Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-41819. February 28, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **WINSTON MANLAPAZ *y* POLING**, *accused*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; JUDGE ON DETAIL CAN RENDER A VALID JUDGMENT ON A CASE ALREADY SUBMITTED FOR DECISION TO HIS PREDECESSOR.** — The fact that a judge did not conduct the trial and that he was merely detailed to the sala did not mean that he could not decide the case. His detail carries with it the prerogative to decide the cases already submitted for decision to his predecessor (See *People vs. Buslon*, L-22778, November 29, 1965, 15 SCRA 460.) There is no law which prohibits a judge from deciding a case just because he did not hear the witnesses who testified therein (*Ortiz vs. Aramburo*, 8 Phil. 98; *Villanueva vs. Estenzo*, L-30050, June 1975, 64 SCRA 407). Where the judge who heard the evidence resigned without deciding the case, his successor, having before him the evidence presented to the first judge, could render a valid judgment on the basis of such evidence.

2. **ID.; ID.; ID.; DECISION RENDERED BEYOND THE 90-DAY PERIOD, NOT VOID.** — The circumstance that the decision was rendered after the ninety-day period fixed in section 5 of the Judiciary Law does not mean that the decision is void. The judge, who does not decide the case within the ninety-day period, may be subject to disciplinary action. The ninety-day period does not apply to a judge on temporary detail to a sala, where the case was submitted for decision to his predecessor while the latter was still the incumbent Judge.

3. **ID.; EVIDENCE; ADMISSION BY SILENCE; WHEN APPLICABLE.** — Where the accused did not deny at the confrontation in the police precinct, that he had sexual intercourse with the complainant on the two occasions mentioned by her, a fact ascertained from her by the police investigator and by the medico-legal officer who examined her the rule on admission by silence applies.

Supreme Court E-Library

4. **CRIMINAL LAW; RAPE; VICTIM, A GIRL DEPRIVED OF REASON; USE OF FORCE BY THE MAN AND LACK OF RESISTANCE ON THE PART OF THE WOMAN, NOT ELEMENTS OF THE CRIME.** — "There can be no question but that a copulation with a woman known to be mentally incapable of giving even an imperfect consent is rape" (*State vs. Jewett*, 192 Atl. 7). "An accused is guilty of the crime of rape if it is established that he had sexual intercourse with a female who was mentally incapable or validly consenting to or opposing the carnal act" (65 Am Jur 2nd 766 citing *State vs. Prokosch*, 152 Minn. 86, 187 NW 971; *Cokely vs. State*, 87 Tex Crim. 256, 220 SW 1099; 31 ALR 3rd 1227, Sec. 3). "In this species of rape neither force upon the part of the man nor resistance upon the part of the woman forms an element of the crime. If, by reason of any mental weakness, she is incapable of legally consenting, resistance is not expected any more than it is in the case of one who has been drugged to unconsciousness, or robbed of judgment by intoxicants. Nor will an apparent consent in such a case avail any more than in the case of a child who may actually consent, but who by law is conclusively held incapable of legal consent. Whether the woman possessed mental capacity sufficient to give legal consent must, saving in exceptional cases, remain a question of fact . . . It need but he said that legal consent presupposes an intelligence capable of understanding the act, its nature, and possible consequences. This degree of intelligence may exist with an impaired and weakened intellect, or may not" (*People vs. Boggs*, 290 Pac. 618 citing *People vs. Griffin*, 49 Pac. 711 and *People vs. Peery*, 146 Pac. 44). In the instant case, the victim has the mentality of a five-year-old child. If sexual intercourse with a child below twelve years of age is rape, then it should follow that sexual intercourse with a thirteen year old girl whose mental capacity is that of a five-year-old child would constitute rape.

