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is of the essence. Yet in this case, appellant Velasquez was clearly identified by the complainant and her mother. What is worse, there is evidence of his threat to kill them if they would reveal his participation. His defense of alibi, inherently weak in itself, is completely discredited. Clearly then, appellants have not made out a case for acquittal.

WHEREFORE, appellants Mariano Tigulo and Pacifico Velasquez are convicted of the crime of rape and each of them sentenced to serve the penalty of *reclusion perpetua*. Each of the accused is likewise sentenced to indemnify the offended party in the amount of ₱12,000.00, as well as to suffer the accessory penalties imposed by law. As thus modified, the judgment stands affirmed.

Barredo, Antonio, Aquino, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

EN BANC

[G.R. No. L-35413. November 7, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **FELIPE MORALES**, *defendant-appellant.*

SYLLABUS

CRIMINAL LAW; RAPE; COMMITTED WHEN THE OFFENDED PARTY IS LESS THAN TWELVE YEARS OLD AT THE TIME OF THE INTERCOURSE; CASE AT BAR.— Considering the extreme modesty and timidity of the Filipino women, especially those from the barrio, We cannot believe that the herein offended party, whose chastity has not been questioned, could have fabricated such a story as would so seriously dishonor her. But, even granting that she had consented to the intercourse,

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this fact does not relieve the accused of criminal responsibility. Since the offended party was less than 12 years old at the time of the intercourse, rape was committed although there might have been consent to the sexual act. Being of tender age, she is presumed not to have a will of her own. The law does not consider any kind of consent given by her as voluntary.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza Assistant Solicitor General Eulogio Raque-Santos and *Solicitor Ma. Rosario Quetulio-Losa* for plaintiff-appellee.

Edcel C. Lagman for defendant-appellant.

D E C I S I O N

CONCEPCION, JR. *J.*:

AUTOMATIC REVIEW of the death sentence imposed upon the accused for having carnal knowledge of a woman under 12 years of age, against her will, with the use of a deadly weapon.

The record shows that the offended party, Antonia (Anita) Solano, who was born on August 10, 1958,[1] was serving as a housemaid in the house of the accused, Felipe Morales, in order to pay off a debt incurred by her parents with said Felipe Morales.[2] The accused is married to Isabel Mahinay and the spouses have four (4) children whose ages are 16, 15, 11, and 7 years.[3] They live in a secluded and forested area in Nanganangan, Dumalinao, Zamboanga del Sur, a barrio very far from the poblacion and the highway, and where their nearest neighbor lived half a kilometer away.[4]

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[1] t.s.n., p. 7: See also Exhibits "A" and "C-3".

[2] *Id.*, p. 65.

[3] *Id.*, p. 27.

[4] *Id.*, pp. 14-15.

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In the evening of March 10, 1970, while the household was asleep, Felipe Morales told Antonia Solano, who was sleeping by herself in another part of the unpartitioned house, "to wake up because he would make a sexual intercourse" with her.[5] Then, the accused got his bolo and, pointing it at the chest of the girl near her neck, told her that if she would not consent, he would kill her. He pulled down her panty and placed himself on top of her. She struggled to get up, but Felipe Morales held her down. She could not shout because she was afraid that the accused would kill her. The accused inserted his penis into her genitalia and had sexual intercourse with her. She felt pain and blood came out of her vagina. She tried to rouse the 15-year old daughter of the accused who was sleeping near her, saying: "Mar, you wake up because your father is raping me." But, Mar did not wake up. She merely moved.[6] Felipe Morales had sexual intercourse with her five (5) times that night.[7]

The following day, she went home and reported the incident to her parents. But, they did not believe her.[8] However, she stayed in their house and did not return to the house of Felipe Morales until "Felipe Morales went to our house and he told my parents that if they will not allow me to return to the house of Felipe Morales, the accused will kill all of us."[9] So, she went back to the house of Felipe Morales. She also reported the incident to the wife of Felipe Morales, but "she did not mind."[10] Thereafter, Felipe Morales had sexual intercourse with the complainant two or three times every night.[11]

On May 11, 1970, Felipe Morales and his son took Antonia Solano with them to Nilo, to sell rattan and to buy some provisions

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[5] *Id.*, p. 13.

[6] *Id.*, pp. 31, 18.

[7] *Id.*, p. 74.

[8] *Id.*, p. 19.

