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1. In Criminal Case No. U-9032, for murder, the appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the heirs of the deceased victim, Pedro Valenzuela, Jr., the amounts of: (a) ₱50,000.00 as civil indemnity for his death, (b) ₱25,000.00 as actual damages, and (c) ₱50,000.00 as moral damages.
2. In Criminal Case No. U-9168, for frustrated murder, the appellant is sentenced to suffer the indeterminate sentence of 12 years of *prision mayor* maximum as minimum, to 14 years, 8 months and 1 day of *reclusion temporal* medium as maximum. The appellant is also ordered to pay Atty. Napoleon Valenzuela the amounts of: (a) ₱216,251.80 as actual expenses and (b) ₱50,000.00 as moral damages.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., CJ., Vitug, Panganiban, Sandoval-Gutierrez, Corona, Morales, and *Callejo, JJ.,* concur.

Bellosillo, Mendoza, Quisumbing, Ynares-Santiago, Carpio, and *Austria-Martinez, JJ.,* on official leave.

SECOND DIVISION

[G.R. No. 137341. October 28, 2002]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMUEL B. BUADA, BENIGNO V. VILLANUEVA and DENNIS VERCELES,** *accused,* **BENIGNO V. VILLANUEVA,** *accused-appellant.*

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SYNOPSIS

The three accused were charged with the crime of rape for sexually abusing a twelve-year old minor. When arraigned, they pleaded not guilty. However, two accused, Buada and Vercelles, changed their plea to guilty. Hence, trial ensued only for accused Villanueva. During the trial, it was established by the prosecution that the victim was waiting for a ride when appellant and his companions accosted her and forcibly brought her to a deserted schoolhouse and took turns in raping her. The trial court found accused Villanueva guilty as charged. Hence, this appeal by appellant.

In affirming the conviction of appellant, the Supreme Court ruled that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness. The testimony of the young victim, in this case, is unwavering. According to her, all the three accused had phallic contact with her genitalia. Against such positive testimony for the prosecution, coupled with her positive identification of her ravishers, appellant's denial cannot prevail. It is noted that the victim in the instant case was only twelve years old at the time of the incident. The Court has consistently held that the testimonies of rape victims who are of tender age are credible, more so if they are without any motive to falsely testify against the accused. Nowhere in the records has appellant shown any reason why complainant should maliciously and falsely charge him with rape. Where no compelling and cogent reason has been established to explain why the complainant was so driven as to implicate an accused, the testimony of a young victim of sexual assault cannot be discarded.

The Court likewise ruled that the trial court did not err in applying Article 63 (2) of the Revised Penal Code, by sentencing appellant to the lesser penalty of *reclusion perpetua* for failure of the information to allege the aggravating circumstances attendant to the commission of the crime. Under Rule 110, Sections 8 and 9 of the 2000 Revised Rules of Criminal Procedure, such qualifying or aggravating circumstances must be specifically alleged in the information. Otherwise, even if these were subsequently proven, they cannot be appreciated in determining the proper penalty.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF RAPE VICTIMS OF TENDER AGE ARE CREDIBLE, MORE SO IF THEY ARE WITHOUT ANY MOTIVE TO FALSELY TESTIFY AGAINST ACCUSED; CASE AT BAR.**— A witness who testifies in a categorical, straightforward, spontaneous, and frank manner and remains consistent is a credible witness. The testimony of the young victim, in this case, is unwavering. According to her, all the three accused had phallic contact with her genitalia. Against such positive testimony for the prosecution, coupled with her positive identification of her ravishers, appellant's denials cannot prevail. Note that the victim in the instant case was only 12 years old at the time of the incident. We have consistently held that the testimonies of rape victims who are of tender age are credible, more so if they are without any motive to falsely testify against the accused. Nowhere in the records has appellant shown any reason why complainant should maliciously and falsely charge him with rape. Where no compelling and cogent reason has been established to explain why the complainant was so driven as to implicate an accused, the testimony of a young victim of sexual assault cannot be discarded.