6. **ID.; ID.; ID.; IMPOSABLE PENALTY.** — Where appellant, taking advantage of the victim's mental deficiency and immaturity (she had barely reached the age of puberty) and subordinating his will to his concupiscence or animal instincts, was able to have carnal intercourse twice with the victim, a thirteen-year-old girl who was not aware of the disagree and dishonorable consequences resulting from that immoral act, the crime committed by the accused is simple rape. And where no modifying

Supreme Court E-Library

circumstances can be appreciated, the trial court properly sentenced him to *reclusion perpetua.*

7. **ID.; ID.; ID.; ID.; INCREASE IN PENALTY, AIMED AS A DETERRENT.** — Before Article 335 was amended, simple rape was penalized by *reclusion temporal* or twelve years and one day to twenty years. Republic Act No. 4111 raised the penalty for simple rape to *reclusion perpetua* and made qualified rape a capital offense. Taking notice of the rampancy of sexual assaults, ensuing from the lawlessness and deterioration of morals occasioned by the war, the law-making body sought to deter rapists by increasing the penalty for rape.

8. **REMEDIAL LAW; CRIMINAL PROCEDURE; CONVICTION; EXECUTIVE CLEMENCY, WHEN MAY BE EXTENDED.** — After a judicious consideration of the facts and circumstances of this case, we believe that after appellant had served a term of imprisonment consistent with the ends of retributive justice, executive clemency may be extended to him in the discretion of the Chief Executive and Prime Minister.

APPEARANCES OF COUNSEL

Rodolfo A. Manlapaz for appellant.

Acting Solicitor General Hugo E. Gutierrez Jr., Assistant Solicitor General Eulogio Raquel-Santos and Solicitor Salvador C. Jacob for appellee.

D E C I S I O N

AQUINO, *J*:

This is a rape case involving a thirteen-year-old, mentally retarded girl named Therese Endencia, the daughter of the spouses, Jerome Endencia and Teresita Encarnacion. They resided at 10 Padre Burgos Street, near Aurora Boulevard, Project 4, Quezon City. Therese, who was born in Chicago, Illinois, is a fair complexioned girl with mestiza features.

Residing in the same neighborhood in an apartment identified as 1021-M Aurora Boulevard, near the Marian Bakery, also in Project 4, was a nineteen-year-old, unmarried boy named Winston

Supreme Court E-Library

Manlapaz who was studying electrical engineering in the University of the East. The apartment was about five hundred meters away from the residence of Therese. Nearby, on Calderon Street, was a basketball court.

Winston stayed in the apartment with his older sister, Bituin Manlapaz, 30, an employee of the Universal Textile Mills at Barranca, Marikina. He has mestizo features also, being the son of an American mother an a Filipino father who lived in Uson, Masbate. Winston and Therese met at the basketball court in November, 1972. They became friends. Therese came to know the residence of Winston. She went there two or three times with her neighbor, Vicky, and her friend, Robin, a teenager. She got acquainted with Winston's sister.

According to the prosecution, Winston had sexual intercourse with Therese in his apartment in the afternoon of November 28 and 30, 1972. Winston denied that he had sexual intercourse with Therese but that denial does not merit any credence. He admits that Therese was in his apartment on those two afternoons. Whether the sexual intercourse was consummated by the use of force is not clear since the only witness on that point is Therese herself. Due to her mental handicap, she was not able to give a coherent, clear and consistent narrative as to how she was ravished by Winston.

According to Mrs. Endencia, since infancy, Therese has a speech impediment. She could not talk when she was already two years old. As she grew older, she spoke in broken sentences. She was enrolled in different schools but, as her mother noted, she could not cope or keep up with the other children. Her parents were advised to enroll her in a special school.

From the age of seven years, or during the school years, 1966-67, 1969-70, 1970-71, 1971-72 and the second semester of 1972-73, Therese was enrolled in the Saint Joseph of Cupertino School for retarded children located at Mangyan Road, La Vista Subdivision, Loyola Heights, Quezon City.

Doctor Fernando Hofileña, a pediatrician with orientation in child psychiatry and experience in the treatment of mentally

Supreme Court E-Library

retarded children, was the clinical head of the Saint Joseph of Cupertino School. Therese was examined by Doctor Hofileña and by a psychologist, a special teacher, a social worker and a guidance counselor. Doctor Hofileña concluded that Therese has an unsound mind, meaning that she has a mental deficiency. He testified on cross-examination:

"Q. Doctor, x x x based on your answer as an expert, will you please tell the Court whether or not Therese is possessed with (of) a sound or unsound mind? x x x.

A I believe she has an unsound mind.

"Q. Are you certain of that, Doctor?

