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circumstances as previously indicated, without any mitigating circumstance to offset them.

FOR ALL THE FOREGOING, the Court is constrained to affirm the judgment of conviction and finds no reason to disturb the penalty of death as imposed by the court *a quo.* Costs against appellants.

SO ORDERED:

Teehankee (Acting C.J.), Barredo, Makasiar, Antonio, Aquino, Concepcion Jr., Fernandez, Guerrero, De Castro, and *Melencio-Herrera JJ.,* concur.

Santos and *Abad Santos, JJ.,* took no part.

Fernando, C.J., is on leave.

EN BANC

[G.R. No. L-37418. September 28, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUAN FRANCISCO,** accused whose death sentence is under review.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ARREST WITHOUT WARRANT; WHEN LAWFUL.**— An arrest may be made without warrant when an offense has in fact been committed, and there is reasonable ground to believe that the person to be arrested has committed it.

2. **CRIMINAL LAW; RAPE WITH HOMICIDE; PENALTY; CASE AT BAR.**— The trial court correctly convicted the accused of rape with homicide, a special complex offense penalized by death

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in Article 335 of the Revised Penal Code. The mitigating circumstances of plea of guilty and drunkenness do not affect the imposition of the death penalty. Death, as a single indivisible penalty, is imposed regardless of any generic mitigating circumstances that may have attended the commission of the crime (Art. 63, Revised Penal Code).

APPEARANCES OF COUNSEL

Office of the Solicitor General for the plaintiff-appellee.
Paz Veto (Counsel de Oficio) for the defendant.

D E C I S I O N

PER CURIAM:

This is a case of rape with murder. In an information dated August 2, 1968 the fiscal charged Juan Francisco with that offense. It was alleged therein that on July 25, 1968 Francisco had sexual intercourse with Josefa Abusejo, a nine-year-old girl, in a coffee plantation located in Barrio Gutapol, Kibawe, Bukidnon and thereafter he strangled and killed her (Criminal Case No. 1981).

At his arraignment on April 30, 1969, Francisco, assisted by a counsel *de oficio,* pleaded guilty. The trial court in its decision of June 7, 1969 sentenced him to death. However, that judgment was set aside by this Court because Francisco had made an improvident plea. The case was returned to the trial court for re-arraignment with the directive that Francisco should be made to understand the nature and gravity of the offense charged, the penalty that might be imposed upon him and his rights under the law (Resolution of June 29, 1972 in L-30763, 45 SCRA 451).

After Francisco's new counsel *de oficio* had been given plenty of time to study the case, he was re-arraigned. At his second arraignment, he again pleaded guilty after he was duly apprised of the nature and gravity of the accusation against him.

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The trial judge interrogated the accused. Francisco said: "I will just plead guilty because that is the truth." In the curse of that interrogation, the accused admitted that he raped and strangled the victim. The prosecution presented its evidence. The accused and his counsel manifested that they did not want to present any evidence.

The prosecution offered in evidence the extrajudicial confession of the accused wherein he admitted that he had sexual intercourse with the victim four times and that he boxed her and choked her to death. The municipal judge, before whom the confession was sworn to, testified as to its voluntariness.

The municipal health officer, who examined the victim's body about five hours after her death, certified that he found (1) complete destruction of the hymen, blood around the vaginal orifice and a whitish fluid inside the vaginal canal; (2) enlarged vaginal opening admitting more than one index finger; (3) slight blackening on the posterior commissure with blood; (4) contusions and bloodstains on her nose and mouth and a wound or her lower lip; (5) contusions on the frontal part of the neck "with marked deepening on both sides of the throat" and (6) contusions on the face and chest, with slight deepening and softening of the costal cartilages.

The doctor certified that the cause of death was "asphyxia due to choking of the throat" (Exh. B).

Francisco, a twenty-seven-year-old illiterate farmer, a native of Barrio Mioquendo, Calbayog, Samar, went to Barrio Gutapol, Kibawe, Bukidnon and worked as a helper in the truck of Lleboro Balangyao.

He declared that in the evening of July 24, 1968, after receiving his wages, he and his friends had a drinking spree from nine o'clock to seven o'clock in the morning of the following day. They drank several bottles of Tanduay rum. After drinking, Francisco slept and woke up at noontime with a hangover.