[9] *Id.*, p. 20.

[10] *Id.*, p. 36.

[11] *Id.*, p. 77.

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in the market. Finding an opportunity, Antonia Solano escaped and fled to Pagadian City, to the house of one Loring Sali, in the wharf area. She recounted her ordeal and together they went to a policeman who in turn brought them to the capitol where he got a lawyer, one Atty. Carpio. The latter brought Antonia Solano back to Dumalinao where she filed a complaint before Mayor Edmundo Dalid. She was investigated by the chief of police who then helped her in filing a formal complaint[12] against Felipe Morales.[13] She was also taken to the Municipal Health Officer who examined her thoroughly from head to foot, after which a medical certificate was issued. The medical certificate[14] states the following:

"Physical Examination

"Anita Solano, born August 10, 1958, living in Barrio Nanganangan residing with the family of Felipe Morales because Anita was left by her mother there when her father died last year 1969. Her father died 1968.

Date, time & place of alleged commission of Rape

Since March 1970, Felipe Morales, with whom she is living with or staying with get her every night and sleep with her even against the will & consent of the wife. It was just recently, this first week of May that she was able to escape. According to the child she could not escape because there is a bolo beside them while sleeping and it is hard to escape because the place is yet a forest.

"Menarche had not began yet, it was only last March 21, 1970 she had bloody discharge from the vagina for 2 weeks, but last April 1970 there was no blood discharge or menstruation.

Date, time & place of examination.

"May 13, 1970, 11:30 AM, Dumalinao, RHU Center.

"11 years 9 months old child, slightly pale looking brought by the policeman.

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[12] Exhibit "B".

[13] t.s.n., pp. 21-24.

[14] Exhibit "A".

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Physical Examination:

"Breasts not yet developed. Examination of the vulva shows absence of pubic hair.

"Hymen shows healed lacerations at 3:00 o'clock, 6:00 o'clock & at 9:00 o'clock when compared to the face of the clock.

"Small vaginal speculum inserted to visualize the cervix, cervix pinkish.

Diagnosis: Healed lacerations of hymen therefore virginity lost."

Antonia gave her name as Anita Solano because "I was afraid of the accused. The moment he will see me, he will kill me."[15]

Felipe Morales admitted that he had carnal knowledge of Antonia Solano on the occasions mentioned by her. He claims, however, that it was with the consent of the woman. He declared that on March 7, 1970, he and his common-law wife, Isabel Mahinay, went to the house of Gaudencio Sanoy, where the parents of Antonia Solano were then residing, in order to propose and make arrangements for his marriage to Antonia. Among those present, other than the parents of Antonia and Gaudencio Sanoy, were Pacio and the son of Flavio, whose family names he could not recall. Antonia was also present, but was asleep in another part of the house when they arrived. However, she was awakened and she consented to her marriage with Felipe Morales. Felipe Morales was required to give a dowry of ₱200.00 and one and a half (1-½) hectares of land to the parents of Antonia. But, he was only able to give ₱62.00 and still lacks ₱138.00. They also agreed to have the marriage celebrated the next year because the priest might not consent as Antonia was still young.[16]

On March 10, 1970, he invited Antonia and her parents to his house to participate in a prayer. They came and stayed in their house that night. Antonia slept with her parents while his

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[15] t.s.n., p. 25.

[16] *Id.*, pp. 66-69.

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wife slept beside her sister. He slept beside Antonia. "As a matter of fact, it was her parents who said that 'why is it that you are far from each other, anyway what is lacking is only the marriage ceremony.'" So, he and Antonia rolled inside a mat and had sexual intercourse. Antonia was a virgin and, in the beginning, he found it difficult to insert his penish into her vagina. Antonia did not resist and enjoyed the act. "She even go on top of me." He had sexual intercourse with Antonia five (5) times that night. He and Antonia were "as sweet as honey" and had sexual intercourse 2 to 3 times every night until May 11, 1970. He does not know why Antonia filed a complaint against him.[17]

The trial court rejected the defense and found that the accused Felipe Morales did in fact commit the crime of rape on the person of Antonia Solano, who at the time of the intercourse was only 11 years and 7 months old, and that the marriage proposal of Morales was a last-ditch effort to make Antonia Solano withdraw her charge of rape.