A. Yes, sir." (38-39 tsn November 28, 1973).

As clinical head of the school, he issued a certificate dated January 23, 1973, or fifty-four days after the commission of the alleged rape, stating that Therese had been diagnosed "as mentally retarded of the educable type" and as a "speech-defective" (Exh. B).

Doctor Hofileña ventured the opinion that Therese might not completely understand the nature and consequences of sexual intercourse (41-42 tsn) or has only a vague notion that sexual intercourse is bad (49-50 tsn) or is not possessed or mental capacity to judge for herself whether sexual intercourse is good or bad (50 tsn) or may give her consent to a request without much deliberation and without knowing the consequences of her assent (49 tsn).

Leticia Joaquin Lizaso, the directress of the school, confirmed the findings of Doctor Hofileña. She certified that "psychometric tests taken (in) 1971 revealed *Therese's mental age as five year and 2 months* and level of intellectual functioning to be mentally defective in the educable level" (Exh. C). That conclusion was based on the report of Carolina Chan, the psychologist who examined Therese. The tests were given by Maria Lourdes Avanceña, the guidance counselor of the Madonna Center.

Supreme Court E-Library

Mrs. Endencia recounted in court how she came to know that Therese had sexual intercourse with Winston. On New Year's Day, January 1, 1973, while Mrs. Endencia was cleaning her house, she found two white pills in the locker of Therese. When she queried her daughter as to the function of the pills, Therese answered that the pills "were for not having a baby" or were contraceptive pills. Mrs. Endencia found out that her daughter got the pills from Winston and that Therese had sexual intercourse with him two times.

Mrs. Endencia consulted her relatives as to the proper course of action to take under the circumstances. Her uncle-in-law, former Justice Pastor Endencia, accompanied her to the City Fiscal of Quezon City. That prosecuting officer advised them to go to the Detective Bureau.

A detective took down the statement of Therese on January 4, 1973. He said that he encountered much difficulty in getting her statement. He had to use much patience. Therese took a long time to answer his questions. Sometimes, she did not answer, *she just laughed*. Sometimes, she was hostile. The detective said: "*Paulit-ulit ang ginagawa ko sa bata para lang masagot*" (*sumagot*). The questions had to be explained to her. The explanations of the detective and some of the remarks made by Therese do not appear in her statement, Exhibit A.

The next day, January 5, Therese was examined by the medico-legal officer of the Philippine Constabulary crime laboratory at Camp Crame. He found her to be "*feeble-minded* but coherent." It was not easy to elicit the facts from her because she was hesitant and her recollection was poor. She was assisted by her mother. However, it was Therese herself who narrated the facts without any leading questions from her mother.

The doctor found that Therese was no longer a virgin. Her hymen had two deep and healed lacerations at the five and seven o'clock positions. Her vaginal orifice offered slight resistance to the index finger and the virgin-sized speculum. The lacerations were more than a month old.

Supreme Court E-Library

The doctor also noted in his report that Therese, who is five feet and two inches tall and weighed one hundred and two pounds, had conical breasts "with pinkish-brown areola and nipples from which no secretion could be pressed out."

On January 12, 1973, at about eleven-forty in the morning, there was a confrontation in the police headquarters between Therese and Winston. She identified Winston as the rapist (50-54 tsn November 26, 1973). Winston admitted that there was such as confrontation. It should be stressed that on that occasion Winston did not make any statement. He was silent (69-73 tsn September 9, 1974).

On June 4, 1973, Therese and her mother filed the following complaint for rape against Winston Manlapaz in the Court of First Instance at Quezon City.

"That on or about the 28th and 30th days of November, 1972, in Quezon City, Philippines, the above-named accused, did, then and there, willfully, unlawfully and feloniously by means *of force and against her will*, have sexual intercourse with the undersigned complainant, a minor, mentally retarded, *with mental level as that of a five-year old child* to her damage and prejudice, in such amount as may be awarded to her under the provisions of the Civil Code of the Philippines."

Note that the charge is that Manlapaz employed force in having sexual intercourse with Therese, a mentally retarded minor with the mental level of a five-year-old child. The trial court regarded that charge as proven, meaning that Manlapaz had forcible sexual intercourse with a feeble-minded girl, a victim with "mental abnormality or deficiency of reason."

