clock in the morning of Sunday, February 2, 1975, Teodora Erjas was dispatched by her mother to buy rice in the market located at 8th Avenue, Caloocan City. Teodora, a grade six pupil, was then twelve years and two months old (she was born on November 8, 1962). She was residing at 22 Daang Bakal Street, Caloocan City. Before she could buy rice, she was accosted by a man whom she did not know but whom she identified during the trial as the accused, Edgardo Santos. (She was crying when she pointed to Santos. She told the court that she was crying because she was afraid of Santos.) Santos asked her where the Grace Park Elementary School was located. She accompanied him to the elementary school.

While they were in front of the school, Santos threatened to kill her with a knife and ordered her to go with him to a place nearby on the pretext that he was going to sell to his aunt his transistorized radio. As she was frightened, she walked with him to 8th Avenue. Santos poked a knife at her waist and held her right hand. At Rizal Avenue Extension, Grace Park, they boarded a jeepney. Santos continued to point the knife covertly at her waist. They alighted near the cemetery.

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They entered the cemetery and reached the grave of Fernando Poe, Sr. which was marked by a tall cross and a tombstone wherein his name was written. Santos, leading her by the hand, looked for a place where he could make her lie down. He placed his knife on top of a cemented niche and told Teodora to sit on the ground. He kissed her cheeks and legs and removed her panty. She did not offer any resistance because she thought that if she did something, he might kill her.

When Teodora was already lying on the ground, Santos removed his pants and underwear. He lifted the girl's dress, inserted his penis into her organ while her legs were spread and raised, and held her neck. She felt pain when he inserted his organ into her vagina and blood came out of it. She cried.

Then, Santos told the girl, who was still under intimidation, to sit in front of him on his legs, asked her to embrace him, and, in that position, he again inserted his penis into her organ and at the same time he kissed her cheeks. After he had removed his organ, he gave Teodora a towel with which to wipe her vagina. There were bloodstains on the towel after she had wipe her organ with it.

He told her to wear her panty. They took a jeepney and returned to 8th Avenue. They parted at that place. He told her that his name was Pedro de la Cruz. When she arrived home at noontime, she tearfully recounted to her mother that she had been ravished. Her clothes were dirty, her hair was dishevelled, and the zipper of her dress was open. Her mother reported the incident to the police.

After the policemen had examined Teodora, they concluded that "one thing had been taken" away from her, meaning that her virginity was lost. At the police station, Teodora identified the photograph of Edgardo Santos as that of the man who had abused her.

At ten o'clock in the evening of February 2, 1975, Teodora was examined by a medico legal officer of the National Bureau of Investigation. He deduced from the physical condition of her genital organ that she had "recent sexual intercourse with

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(a) man" or had sexual intercourse within the last twenty-four hours. Her hymen had healing lacerations at the three and seven o'clock positions. The smears from her vulva, urethra and vagina were positive for human spermatozoa, pus and epithelial cells.

On the following day, a police sergeant picked up Santos. He had known Santos since 1971 as a former detainee in the city jail with a pending murder case. The sergeant delivered Santos to Detective Paulino Batarina as a suspect. Baterina brought Santos to the barangay outpost at 7th Avenue, where Teodora Erjas and her parents were summoned to appear. At the confrontation, Teodora pointed to Santos as the person who had sexually assaulted her. The barangay captain asked Teodora: "*Ituro mo sa akin kung sino ang gumahasa sa iyo*?" She was crying when she fingered Santos as her assailant. Santos did not say anything when Teodora identified him.

Her mother filed against Santos a complaint for forcible abduction with rape on February 6, 1975 in the Court of First Instance. It was sworn to before a special counsel who certified that he conducted the corresponding preliminary investigation and that Santos was informed of the complaint and of the evidence against him and that he was given an opportunity to controvert it.

Appellant Santos, thirty-seven years old, single, a high school undergraduate, residing at 212 Interior 3, Doña Rita Street (between 6th and 7th Avenues), Caloocan City, testified that in the morning of February 3 (should be 2), 1975 he was at the residence of his uncle, Virgilio Danting, at 116 9th Avenue, Caloocan City. He talked with his uncle and then slept. He left his uncle's house at five o'clock in the afternoon, stayed in the billiard hall at A. Mabini Street and returned home in the evening.

He said that he did not know anything about the abduction and rape imputed to him by Teodora Erjas. At the police station, he told Detective Batarina that he was not willing to give any statement. He admitted that he was convinced of acts of lasciviousness in 1967, that he was accused of robbery in 1966, and that he was convicted of some crimes which he could not remember anymore.

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Danting, the uncle of Santos, was repeatedly subpoenaed to appear as a witness for the defense. He did not testify. Consequently, the alibi of Santos remains uncorroborated. It cannot be given any credence.