He went out at around three o'clock in the afternoon of July 25, intending to go to the mountain. On the way, he saw Josefa Abusejo, a grade one schoolgirl (she was carrying a book). He

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held the girl and brought her to the coffee plantation of his employer, Balangyao. There he raped, boxed and strangled her.

In the evening of that day, July 25, the municipal health officer and some Constabularymen, accompanied by Balangyao, repaired to the scene of the crime. They found the victim lying on her back on the ground under a coffee tree, face up, arms spread, forming a "U" shape, thighs exposed, legs parted, and her private parts partly covered.

Near her body were a plastic hose, a water bottle, a buri hat, a school bag and a white panty. The hat belonged to Francisco. The plastic hose belonged to his employer. It was carried by Francisco who had been asked to get gasoline.

The trial court convicted Francisco of rape with homicide, sentenced him to death and ordered him to pay an indemnity of six thousand pesos to the heirs of Josefa Abusejo.

Counsel *de oficio* contends that the trial court erred in ignoring the allegation of the accused that he was mauled by the police. That contention is devoid of merit. It is true that the accused testified that he pleaded guilty because he was mauled by the police but a few minutes later, when he was asked to clarify that testimony, he declared that he was mauled because he committed the crime.

Any physical violence that was used against him was not intended to make him confess, since he knew that he could not deny the crime. It was the natural reaction of all decent men to the iniquitousness of his crime.

The contention of counsel *de oficio* that the accused was illegally arrested and that there was no preliminary investigation does not justify his acquittal.

Francisco was arrested by the inhabitants of the barrio and brought to the police headquarters. An arrest may be made without warrant when an offense has in fact been committed, and there is reasonable ground to believe that the person to be arrested has committed it.

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The case was investigated by a Constabulary sergeant who took the statements of Francisco, Remedios Abusejo (the victim's mother), Regino Albios (an eyewitness) and Balangyao, the employer of Francisco.

On the basis of those statements, all sworn to before the municipal judge, the medical certificate, and the sketch of the scene of the crime, the sergeant filed in the municipal court a verified complaint for murder with rape.

The municipal judge testified that he read to Francisco his statement before he asked the latter to swear to it. He declared that he complied with the requirement of Republic Act No. 3828 as to searching questions and answers during the preliminary investigation. He issued the corresponding warrant of arrest. Francisco was committed to prison. He made a written waiver of the second stage of the preliminary investigation.

Counsel *de oficio* also contends that the trial court erred in not taking into account "material and conclusive evidence that may prove the guilt of the accused beyond all reasonable doubt." That is a vague contention. What counsel *de oficio* meant was that the accused made an improvident plea of guilty and that the trial court did not follow the guidelines laid down in *U.S. vs. Jamad,* 37 Phil. 305, as to the course of action to be taken in case the accused pleaded guilty.

Counsel's contention is refuted by the proceedings taken by the lower court after the second arraignment. The accused was repeatedly advised as to the nature and gravity of the complex offense imputed to him. It is true that the prosecution did not present any eyewitness but that was not necessary because his voluntary extrajudicial confession was corroborated by evidence of the *corpus delicti.*

The trial court recommended that executive clemency be extended to the accused and that he be committed to a mental institution for treatment. That recommendation is not supported by any medical opinion. Because of that recommendation, counsel *de oficio* contends that the accused should not have been tried and convicted.

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A reading of the testimony of the accused shows that he was sane and was not suffering from any mental disease or defect. He gave intelligent answers to the questions of the trial court. The fact that a person does something abnormal or commits some aberration does not necessarily mean that he is insane in the legal sense. (*U.S. vs. Vaquilar,* 27 Phil. 88).

The trial court correctly convicted the accused of rape with homicide, a special complex offense penalized by death in Article 335 of the Revised Penal Code. The mitigating circumstances of plea of guilty and drunkenness do not affect the imposition of the death penalty. Death, as a single indivisible penalty, is imposed regardless of any generic investigating circumstances that may have attended the commission of the crime (Art. 63, Revised Penal Code).

We agree with the Solicitor General that, considering the facts of this case, the trial court's recommendation for executive clemency is not justified.

WHEREFORE, the trial court's judgment imposing the death penalty is affirmed with the modification that the indemnity should be increase to twelve thousand pesos. Costs *de oficio.*

SO ORDERED.

Teehankee (Actg. C.J.), Barredo, Makasiar, Antonio, Aquino, Concepcion Jr., Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.,* concur.

Abad Santos and *Santos, JJ.,* took no part.

Fernando, C.J., is on leave.