It convicted Manlapaz of simple rape, sentenced him to *reclusion perpetua* and ordered him to pay Therese Endencia damages amounting to ₱40,000.

Manlapaz contends in this appeal (1) that the lower court's judgment is void, (2) that Therese was not mentally retarded, (3) that her testimony should not be given credence, and (4) that the prosecution's evidence is not sufficient to warrant conviction.

Supreme Court E-Library

The contention that the lower court's decision is void cannot be taken seriously. Appellant argues that the decision is void because Judge Onofore Villaluz did not hear the case and he rendered the judgment after the expiration of the ninety-day period from the time when it was submitted for decision. The case was heard by Judge Julian E. Lustre who suffered a stroke before he could decide it.

The fact that Judge Villaluz did not conduct the trial and that he was merely detailed to the sala did not mean that he could not decide the case. His detail carries with it the prerogative to decide the cases already submitted for decision to his predecessor, Judge Lustre. (See *People vs. Buslon*, L-22778, November 29, 1965, 15 SCRA 460.) There is no law which prohibits a judge from deciding a case just because he did not hear the witnesses who testified therein (*Ortiz vs. Aramburo*, 8 Phil. 98; *Villanueva vs. Estenzo*, L-30050, June 27, 1975, 64 SCRA 407).

Thus, in the *Ortiz* case, it was held that where the judge who heard the evidence resigned without deciding the case, his successor, having before him the evidence presented to the first judge, could render a valid judgment on the basis of such evidence.

In the instant case, the circumstance that the decision was rendered after the ninety-day period fixed in Section 5 of the Judiciary Law does not mean that the decision is void. The judge, who does not decide the case within the ninety-day period, may be subject to disciplinary action. The ninety-day period did not apply to Judge Villaluz because the case was submitted for decision when Judge Lustre was still the incumbent Judge.

As to the merits of the case, we are convinced that Manlapaz had sexual intercourse with Therese on the two occasions mentioned by her. That fact was ascertained from her by the police investigator and by the medico-legal officer who examined her. It is noteworthy that Manlapaz did not deny it at the confrontation in the police precinct. "He who remains silent when he ought to speak cannot be heard to speak when he

Supreme Court E-Library

should be silent." (31 C.J.S. 494. See Sec. 23, Rule 130, Rules of Court on admission by silence, which was applied in *People v. Pilones*, L-32754-5, July 21, 1978.) Although the testimony of Therese at the trial may be vitiated by contradictions and inadequacies, due to her low intelligence, she, nevertheless, stuck steadfastly to her story that she, to use her own words, had "made baby" or had carnal intercourse with Manlapaz in the afternoon of November 28 and 30, 1972.

However, the circumstance as to whether Manlapaz employed force in "making baby" with her or in inserting his organ into her "paddy" was not proven beyond reasonable doubt. There are indications that Therese did not tenaciously resist the advances of Manlapaz. According to the police investigator, Therese narrated the alleged rape in this manner (Exh. A):

"13. Q: How did he make baby with you? — A. Winston invited me to his house because he said that his sister wants to be friend with me. So I go with him. When we arrive at their house, Winston told me that his sister is not in the house. So I want to leave the house. When I am going out of the house, Winston locked the door.

"When Winton locked the door, I fight him and told him I want to go home. But, he hold my hands and lay me down the floor and then he put his body on top of me. I cannot move anymore and he pulled my panty. Then, he insert his peny in my paddy. This take him about 15 minutes before he let me go. Then he gave me a pill, colored red and white and told me to drink the pill for my menstruation. After giving the pill he accompanied me up to the basketball court. Then, I went home alone.

"At about 3:00 o'clock in the afternoon of November 29, 1972, I went to the basketball court at the corner of Calderon and a small street I do not know the name. At the basketball court, Winston see me and told me to go to his house. I told him I want to go with somebody to his house. So I go with Robin and Winston. At the house we just talk and then later we all leave the house and I go home.

"At about 4:30 pm. *November 30, 1972*, I play basketball at the basketball court again. Then, when I was playing, I saw Winston and he saw me also. Winston called me and I continue playing. Then Edgar comes to me and told me that Winston is calling me. I asked

Supreme Court E-Library

him why. He said that Winston will tell me something and if I will not go, he will get mad of me. So I go with Winston and he take me to his house again.