Three days after Santos was arrested, or on February 6, 1975, while he was detained in the city jail, he wrote two letters. In one letter, addressed to Teodora's parents, he stated that, whether he was acquitted or not, he was willing to marry Teodora. He *asked for pardon* (9 tsn March 25, 1975). He said:

"I foresee your surprise upon tendering (sic) this unexpected missive especially coming from this little corner of the world — But before I proceed to what I will beg of you let me extend my esteem regards and best wishes to the (sic) your wonderful family circle.

"May this humblest of all billet finds (sic) you all there that you're all in the prime of happiness, in the pink of health and in the best of everything but the lion share is for beautiful Teodora.

"*Atche (sic), ibig ko pong malaman ninyo na kahit na ako ay inyong itinuturo na siyang sumalbahe sa inyong panganay at tanging anak na babae kahit po ako tunay at talagang walang kasalanan ay di po ako nagdaramdam sa inyo —*

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"*Nabuo na po sa aking sarili, sa maka-absuelto ako't hindi kung ako ma'y ayaw ninyong patawarin ay hihintayin kong maging dalagang ganap si Teodora at aking liligawan at handa ko siyang pakasalan — O kung gusto naman ninyo ay kasal muna bago ligaw.*

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"*Kung gusto naman ninyo ay pabibigyan ko kayo sa aking magulang ng sapat na halaga para makatapos ng pag-aaral si Teodora at kung ako'y inyong patatawarin ay nangangako po akong tapat sa inyo na lahat ng buong suweldo ko sa aking trabajo ay ibibigay kong lahat kusang loob sa inyo para kay Teodora at kung lumaki siya at makatapos ng pagaaral ko siya liligawan kung maibig niya ako o hindi ay walang samaan ng loob.*

"*x x x basta't ang batid ko'y mahal na mahal ko siya — ang makita ko lamang siyang masaya ay maligaya na rin po ako.*

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"Magkakasakit po yata ako kung di ko na siya makikitang muli at tuluyan na kayong magalit sa akin. Hindi na po ako makatulog . . .

"Hanggang dito po, lubos ang aking pagasa sa inyong pangunawa, patawad at pagtulong sa aking gipit at abang kalagayan. Lagi ko pong dalangin ang inyong kaligtasan, kaligayahan at magandang kapalaran." (pp. 42-43, Record).

That letter contains the following postscript: "*Huwag sana po ninyong pababayaan si Teodora at alagaang mabuti siya. Salamat po.*" And also a note: "*Pahingi naman po sana kung mayroon ng isang litrato ni Teodora kahit bayaran ko sa inyo.*"

In the other letter, addressed to Teodora, the accused used as one of his names the name "Edgar (Allan *Poe*) Santos."

The trial court found that the accused was definitely identified by Teodora as the culprit and that there was no reason why she would frame up the accused.

Appellant Santos, through his counsel *de oficio*, contends that the trial court erred in finding that the complainant was raped and that he was the rapist. The first contention is predicated on the theory that Teodora could have easily made an outcry and liberated herself from appellant's control. That contention would be meritorious if Teodora was already of age. But she was only twelve years and two months old. A mere child, she was not even a teenager (one between the ages of thirteen and nineteen years). She could hardly be expected to use any discretion and discernment as to how she could resist the coercive power of the accused. Being young and immature, she was completely intimidated by Santos.

Appellant's second contention that he was not sufficiently identified as the malefactor is not well-taken. His letter to Teodora's parents, wherein he sought pardon and conveyed his longing to marry Teodora, removes any scintilla of doubt as to his guilt.

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Appellant Santos belongs to the category of pedophiliacs or perverts who prefer children as sexual objects. Examples of that form of sexual deviation are found in our criminology.

Rape committed with the use of a deadly weapon is punished by *reclusion perpetua* to death. As no aggravating circumstances are present in this case, the trial court correctly imposed the lesser penalty upon the accused (Arts. 63[2] and 335, Revised Penal Code).

WHEREFORE, the trial court's judgment is affirmed with the modification that the indemnity of ₱5,000 should be increased to ₱12,000. Costs against the appellant.

SO ORDERED

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

FIRST DIVISION

[G.R. No. L-42213. October 23, 1978]

DOMINGO HERRERA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES (BUREAU OF PUBLIC SCHOOLS) and WORKMEN'S COMPENSATION COMMISSION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; ILLNESS WHICH SUPERVENED DURING AND/OR AGGRAVATED BY EMPLOYMENT, PRESUMED COMPENSABLE. — An illness which supervenes in the course of and is aggravated by the employment in the employee's disability to perform his customary work either permanently or