2. **CRIMINAL LAW; RAPE; NOT NEGATED BY FACT THAT VICTIM FAILED TO RESIST FORCIBLE SEXUAL ADVANCES OF ACCUSED IN CASE AT BAR.**— Appellant argues that because he and his co-accused had no weapon, no knife or gun, or anything of the sort with which to threaten the victim, it could be concluded that complainant consented to the sexual acts. However, the prosecution's evidence shows that the victim offered a notable degree of resistance by pushing away and even slapping one of her tormentors. She tried to shout because of the pain of the forcible penile entry, she said, but her mouth was covered. These circumstances show that the victim was physically forced and intimidated into granting her sexual favors to appellant and his co-accused. That she could not offer a more tenacious fight to protect her maidenhood could be explained by the fact that she was tipsy and nauseated. But there was resistance, nonetheless. And such resistance to sexual advances negates consent. The fact that complainant failed to resist the forcible sexual advances of appellant and

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his companions does not mean that the rapes did not take place. As well said, it is not necessary that she should have resisted unto death.

3. **ID.; ID.; GRAVAMEN IS SEXUAL CONGRESS WITH WOMAN BY FORCE AND WITHOUT CONSENT.**— In rape cases, the essential element that the prosecution must prove is the absence of the victim's consent to the sexual congress. The gravamen of the crime of rape is sexual congress with a woman by force and without consent. In the present case, we agree with the trial court that the prosecution has proven beyond reasonable doubt the guilt of appellant for the rape of private complainant.

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION OR COMPLAINT; MUST ALLEGE QUALIFYING OR AGGRAVATING CIRCUMSTANCES ATTENDANT TO COMMISSION OF CRIME; CASE AT BAR.**— The OSG claims that the penalty of death should have been imposed on appellant because the rape was attended by the following aggravating circumstances: (1) nighttime; (2) commission of the rape in a public elementary school, where public authorities are engaged in the discharge of their duties; (3) taking advantage of superior strength; (4) employment of means to weaken the defense, which here refers to the forced consumption of gin; and (5) deliberate augmentation of the rape by causing other wrong not necessary for its commission, such as when appellant brought Pinky to the stage of the plaza, and there raped her again. We are, however, unable to agree to OSG's demand for capital punishment. In this case, the information for rape shows that none of the aggravating circumstances mentioned by the OSG was expressly alleged. Under Rule 110, Sections 8 and 9 of the 2000 Revised Rules of Criminal Procedure, such qualifying or aggravating circumstances must be specifically alleged in the information. Otherwise, even if these were subsequently proven, they cannot be appreciated in determining the proper penalty. As held in *People vs. Lachica*, a court is precluded from considering the attendance of qualifying or aggravating circumstances if they are not alleged in the complaint or information, because under the 2000 Revised Rules on Criminal Procedure, aggravating circumstances, whether ordinary or qualifying, must be so stated in the complaint or information. Thus, we find that the trial

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court did not err in applying Article 63 (2) of the Revised Penal Code, by sentencing appellant to the lesser penalty of *reclusion perpetua.*

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

De Guzman Imus Bautista Cayago & Associates Law Firm for accused-appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the decision[1] dated December 17, 1998, of the Regional Trial Court of San Carlos City, Pangasinan, Branch 57, convicting appellant Benigno V. Villanueva of rape in Criminal Case No. SCC-2856 and sentencing him to *reclusion perpetua.* He was also ordered to indemnify the victim, Marianne Pinky Limson,[2] in the amount of fifty thousand pesos (₱50,000).

In an information dated June 17, 1998, Samuel B. Buada, Dennis F. Verceles and Benigno V. Villanueva were charged with rape, allegedly committed as follows:

That on or about May 15, 1998, in the evening or thereafter, in Barangay Bani, municipality of Bayambang, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force or intimidation, conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with Marianne Pinky Limson, a minor of 12 years old against her will and consent and to her damage and prejudice.

Contrary to Article 335 of the Revised Penal Code, as amended by R.A. 7659.[3]

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[1] Records, pp. 249-256.

[2] Also referred to as Ma. Pilipinas I. Limson and Marianne Filipinas Pinky Limson elsewhere in the records. Her name as per her birth certificate is Maria Felipinas I. Limson. See Exh. "D", note 4 *infra.*

[3] Records, p. 1.

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With assistance of counsel, the three accused pleaded not guilty when arraigned. However, on September 2, 1998, Buada and Verceles changed their plea to guilty. Thereupon, trial ensued only for herein accused-appellant, Benigno V. Villanueva.