We have examined the records of the case with great care and find no reason to disturb the findings of fact of the trial court based upon credibility of witnesses. In the manner the complainant had testified in court, there could be no doubt that she was telling the absolute truth. It is hard to conceive that she would claim and admit the ignominy and shame she had gone through if they were not true. We are also fully convinced that the allegations of rape have been proven beyond reasonable doubt. In the case at bar, the offended party recited in full the details of how the accused did everything in his power to overcome her. The evidence of force indicates that the accused had carnal knowledge of her after pointing a bolo at her chest, near the neck, and telling her that he would kill her if she did not accede to his demands. The accused pinned her down and though she tried to get up, he proved much stronger. She could not shout as she was afraid that he would kill her if she did. Her testimony is corroborated by Dr. Bernarda Dalid who

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[17] *Id.*, pp. 70-77.

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examined her and found signs of violation of her person. One other circumstance which supports the claim that rape was committed is the fact that the day following the commission of the felony, the complainant went home and reported the incident to her parents and refused to return to the house of the accused, until the latter threatened to kill all of them if she did not return. Another circumstance indicative of his guilt is the fact that the accused proposed marriage to Antonia. Antonia Solano declared that the accused had, indeed, proposed marriage to her, but that it was made after he had raped her and she did not agree to the proposal "because he has wife and so many children and he even raped me and I am still young."[18] And Gaudenico Sanoy, a friend of the accused, who was presented to corroborate the statement of the accused that he had proposed marriage, stated that he cannot understand why the accused should propose marriage "because I know that Felipe Morales is a married man" and has four children.[19] He did not ask Felipe Morales the reason why he was proposing marriage "because if I will ask he might get angry."[20] He was also ashamed and did not like to interfere.[21] The accused, who had already a wife and children some of whom are even older than the complainant, would not have offered to marry her except out of a sense of guilt and in order to avoid criminal responsibility.

We are not oblivious to the efforts made by counsel for the accused to discredit the testimony of the complainant in pointing out some discrepancies or flaws in the testimony of the complainant concerning the manner she was forced into submission by the accused. But said flaws or discrepancies cannot devalue the substance of her testimony or destroy the other circumstances that point unerringly to the defendant's guilt. Besides, We have to consider her situation as a girl of tender age whose will had been subjugated, accompanied by

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[18] *Id.*, p. 22.

[19] *Id.*, p. 52.

[20] *Id.*, p. 54.

[21] *Id.*, p. 63.

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threats of death, and the fact that the felony was committed almost two years before she gave her testimony in court.

The claim of the defendant that it was the parents of the complainant who proposed that the accused should have sexual intercourse with the offended party without the benefit of clergy is very incredible. The fact that accused is a married man with four children was known to the parents of the complainant. Even if they consented that their daughter be a second wife to the accused, still it is unbelievable for the parents of the girl to have proposed and openly and willingly allowed their daughter to have sexual intercourse with the accused, before marriage, and in the presence of several persons, including the wife of the accused.

Besides, if it were true, as the defense alleges, that the complainant had agreed to marry the accused and have sexual intercourse with him and that their connubial relationship was "as sweet as honey," it is incomprehensible for the complainant to have escaped from the accused at the first opportunity and later denounce him for committing such a beastly and shameful crime. Considering the extreme modesty and timidity of the Filipino women, especially those from the barrio, We cannot believe that the herein offended party, whose chastity has not been questioned, could have fabricated such a story as would so seriously dishonor her.

But, even granting that she had consented to the intercourse, this fact does not relieve the accused of criminal responsibility. Since the offended party was less than 12 years old at the time of the intercourse, rape was committed although there might have been consent to the sexual act. Being of tender age, she is presumed not to have a will of her own. The law does not consider any kind of consent given by her as voluntary.

The accused assails the decision of the trial court, claiming that the prosecution failed to introduce evidence, whether documentary or testimonial, to support the claim of the offended party that she was under 12 years of age at the time of the commission of the felony. The contention is without merit.

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Antonia Solano declared that she was born on August 10, 1958 so that she was only 11 years and 7 months old on March 10, 1970 when the accused had carnal knowledge of her. This fact is admitted by the accused in his sworn statement,[22] given soon after his arrest, wherein he stated the following:

"Q Do you know how old Anita Sullano is?

A What I know of her age is running 12 years old."

