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SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Antonio, Concepcion Jr., Fernandez, Guerrero, and *Melencio-Herrera, JJ.,* concur.

Abad Santos, De Castro and *Santos, JJ.*, are abroad.

EN BANC

[G.R. No. L-35793. August 21, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCO VILLAGONZALO,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS WILL NOT GENERALLY DISTURB THE FINDINGS OF THE TRIAL COURT.— Except on a showing of a fact or circumstance overlooked or the significance of which is misinterpreted, the appraisal made by the lower court on the evidence on record is accorded credence and respect. The latest expression of such a view is found in *People v. Gargoles*. As pointed out in the opinion of Justice Santos: "When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case."

2. CRIMINAL LAW; PENALTIES; DEATH; IN THE ABSENCE OF A CLEAR SHOWING THAT THERE WAS THE USE OF A DEADLY WEAPON IN THE COMMISSION OF RAPE, IT

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CANNOT BE CONCLUDED THAT THE IMPOSABLE PENALTY SHOULD BE THAT OF DEATH.— Nonetheless, in the absence of a clear showing that there was the use of a deadly weapon, it cannot be concluded that the imposable penalty should be that of death. It is true the information mentioned that the appellant was "armed with a hunting knife." The plea of appellant would show that such element of the crime could not be considered. Thus: "However, such hunting knife was never described by the complainant during the time the complainant's affidavit was taken, or during the preliminary investigation, or even during the trial. Its appearance or description is important, for it would be very easy for a woman to say that the attacker used a hunting knife. Such appearance or description is important as the law uses the words deadly weapon. Under the circumstances and considering that every presumption should be resolved in favor of the accused, it would be going too far to conclude that the commission of the crime could be attributed to the presence of the alleged deadly weapon..

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Alicia V. Sempio-Diy and *Solicitor Amado D. Aquino* for plaintiff-appellee.

Isidoro E. Real Jr. for defendant-appellant.

D E C I S I O N

FERNANDO, *C.J.*:

Since 1964, by virtue of an amendment of Article 335 of the Revised Penal Code, the imposable penalty whenever "the crime of rape is committed with the use of deadly weapon or by two or more persons, is *reclusion perpetua* to death."[1] Appellant in this case, Francisco Villagonzalo, charged with perpetrating the crime of rape on the offended party on October 26, 1967, mention being made in the information that he was "armed with a hunting knife," was sentenced to death, the lower court

[1] Republic Act 4111, approved June 20, 1964.

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likewise taking into consideration the aggravating circumstance of the crime having been committed in the dwelling place of the offended party. The case is thus before us *en consulta.* After a careful study of the records, while it was shown that the offended party was compelled to submit to the lustful desires of appellant against her will, it was not clearly demonstrated that the hunting knife was relied upon, an attempt having been made to coax the complainant, a relative by affinity, to engage in the act and, as admitted by her, it being laid aside during the commission thereof. Accordingly, the penalty should be reduced to *reclusion perpetua.*

The lone prosecution witness was complainant Wilfreda Perong. She testified that she and her husband, Alberto Perong, attended a meeting held at Barrio Litapan, Tambulig, Zamboanga del Sur in the afternoon of October 26, 1967. She decided at around 6:00 p.m. to leave her husband and to go home, with her three-month-old baby. Upon arriving at her house after about thirty minutes, she was accosted by appellant Villagonzalo, who suddenly embraced her from behind and simultaneously touched her breast and kissed her. Thus surprised, she struggled and pleaded to the accused not to do anything to her in view of their relationship, his wife being the cousin of her husband. Appellant replied that if crows who are of the same color cohabit with each other, there should be no reason why he should be denied sexual favors by her, their family names being different. Unconvinced, complainant tried hard to free herself from the embrace of accused Villagonzalo but, being weaker, she was overpowered. He then pushed her to the floor. There was an admission by her that with both hands busily occupied, the hunting knife was put down. She likewise stated that appellant was able to have sexual intercourse with her by placing his knees between her two parted legs. The appellant then left her. The husband, upon his arrival, was immediately informed of what occurred. The offended party reported the incident to the barrio captain the following morning, October 27, 1967, and three days thereafter, or on October 30, 1967, she likewise complained to

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the chief of police of Tambulig, Zamboanga del Sur, filing her complaint for rape against appellant.[2]

Judge Willelmo Fortun of the lower court, in his well-written decision, took into consideration the above testimony as well as the defense of alibi of appellant. He came to this conclusion: "After a careful, thorough, deliberate and painstaking study, evaluation and assessment of all the evidence presented in this case, both oral and documentary, this Court has arrived at the conclusion that the accused Francisco Villagonzalo, had in fact, committed the crime of rape as charged by the victim of the rape Wilfreda Perong,"[3] As noted at the outset, this Court is in agreement, except that the penalty imposed should be reduced to *reclusion perpetua*.