The version of the prosecution shows that at the time of incident, the victim was but 12 years old[4] and a Grade VI pupil at Sta. Maria Elementary School in Camiling, Tarlac.[5] She testified that on May 15, 1998, at around 4:00 P.M., she went to Bani, Bayambang, Pangasinan to visit a former classmate.[6] As she was unable to find her friend's house, she decided to go home. She was waiting for a ride when Verceles approached her saying appellant wanted to talk to her.[7] Thinking that she knew Villanueva, she went with Verceles. Upon seeing appellant, she realized that he was a complete stranger to her. She decided to leave. At that point, another male stranger accosted her.[8] She was prevented from leaving. Verceles, Villanueva, Buada and the unidentified man then forcibly brought her inside the Bani Elementary School.[9] Buada bought gin[10] and the four men then compelled her to drink with them.[11] Pinky became tipsy and nauseated. Thereafter, all four took turns in raping her. They then left her at the back of the school plaza where, being very dizzy and weak, she fell asleep.[12] At 3:30 A.M., she woke up and saw Villanueva and Buada return. She was brought to the plaza stage where she was again raped by the duo.[13] Appellant

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[4] She was born on October 3, 1985 as per Exh. "D", (Birth certificate of Maria Felipinas I. Limson) Records, p. 13. See also TSN, August 5, 1998, pp. 7-8.

[5] TSN, August 21, 1998, pp. 2-3.

[6] *Id.* at 3.

[7] *Id.* at 8-10.

[8] *Id.* at 4.

[9] *Ibid.*

[10] TSN, November 16, 1998, p. 8.

[11] *Ibid.*

[12] *Id.* at 16.

[13] *Ibid.*

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then told her to return the following day.[14] Pinky then walked home all the way to Baluyot, Bautista, Pangasinan.[15]

The victim's mother, Iluminada Limson, testified that on the afternoon of May 15, 1998, the victim asked permission to visit a former classmate. Complainant, however, failed to return home that evening. Early in the morning of May 16, 1998, Iluminada was informed that complainant was at the *barangay* hall. Iluminada then sent her husband, prosecution witness Florante Limson, to fetch their daughter. She appeared weak and fearful. Her pants were bloodstained.[16] Pinky revealed to her parents that four men had abused her. The Limson spouses had her medically examined. Thereafter, they went to the Bayambang, PNP station to report the rape.[17]

Dr. Araceli Malasan-Callao, a medical officer of the San Carlos General Hospital, testified that on May 16, 1998, she examined Marianne Pinky Limson with the following results:

POST FOURCHETTE – WITH LACERATION, AND ACTIVE BLEEDING

HYMEN – WITH INCOMPLETE LACERATION, STILL BLEEDING AT 6 O'CLOCK POSITION

BLUISH DISCOLORATION OF HYMEN, FROM 4-6 O'CLOCK AREA

LABIA MINORA- ERYTHEMATOUS.[18]

Dr. Callao also declared that the sperm smear test conducted on Marianne showed she was positive for spermatozoa.[19] This could have been caused by sexual intercourse, according to Dr. Callao.[20]

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[14] TSN, September 9, 1998, p. 18.

[15] TSN, August 21, 1998, p. 6.

[16] TSN, August 14, 1998, p. 5.

[17] TSN, August 5, 1998, pp. 5-6.

[18] Records, p. 10.

[19] *Ibid.*

[20] TSN, July 30, 1998, p. 12.

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Appellant Benigno Villanueva denied having carnal knowledge of the complainant. On direct examination, he testified that in the afternoon of May 15, 1998, he and his co-accused met Pinky at a nearby waiting shed. She then joined them in a drinking session. No one forced her to drink. She did not cry or shout for help.[21] After drinking, Buada and then Verceles successively had sexual intercourse with a willing Pinky, according to appellant.

On cross-examination, appellant clarified that it was Buada who called Pinky while she was standing alone near a waiting shed. Verceles then invited Pinky to drink with them at the Bani Elementary School. Appellant claimed he was outside the room when Buada and then Verceles had sex with Pinky. He and Pinky did not have sexual intercourse, appellant said.[22]

Dennis Verceles corroborated appellant's testimony. Verceles declared that on the afternoon of May 15, 1998, he was with Buada and appellant inside the Bani Elementary School compound. They were having a conversation when Pinky joined them. She asked them to buy a bottle of gin and thereafter, invited them to drink.[23] After they had consumed the gin, Pinky and Buada had sex inside one of the rooms. He and appellant remained outside.[24] Pinky did not shout.[25] After Buada, Verceles also had sex with Pinky. Again, appellant stayed outside the room.[26] Nobody restrained her hands and feet during the sex acts, according to Verceles. He further claimed that Pinky kissed and embraced him back when he kissed and embraced her.[27] After their sexual congress, Verceles went home. He did not see appellant afterwards.[28]

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[21] TSN, November 12, 1998, pp. 3-4.