"When we were at the garage he closed the door of the garage and then told me 'I want to make love'. I told him I do not like. But he hold my hands again while I was sitting on chair and told me to lay down. I told him do not like (*sic*). So, pushed me very hard and I fall on the chair and he put his body again on top of me and pulled my panty and insert again his penny in to my paddy. It takes us about ten minutes. Then he told me to go home alone. So I go home alone." (pp. 108-109, Record).

The police investigator admitted that the pieced the above account from the fragmented narration which he extracted with much trouble from Therese and which was punctuated by remarks not included in her statement.

Even the above recital does not exclude the hypothesis that Therese consented to the carnal intercourse although with some show of reluctance. The initiative came from Manlapaz.

The issue is whether the complaint and the evidence are sufficient to convict appellant Manlapaz of rape committed when the victim was deprived of reason (*privada de razon*).

The complaint does not spell out that Manlapaz had sexual intercourse with a girl who was "deprived of reason," as contemplated in paragraph 2 of Article 335 of the Revised Penal Code. But the allegation therein that Manlapaz had sexual intercourse with a mental retardate implies that the victim was not in full possession of her normal reasoning faculty. That is sufficient to alert the accused as to the nature of rape imputed to him. So, he has no reason to protest that he has not been charged with having abused a girl who was deprived of reason.

Sexual intercourse with a woman who is deprived of reason or with a girl who is below twelve years of age is rape because she is incapable of giving rational consent to the carnal intercourse. "*Las mujeres privadas de razon, enajenadas, idiotas, imbeciles, son incapaces por su estado mental de apreciar la ofensa que el culpable infiere a su honestidad*

Supreme Court E-Library

y, por tanto, incapaces de consentir. Pero no es condicion precisa que la carencia de razon sea completa, basta la abnormalidad o deficiencia mental que solo la disminuye, sin embargo, la jurisprudence es discordante" (II Cuello Calon, Derecho Penal, 14th Ed., 1975, pp. 538-9).

"*Comete violacion el que yace con mujer que no tiene normalmente desarrolladas sus facultades mentales (19 nov. 1930); aqui esta comprendido el yacimiento con debiles o retrasados mentales (11 mayo 1932, 25 feb. 1948, 27 sept. 1951); constituye este delito el coito con una niña de 15 años enferma de epilepsia genuina que carece de capacidad para conocer el valor de sus actos (2 marzo 1953); el yacimiento con oligofrenicas (mentally deficient persons) (28 Abril, 24 Octubre, 1956, 19 feb. 1958)*; x x x" (*Ibid.*, note 3).*

The same rule prevails in American jurisprudence. "There can be no question but that a copulation with a woman known

---

* In *People vs. Ladeca*, CA-G.R. No. 3835-R, June 30, 1950, the Court of Appeals cites the opinion of the Spanish commentator, Groizard, 5 *Codigo* Penal de 1870, 105-107, that in "rape committed when the woman is deprived of reason or otherwise unconscious, it is the lack of will in the victim that determines the existence of the crime, and this lack of will is present, not only when the victim is unconscious or totally deprived of reason, but also where the woman is suffering from *mental deficiency* to the extent that she is deprived of reason or free will. In such cases, it is not necessary that the woman offer real or constant resistance to the consummation of the criminal act.

"It is a settled proposition, both in civil law as well as in common law jurisdiction, that carnal knowledge of a woman, who is weak in intellect to the extent that she is incapable of legally consenting, constitutes the crime of rape; and that in this type of rape the employment of force or intimidation on the part of the man and resistance on the part of the woman is not essential.

"It being an established fact that the offended party was feeble-minded, sickly, weak in mind and intellect, almost an idiot, she was deprived of reason when the accused had carnal knowledge of her within the meaning of Article 335, Case No. 2 of the Revised Penal Code. The fact that she did not offer any resistance did not mean that she consented, for she was incapable of giving rational consent." (18 Velayo's Digest, 931-2).

Supreme Court E-Library

to be mentally incapable of giving even an imperfect consent is rape" (*State vs. Jewett*, 192 Atl. 7).