The fact is further corroborated by Dr. Bernarda Dalid who, upon examining the offended party, stated that the complainant was "A(n) 11 years 9 months old child, slightly pale looking brought by the policeman."[23] Besides, the age of the complainant has not been controverted in the court below. In the absence of proof to the contrary, her testimony should be accepted as the truth, as found by the trial court.

It may be true that the complaint and the information stated that the complainant was 12 years old. However, as contended by the Solicitor General, "the allegations in the complaint or information do not control over the proof submitted regarding the date of birth of the complainant, which proof, the defense did not controvert in any way during the trial. Besides, the information is technically correct, because when it was filed on September 22, 1970, the complainant was then actually 12 years of age, her 12th birthday having been August 10, 1970."[24]

The accused also claims that the sexual intercourse between the accused and the complainant could not have been consummated other than through mutual agreement and performed with utmost secrecy and surreptitiousness since the sala of his house, which is only 3 x 3 meters in dimension, is used at the same time as the sleeping quarters of his entire family consisting of himself, his wife, and four children whose ages were 16, 15, 11, and 7 years.

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[22] Exhibit "C".

[23] See Exhibit "A".

[24] Appellee's Brief, p. 11.

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Seemingly, it would be improbable for the accused to have raped the complainant under those circumstances and in the presence of his wife and children, but a man overcome by his perversity and beastly passions chooses neither time, nor place, nor victim, and forgets everything to satisfy his passion. Besides, as stated in the medical certificate (Exh. "A") the accused would have sexual intercourse with the complainant "even against the will and consent of the wife."

Finally, the accused contends that the claim of the complainant during the trial that she was threatened with a bolo is a "wild figment of her malevolent imagination" since her complaint, affidavit, and the "searching questions and answers" Mayor Dalid do not mention anything about her having been threatened by the accused with a bolo, and, therefore, deserves no credence.

The contention is without merit. The medical certificate (Exhibit "A") shows that the complainant had already mentioned the bolo as the intimidating force in the commission of rape against her. The said certificate states: "According to the child, she could not escape because there is a bolo beside them while sleeping and it is hard to escape because the place is yet a forest." At any rate, the fact that the affidavit of the offended party in support of the complaint and information are less detailed than her testimony in open court does not make said affidavit or testimony false or incredible, there being no incongruity between them or inconsistency in the facts stated in one and the other. Neither the rules nor practice require detailed affidavits in support of a complaint or information.

The trial court found that the aggravating circumstances of nighttime, dwelling and abuse of confidence attended the commission of the felony. Nighttime, however, is not aggravating since the record does not show that it was sought after to facilitate the attainment of the lustful purpose. Dwelling cannot also be appreciated as an aggravating circumstance because the accused and the offended party are domiciled in the same house where the felony was committed.[25] But abuse of confidence is present

[25] *U.S. vs. Rodriguez*, 9 Phil. 136.

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since the complainant was a housemaid of the accused when the crime was committed.

Under Article 335 of the Revised Penal Code, the penalty to be imposed is *reclusion perpetua* to death when the crime of rape is committed with the use of a deadly weapon. Since the felony was committed with the use of a deadly weapon and attended by the aggravating circumstance to offset the same, the penalty should be imposed in its maximum period, which is death. The trial court, therefore, correctly sentenced the accused to suffer the death penalty.

The Solicitor General recommends that the accused should be ordered to indemnify the offended party. We agree. Having been raped is akin to suffering moral death. Hence, the offended party should be indemnified.

WHEREFORE, the judgment of the trial court is hereby affirmed with the modification that the accused Felipe Morales is ordered to indemnify the offended party, Antonia Solano, the amount of ₱12,000.00. With costs against the accused.

However, for lack of the required number of votes, for the imposition of the death penalty, the accused Felipe Morales is hereby sentenced to suffer the penalty of *reclusion perpetua.*

SO ORDERED.

Fernando, C.J., Antonio, Fernandez, Guerrero, Abad Santos, and *De Castro, JJ.*, concur.

Teehankee and *Aquino, JJ.*, concur in the result.

Barredo, J., votes for the imposition of the death penalty.

Makasiar, J., The evidence warrants the imposition of the death penalty.

Santos, J., concurs with Justice A. Melencio-Herrera that upon the evidence on record, the death sentence should be imposed.

Melencio-Herrera, J., Upon the evidence, I believe that the death sentence should be imposed.