[22] *Id.* at 4-7.

[23] TSN, October 8, 1998, p. 6.

[24] *Id.* at 8.

[25] *Id.* at 6.

[26] *Id.* at 8.

[27] *Id.* at 6-7.

[28] *Id.* at 8.

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The trial court found the accused guilty as charged and accordingly sentenced them as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. The Court hereby finds accused Samuel Buada and Dennis Verceles guilty beyond reasonable doubt as principals of the crime charged and hereby sentences each to suffer imprisonment from eight (8) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum and to indemnify the victim the sum of ₱50,000.00 each. Considering however, that the accused are youthful offenders, their sentence is hereby suspended in accordance with Article 192 of the Child and Youth Welfare Code.

   Both accused will remain under the custody and care of the Department of Social Welfare and Development, Regional Development Center for Youth in Bauang, La Union.

2. The Court likewise hereby finds the accused Benigno Villanueva guilty beyond reasonable doubt of Rape and hereby sentences him with the penalty of *Reclusion Perpetua* and to indemnify the victim Marianne Pinky Limson the amount of ₱50,000.00.

SO ORDERED.[29]

Hence, this appeal by Benigno Villanueva, averring that the trial court erred:

A. ...IN NOT FINDING THAT THE ACCUSED [Villanueva] WAS NOT POSITIVELY [I]DENTIFIED BY THE PRIVATE COMPLAINANT AS ONE OF THOSE WHO HAD SEXUAL INTERCOURSE WITH HER.

B. ...IN FINDING THAT THERE WAS FORCE AND INTIMIDATION.

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[29] Records, p. 256.

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C. ...IN FINDING THAT ACCUSED APPELLANT IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[30]

Appellant's assigned errors boil down to one issue: Whether appellant's guilt has been proven with moral certainty.

Appellant first argues that private complainant did not positively identify him as one of those who had forcible coitus with her. Appellant points out that according to complainant's own testimony, she could not tell who among the three (3) males present first ravished her. This was due to the total lack of illumination at the crime scene, a deserted classroom in a rural area at a time when school was still out for summer. Ergo, if she did not know who first had sexual intercourse with her, then she would not know who her partners were in the succeeding sexual acts. A doubt is thus created as to whether one of those who had sex with her was appellant Villanueva.

For the appellee, the Office of the Solicitor General (OSG) contends that even the scantiest examination of the complaining witness' testimony would show that she was very categorical in her statement that appellant was among those who raped her.

A careful perusal of private complainant's testimony clearly shows that she categorically pointed to appellant as one of her assailants. On direct examination, she testified:

Q: Before you were about to be molested who were present?
A: I and the three suspects, sir.

Q: Who were those suspects you are referring to?
A: Dennis Verceles, Benigno Villanueva and Samuel Buada, sir.

Q: And the other one you mentioned?
A: I did not recognize his face, sir.

Q: When the first one started sexually abusing you, you were then tipsy, what do you mean by tipsy?
A: I was dizzy and weak, sir.

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[30] *Rollo*, p. 45.

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Q: How was your surroundings, can you still recognized your surroundings?
A: Yes, sir.

Q: How about the persons near you, can you still recognized them?
A: Yes, sir.

Q: Who were they?
A: Dennis Verceles, Benigno Villanueva and Samuel Buada, sir.

Q: No other persons except these?
A: Yes, sir.

Q: You were molested, what do you mean by molested?
A: They raped me, sir.

Q: What do you mean by rape?

PROS. E. MANAOIS
May I reform, your Honor?

Q: You were sexually molested, how did they molest you?
A: They undressed themselves and inserted their organ(s) in me, sir.

Q: How about you, were you dressed at the time when they inserted their organ(s)?
A: No, sir.

Q: Why, what did you do when they inserted their organ(s)?
A: I was pushing them, sir.

Q: They molested you one after the other, is that what you mean?
A: Yes, sir.[31]

On re-direct examination as the prosecution's rebuttal witness, private complainant stuck to her story of multiple ravishment, thus:

PROS. E. MANAOIS:
Few re-direct, your Honor

[31] TSN, August 25, 1998, pp. 9-10.