"An accused is guilty of the crime of rape when it is established that he had sexual intercourse with a female who was mentally incapable of validly consenting to or opposing the carnal act" (65 Am Jur 2nd 766 citing *State vs. Prokosch*, 152 Minn. 86, 187 NW 971; *Cokeley vs. State*, 87 Tex. Crim. 256, 220 SW 1099; 31 ALR 3rd 1227, Sec. 3).

"In this species of rape neither force upon the part of the man nor resistance upon the part of the woman forms an element of the crime. If, by reason of any mental weakness, she is incapable of legally consenting, resistance is not expected any more than it is in the case of one who has been drugged to unconsciousness, or robbed of judgment by intoxicants. Nor will an apparent consent in such a case avail any more than in the case of a child who may actually consent, but who by law is conclusively held incapable of legal consent. Whether the woman possessed mental capacity sufficient to give legal consent must, saving in exceptional cases, remain a question of fact x x x. It need but be said that legal consent presupposes an intelligence capable of understanding the act, its nature, and possible consequences. This degree of intelligence may exist with an impaired and weakened intellect, or it may not" (*People vs. Boggs*, 290 Pac. 618 citing *People vs. Griffin*, 49 Pac. 711 and *People vs. Peery*, 146 Pac. 44).

"The deprivation of reason contemplated by law does not need to be complete. Mental abnormality or deficiency is enough. So, it was held by the Supreme Court of Spain that a man having carnal knowledge of a woman whose mental faculties are not normally developed or who is suffering from hemiplegia and mentally backward or who is an idiot commits the crime of rape" (Sentences of November 19, 1930, May 11, 1932 and June 24, 1935 cited in *People vs. Daing*, CA 49 O.G. 2331, 2338).

In the *Daing* case, the sixty-five-year-old accused was convicted or rape of a fourteen-year-old feeble-minded girl who communicated her ideas and feelings in monosyllables, punctuated here and there by gestures and signs of her hands as well as by her facial expressions, especially through the medium of her lips. The case was considered as rape of a girl deprived of reason. She was allowed to testify in court.

Supreme Court E-Library

The instant case bears some similarity to *State vs. Prokosch*, *supra*, where Frank Prokosch was charged with having raped a twenty-two-year-old girl, an inmate of the State School for Feeble-Minded. The girl had been committed to that school since she was eleven years old. At the time the sexual intercourse took place, the girl was at her father's home on temporary leave of absence during the holiday season. After her return to the school, the attendants discovered that she was pregnant. She later delivered a fully developed child.

The girl testified that during her stay in her father's home she had sexual relations with three men, one of whom was Prokosch. Her testimony was found to be credible. The court found that she was not an imbecile. She had sufficient intelligence to comprehend the nature of sexual intercourse but not sufficient "to require a holding as a matter of law that she understood and appreciated the moral wrong or the natural consequences to flow therefrom. She was classed by an expert psychologist, a witness for the State, as a moron, and to posses the mentality of a child about the age of eight years." Prokosch was convicted of rape.

In the *Boggs* case, *supra*, a case also similar to the instant case, the accused had sexual intercourse twice with a twenty-two-year-old woman of subnormal mentality. She reached high school but, according to one of her teachers, the victim had the "mentality of a child twelve years old." A doctor testified that she had no "sufficient mentality to protect herself from the ordinary vicissitudes of life." The victim testified and, "while she showed considerable intelligence in fixing dates and describing places and events, her understanding of the nature of sexual intercourse and its consequences was essentially that of a child."

"It is true that she seemed to know what constitutes the physical act and that pregnancy might result therefrom, but she apparently had little conception of other serious consequences which would follow.' Another doctor testified that the victim sometimes gave intelligent answers to questions, "showing, of course, what she had assimilated by contact with older people,

Supreme Court E-Library

and then again the answers showed the irrelevancy of a child rather than an adult."

It was held that the victim was incapable of giving legal consent to sexual intercourse because of mental subnormality. The accused was convicted of rape. The court said that it would be a reproach to the State to hold that it affords no protection to morons of weak mental capacity, like the victim, "against the base passions of unprincipled men."

In the instant case, the victim has the mentality of a five-year-old child. If sexual intercourse with a child below twelve years of age is rape, then it should follow that sexual intercourse with a thirteen-year old girl whose mental capacity is that of a five-year old child would constitute rape.