1. Appellant would have this Court reverse the above finding of facts. That task is attended with difficulty. It is confronted by an unbroken line of decisions where invariably, except on a showing of a fact or circumstance overlooked or the significance of which is misinterpreted, the appraisal made by the lower court on the evidence on record is accorded credence and respect.[4] The latest expression of such a view is found in *People v. Gargoles*.[5] As pointed out in the opinion of Justice Santos: "When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their

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[2] T.s.n., Session of February 16, 1972, 2-12.

[3] Decision, 8.

[4] Some of the more recent cases may be cited: *People v. Angcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 259; *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. Ordonio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*, L-37148, June 30, 1976, 71 SCRA 593; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574; *People v. Villamala*, L-41312, July 29, 1977, 78 SCRA 145; *People v. Rapada*, L-31243, Oct. 28, 1977, 80 SCRA 63.

[5] L-40885, May 18, 1978, 83 SCRA 282.

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deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case."[6]

2. Nonetheless, in the absence of a clear showing that there was the use of a deadly weapon, it cannot be concluded that the imposable penalty should be that of death. It is true the information mentioned that the appellant was "armed with a hunting knife." The plea of appellant would show that such element of the crime could not be considered. Thus: "However, such hunting knife was never described by the complainant during the time the complainant's affidavit was taken, or during the preliminary investigation, or even during the trial. Its appearance or description is important, for it would be very easy for a woman to say that the attacker used a hunting knife. Such appearance or description is important as the law uses the words deadly weapon. It is possible that the weapon, granting that it really existed, merely appeared to be a hunting knife although it was not. Or it is also possible that, even if it was really a hunting knife, it was so dull or so damaged so that it could no longer be classified as deadly. Since in a criminal prosecution all doubts are resolved in favor of the accused, then it cannot be presumed that the hunting knife was deadly."[7] Moreover, there was the admission of appellant at first relying on his powers of persuasion to convince the offended party that there was nothing wrong in their having sexual intercourse. It was never shown that the weapon was ever utilized by appellant to intimidate her. From her testimony from the time she was on the stairway, both of his hands were busy at work embracing her, touching various parts of her body, and holding her hands to frustrate the attempt to escape from him. Under the circumstances and considering that every presumption should be resolved in favor of the accused, it would be going too far to conclude that the commission of the crime could be attributed to the presence of the alleged deadly weapon.

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[7] Appellant's Brief, 16.

[6] *Ibid*, 290.

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WHEREFORE, the lower court's decision of September 14, 1972 finding appellant guilty beyond reasonable doubt of the crime of rape, is modified to reduce the death penalty to one of *reclusion perpetua* and affirmed in all other respects.

Teehankee, Barredo, Antonio, Aquino, Concepcion Jr., Fernandez, Guerrero, and *Melencio-Herrera, JJ.,* concur.

Makasiar and *De Castro, JJ.*, took no part.

Santos and *Abad Santos, JJ.,* on leave.

SECOND DIVISION

[G.R. No. L-35858. August 21, 1979]

LIBRADA N. FIRME and FLORENCIO FIRME, *petitioners, vs.* **ARSENIO REYES, HON. SIMEON M. GOPENGCO, as Presiding Judge of Branch XXV of the Court of First Instance of Manila, G. A. MACHINERIES, INC., SHERIFF OF MANILA and GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondents.*

SYLLABUS

1. *REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR* **RECONSIDERATION; DOES NOT INTERRUPT THE PERIOD FOR APPEALING FROM THE LOWER COURT'S JUDGMENT.**— We find that the trial court and the Court of Appeals correctly held that the motion for reconsideration of the Firme spouses did not interrupt the period for appealing from the lower court's judgment. Consequently, that judgment became executory. The trial court rightly ignored that motion.

2. **ID.; ID.; NEW TRIAL; A MOTION FOR NEW TRIAL, SANS NOTICE OF HEARING, DID NOT MERIT ANY**