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Q: You said a while ago that after 6 or 7 o'clock and after you were forced to take, *"ginalaw"* they used you, what do you mean by *"ginalaw"* or used?

A: They raped me, sir.

Q: Who raped you?

A: Benigno Villanueva, Samuel Buada and Dennis Verceles, sir.

Q: Again, at about 3 o'clock the following day, you mentioned "they," *"ginalaw,"* used me, whom are to referring to when said "they?"

A: Benigno Villanueva and Samuel Buada, sir.

Q: I heard you say words while they were using you, *"ginalaw,"* after you drank gin, when you shout you said they cover your mouth, to whom are you referring to when you said they?

A: Benigno Villanueva, Samuel Buada, and Dennis Verceles, sir.

PROS. E. MANAOIS
That is all, your Honor.[32]

Appellant argues that it was so dark at the crime scene that private complainant could not identify her ravishers. However, it must be recalled that complainant first encountered the appellant and his co-accused in the afternoon of May 15, 1998, when there was still daylight. She thus had every opportunity to see them and imprint their faces in her memory. Further, at the time that complainant was forced to drink gin with her ravishers, it was still light. Considering her proximity to them, she could clearly see them and later recall their faces and features. In fact, she even testified that appellant had a tattoo on his chest,[33] which appellant did not deny. Both at the police line-up[34] and

[32] TSN, November 16, 1998, pp. 18-19.

[33] TSN, September 9, 1998, p. 10.

[34] See Exhibits "X" and "Y", Records, p. 20, as per TSN, November 16, 1998, pp. 20-21. See also TSN, August 25, 1998, p. 13.

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in open court,[35] private complainant unhesitatingly pointed to appellant as among her defilers.

A witness who testifies in a categorical, straightforward, spontaneous, and frank manner and remains consistent is a credible witness.[36] The testimony of the young victim, in this case, is unwavering. According to her, all the three accused had phallic contact with her genitalia. Against such positive testimony for the prosecution, coupled with her positive identification of her ravishers, appellant's denials cannot prevail. Note that the victim in the instant case was only 12 years old at the time of the incident. We have consistently held that the testimonies of rape victims who are of tender age are credible, more so if they are without any motive to falsely testify against the accused.[37] Nowhere in the records has appellant shown any reason why complainant should maliciously and falsely charge him with rape. Where no compelling and cogent reason has been established to explain why the complainant was so driven as to implicate an accused, the testimony of a young victim of sexual assault cannot be discarded.[38]

Appellant next contends that since he was charged in this case with rape through force or intimidation, said element must be proven clearly and convincingly. Appellant argues that there is not one iota of proof in the prosecution's evidence to show that he had raped private complainant through force or intimidation. Appellant argues that a closer examination of complaining witness' conduct before, during, and after the incident would indicate that no rape occurred.

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[35] TSN, August 21, 1998, p. 10; TSN, August 25, 1998, p. 5; and TSN, September 9, 1998, p. 9.

[36] *People vs. Abayon,* G.R. No. 142874, July 31, 2002, p. 7, citing *People vs. Optana,* 351 SCRA 485 (2001).

[37] *People vs. Manrique,* G.R. No. 139314, June 6, 2002, p. 8, citing *People vs. Ibalang,* 286 SCRA 387 (1998).

[38] *People vs. Hermanes,* G.R. No. 139416, March 12, 2002, p. 6, citing *People vs. Abella,* 315 SCRA 36 (1999).

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Appellant further insists the victim's own testimony shows the following: (1) She was not prevented from leaving the Bani Elementary School by appellant and his co-accused. (2) Complainant was not forced to drink gin, but partook of the liquor voluntarily. (3) She willingly undressed herself when asked for sex by Buada and Verceles. Both were just teen-aged boys who, according to complainant, were not bad-looking. Clearly, concludes appellant, the sexual acts which took place were a result of mutual lust stimulated by liquor.

The OSG assails appellant's contentions as a desperate effort to portray complaining witness in the most undesirable light. The Solicitor General forcefully points out that the victim was from another town and it would be highly unlikely for her to travel elsewhere to solicit sex with males whom she had just met. The OSG stresses that her condition when her father first saw her totally debunks the theory that complainant had sexual congress with several male strangers in succession just for fun. When found by her parents, the victim was very weak, in a state of shock, dressed in soiled clothing, and with blood all over her pants, all of which negate consensual sex.