The mental deficiency of Therese may be gleaned from her testimony. She testified that she resided at "P. Go, Project 4, Quezon City." When she was asked to spell "P. G," she said that she could not spell it (4 tsn January 30, 1974). She actually resided at 10 Padre Burgos Street.

Asked to explain her testimony that she "was fucking with" Winston, she replied that fucking means "fighting" and that when she "made baby" with Winston she was "fighting with" him (*Ibid.*, 19 and 23 tsn). She testified that Winston placed his penis "in the couch" (29 tsn), that she did not suffer any physical injury because she "had no voice" (43 tsn) and that she did not cry for help but a moment later she said that she cried for help (44 tsn).

During the second time Therese was under cross-examination, she testified that she had sexual intercourse with Winston in the market in Cubao, meaning the Unimart (14 tsn April 1, 1974). She did not know whether her friend, Robin, is a teenager (35 tsn). She made contradictory statements as to whether Winston inserted his organ into her private part (41 tsn). Usually, she answered questions by making statements but when she answered in the affirmative or in the negative, she just nodded or shook her head as the case may be (44 and 48 tsn).

Supreme Court E-Library

During the third time that she was under cross-examination, she could not understand what making contradictory statements meant (16 tsn April 3, 1974). She testified that she did not know that sexual intercourse with appellant Manlapaz was wrong:

"Q. Precisely, knowing that .. ., do you know that what Winston did to you on November 28 was wrong? —

A: *No sir.*

"Q. You did not know that having (sexual) intercourse with Winston was not wrong? (sic) —

A. *I do not know that.*

"Q. Do you know that having (sexual) intercourse with a man may cause pregnancy, may make you pregnant? —

A. *No, sir.*" (43 tsn April 1, 1974).

Considering the circumstances detailed above and the testimonies of Doctor Hofileña and Mrs. Lizaso as to the mental incapacity of Therese, appellant's contention that Therese is not mentally retarded cannot be sustained.

Manlapaz testified that he knew Therese to be a normal person and that she informed him that she was studying at the "St. Joseph College". He denied any knowledge that Therese was mentally retarded (63-65 tsn September 9, 1974).

However, considering that Therese was not his girl friend, that he never courted her, and that after knowing her for two or three weeks, he was able to have sexual congress with her two times, we cannot believe his pretension that he did not know that Therese was mentally handicapped or was subnormal. Anyone who conversed with Therese would not fail to notice that she has some mental deficiency. The Constabulary medico-legal officer, who examined her, concluded that she was "feeble-minded" although he did not give her any psychometric tests.

In the *Boggs* case, *supra*, where a twenty-two-year-old girl with subnormal mentality was ravished, the court noted that the accused "must have known of the subnormal mentality of

Supreme Court E-Library

his victim. Notwithstanding such knowledge, he persisted in his lustful purpose until he overcame her weak resistance and accomplished her ruin." That observation applies to the instant case.

Appellant Manlapaz, taking advantage of Therese's mental deficiency and immaturity (she had barely reached the age of puberty) and subordinating his will to his concupiscence or animal instincts, was able to have carnal intercourse twice with a thirteen-year-old girl who was not aware of the disgrace and dishonorable consequences resulting from that immoral act.

The crime committed by the accused is simple rape. No modifying circumstances can be appreciated in this case. The trial court properly sentenced him to *reclusion perpetua* [Arts. 63 and 335(2). Revised Penal Code].

Before article 335 was amended, simple rape was penalized by *reclusion temporal* or twelve years and one day to twenty years. Republic Act No. 4111 raised the penalty for simple rape to *reclusion perpetua* and made qualified rape a capital offense. Taking notice of the rampancy of sexual assaults, ensuring from the lawlessness and deterioration of morale occasioned by the water, the lawmaking body sought to deter rapists by increasing the penalty for rape.

After a judicious consideration of the facts and circumstances of this case, we believe that after appellant Manlapaz had served a term of imprisonment consistent with the ends of retributive justice, executive clemency may be extended to him in the discretion of the Chief Executive and Prime Minister. A copy of this decision should be furnished the Minister of Justice.

The trial court's judgment is affirmed subject to the observation in the preceding paragraph as to the application to this case of Article 5 of the Revised Penal Code. Costs against the appellant.

SO ORDERED.

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