Appellant's efforts to besmirch complainant's character are but a futile clutching at straws. We find that his attempts mock the intelligence of this Court and severely try its patience. Appellant should, at the very least, present persuasive proof to support his portrayal of complainant as a depraved young woman, if that is his line of defense. But he did nothing of that sort. Instead, the evidence clearly shows that appellant and his companions accosted her as she was waiting for a ride,[39] asked her for money to buy drinks,[40] forcibly brought her to the deserted schoolhouse,[41] and when she tried to leave, was prevented from so doing.[42]

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[39] TSN, August 21, 1998, p. 4.

[40] TSN, August 21, 1998, *supra*; TSN, November 16, 1998, pp. 3, 6-7.

[41] TSN, September 9, 1998, pp. 17-18.

[42] TSN, November 16, 1998, pp. 10-11.

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Complainant testified that she pleaded with the accused to be allowed to go home, but her pleas were met with threats of bodily harm or worse.[43] Note that the victim was but a young wisp of a girl, who was in another town. Her tormentors had surrounded her and made her drink hard liquor with them. Complainant emphatically declared that they held her hands and forced the gin into her mouth.[44] Consider also that the rapes took place in an empty classroom, whose only entrance was blocked and whose windows were closed beforehand, thus not only effectively preventing her escape but also effectively isolating her from any help or intervention. All of the foregoing circumstances, taken together, are more than sufficient to intimidate a young and immature victim into involuntarily surrendering to satyrs intent on gang rape.

Appellant argues that because he and his co-accused had no weapon, no knife or gun, or anything of the sort with which to threaten the victim, it could be concluded that complainant consented to the sexual acts. However, the prosecution's evidence shows that the victim offered a notable degree of resistance by pushing away and even slapping one of her tormentors.[45] She tried to shout because of the pain of the forcible penile entry, she said, but her mouth was covered.[46] These circumstances show that the victim was physically forced and intimidated into granting her sexual favors to appellant and his co-accused. That she could not offer a more tenacious fight to protect her maidenhood could be explained by the fact that she was tipsy and nauseated. But there was resistance, nonetheless. And such resistance to sexual advances negates consent. The fact that complainant failed to resist the forcible sexual advances of appellant and his companions does not mean that the rapes did

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[43] TSN, September 9, 1998, pp. 12-13.

[44] *Id.* at 6.

[45] TSN, August 25, 1998, p. 10; TSN, November 16, 1998, p. 14.

[46] TSN, November 16, 1998, p. 15.

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not take place. As well said, it is not necessary that she should have resisted unto death.[47]

Moreover, the medico-legal evidence presented by the prosecution supports complainant's claim that appellant and his confederates forcibly subjected her to penile invasion. Dr. Araceli M. Callao testified that her examination of the victim disclosed not only a bluish discoloration of her private parts, but also bleeding lacerations therein. Dr. Callao declared that the victim's injuries were caused by "trauma," possibly caused by sexual abuse.[48]

Finally, appellant hammers on the victim's "perplexing" behavior of staying on at the deserted schoolhouse after she was raped and spending the night there even after they had left her. Appellant stresses that a rape victim would not risk a second rape by lingering at the crime scene. Furthermore, he contends it is incredible that appellant would ask her to return the following day for to do so would be courting identification and arrest.

Appellant's contentions are unconvincing. We find nothing "perplexing" about the victim's behavior after her ordeal. The hard facts of this case show that the victim was groggy with the effects of the hard liquor she had been forced to imbibe. She was also weakened by the multiple acts of sexual molestation. Her private parts were bruised and bleeding as a result of the successive rapes. In her weakened condition, immediate return to her home that night was out of the question. While it is true that the normal reaction of a rape victim is to take flight at the first opportunity so as to avoid her tormentors, and thus avoid risking a second rape,[49] nonetheless, it is also true that nobody can tell how a victim of sexual aggression is supposed to act or behave after her ordeal.[50] The victim in this case was a mere

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[47] *People vs. Edem*, G.R. No. 130970, February 27, 2002, p. 20, citing *People vs. Igdanes*, 272 SCRA 113 (1997).

[48] TSN, July 30, 1998, pp. 8-10.

[49] *People vs. Castillon*, 217 SCRA 76, 89 (1993).

[50] *People vs. Quezada*, G.R. Nos. 135557-58, January 30, 2002, p. 19.

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youngster of 12 years. It is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected from mature persons under similar circumstances.[51] A young girl cannot be expected to face the terrors of travel at night, more so when she is a long way from home.

In rape cases, the essential element that the prosecution must prove is the absence of the victim's consent to the sexual congress. The gravamen of the crime of rape is sexual congress with a woman by force and without consent.[52] In the present case, we agree with the trial court that the prosecution has proven beyond reasonable doubt the guilt of appellant for the rape of private complainant.

Concerning the penalty imposed, the OSG submits that the trial court erred in sentencing appellant to *reclusion perpetua* only. According to the OSG, whenever rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. The OSG claims that the penalty of death should have been imposed on appellant because the rape was attended by the following aggravating circumstances: (1) nighttime; (2) commission of the rape in a public elementary school, where public authorities are engaged in the discharge of their duties; (3) taking advantage of superior strength; (4) employment of means to weaken the defense, which here refers to the forced consumption of gin; and (5) deliberate augmentation of the rape by causing other wrong not necessary for its commission, such as when appellant brought Pinky to the stage of the plaza, and there raped her again.

We are, however, unable to agree to OSG's demand for capital punishment. In this case, the information for rape shows that none of the aggravating circumstances mentioned by the OSG

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[51] *People vs. Villanos*, 337 SCRA 78, 85 (2000), citing *People vs. Sta. Ana*, 291 SCRA 188 (1998) and *People vs. Tadulan*, 271 SCRA 233 (1997).

[52] *People vs. Baluya*, G.R. No. 133005, April 11, 2002, p. 9, citing *People vs. Dela Cruz*, 338 SCRA 582 (2000).

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was expressly alleged. Under Rule 110, Sections 8[53] and 9[54] of the 2000 Revised Rules of Criminal Procedure, such qualifying or aggravating circumstances must be specifically alleged in the information. Otherwise, even if these were subsequently proven, they cannot be appreciated in determining the proper penalty.[55] As held in *People vs. Lachica,*[56] a court is precluded from considering the attendance of qualifying or aggravating circumstances if they are not alleged in the complaint or information, because under the 2000 Revised Rules on Criminal Procedure, aggravating circumstances, whether ordinary or qualifying, must be so stated in the complaint or information. Thus, we find that the trial court did not err in applying Article 63 (2) of the Revised Penal Code, by sentencing appellant to the lesser penalty of *reclusion perpetua.*[57]

The trial court also properly ordered each of the accused in this case to pay the victim ₱50,000 as civil indemnity. This is

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[53] SEC. 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[54] SEC. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[55] *People vs. Soriano,* G.R. No. 135027, July 3, 2002, pp. 21-22.

[56] G.R. No. 143677, May 9, 2002, pp. 24-25.

[57] Art. 63. *Rules for the application of indivisible penalties.*– In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

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in accord with prevailing jurisprudence.[58] However, we note that the trial court failed to award moral damages. Considering the tender age of the victim and the brutal ordeal she suffered, it is proper that herein appellant be ordered to pay an additional amount of ₱50,000 to the victim as moral damages[59]

WHEREFORE, the appeal is *DENIED*. The decision of the Regional Trial Court of San Carlos City, Branch 57, in Criminal Case No. SCC-2856 finding appellant BENIGNO V. VILLANUEVA guilty beyond reasonable doubt of rape and sentencing him to *reclusion perpetua* is *AFFIRMED, with the MODIFICATION* that appellant BENIGNO V. VILLANUEVA is also hereby ordered to each pay the victim, Marianne Pinky Limson, the sum of ₱50,000.00 as moral damages, in addition to the amount of P50,000.00 as civil indemnity.

Costs *de oficio*.

SO ORDERED.

Bellosillo (Chairman), *Mendoza*, and *Callejo, Sr., JJ.*, concur.

Austria-Martinez, J., on leave.

SECOND DIVISION

[G.R. No. 139302. October 28, 2002]

EDUARDO P. CORSIGA, Former Deputy Administrator, National Irrigation Administration, *petitioner, vs.* **HON. QUIRICO G. DEFENSOR, Presiding Judge, Regional Trial Court, Branch 36, Iloilo City, and ROMEO P. ORTIZO,** *respondents.*

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[58] *People vs. Hermanes*, G.R. No. 139416, March 12, 2002, p. 13.

[59] See *People vs. Aparejado*, G.R. No. 139447, July 23, 2002, p. 11.