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acts which may have been necessary but not indispensable to the commission of the offense. His liability, therefore, is only that of an accomplice.

The penalty imposed upon an accomplice in a consummated crime of murder is *prision mayor* in its maximum period to *reclusion temporal* in its medium period. As the accused is entitled to an indeterminate sentence and since there are no modifying circumstances, the penalty to be imposed upon him should be from 6 years and 1 day of *prision mayor*, as minimum, to 12 years and 1 day of *reclusion temporal*, as maximum. The indemnity to be paid to the heirs of the victim is hereby increased to ₱30,000.00.

WHEREFORE, with the modification above indicated, the judgment appealed from should be, as it is hereby, AFFIRMED. With proportionate costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos, Escolin, and *Cuevas, JJ.*, concur.

SECOND DIVISION

[G.R. Nos. L-48930-40. July 15, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUDELINO LAO,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; RESISTANCE BY THE OFFENDED PARTY; DEGREE REQUIRED BY LAW.— Complainant testified that her only attempts at resistance were mere attempts to rise

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which We believe are not the manifest resistance required and expected of a woman defending her honor and chastity. In *People vs. Lago* We said: "The mere initial resistance of the offended party is not the manifest and tenacious resistance that the law requires her, to justify the conclusion that the intercourse complained was not voluntary."

2. **ID.; ID.; ID.; LACK OF SEXUAL ASSAULT.**— It is likewise a matter of record that the mother of complainant admitted that after the alleged rapes, the accused and the complainant never changed their attitudes towards one another and they still carried on their usual relations as if nothing happened. This observation only meant that there was no sexual assault made by Rudelino Lao on Marina Olaquir. If there was sexual intercourse, it was with the consent of complainant.

3. **ID.; ID.; WHEN THERE IS LACK OF FACTUAL AND LEGAL BASIS FOR DECLARING THE ACCUSED AS THE FATHER OF THE CHILD.**— Moreover, the conclusion that the child was conceived in January of 1976, is supported by the findings of Dr. Jose Cola, a prosecution witness who testified to the fact that when he examined the complainant on July 29, 1976, she was already six (6) months pregnant. The logical date of conception did not coincide with the alleged occasions of rape. Such being the case, the child could not have been the child of Rudelino Lao. Hence, there is no factual and legal basis for declaring the accused as the father of the child.

4. **REMEDIAL LAW; EVIDENCE; ADMISSIONS; LETTER OF APOLOGY BY ACCUSED IN CASE AT BAR CANNOT BE CONSIDERED AS AN APOLOGY FOR COMMITTING RAPE.**— As regards the letter of apology, if it was indeed written by the accused, this cannot be considered as an apology for committing rape. If ever accused asked for apology, it was because he and complainant were cousins and that he was a married man.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Recto A. de Dios for defendant-appellant.

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DECISION

CONCEPCION, JR. *J.*:

Accused Rudelino E. Lao was charged before the Court of First Instance of Cebu by complainant Marina Olaquir of the crime of rape, on two counts, committed as follows:

"That on/or about March 7, 1976, in barrio Sandayong Norte, Danao City, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with the herein complainant inside her house against her will."

and

"That on/or about March 19, 1976, in barrio Sandayong Norte, Danao City, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with the herein complainant against her will."

The two cases were consolidated and the accused was tried on both counts. After trial, the lower court rendered a decision convicting the accused of the rape committed on March 7, 1976 (Case No. DC-0155) but acquitted him of the crime of rape committed on March 19, 1976 (Case No. DC-0156). The trial court imposed upon the accused the penalty of *reclusion perpetua*, to indemnify the complainant with the amount of ₱5,000 and declared the accused the father of the illegitimate child.

From the verdict, accused appealed to this Court.

It is of record that on March 7, 1976, at about 4:00 p.m., complainant Marina Olaquir, fifteen years old, was in their house together with her 7-month old sister who was asleep when accused Rudelino Lao, a married man, and a cousin of complainant, went to the house of the latter and asked for a match. He was told that it was in the kitchen. When accused replied that he could not locate the match, complainant went

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to the kitchen to help him, but the accused suddenly held her and gagged her in the mouth with a piece of cloth. When she resisted, she was hit with a fistic blow in the arm. Accused then pushed her down against the floor and she was warned: "Try to stand up and I will try to attack you." (*tsn, pp. 26-28, October 13, 1976*). Complainant tried to raise her body but accused threatened to box her in the face. Because of fear and the accused's repeated threats, and knowing that accused shot somebody in the past (*tsn, November 18, 1976*), complainant did not attempt to get up. Thus, accused succeeded in abusing her. Afterwards, the accused left the house and warned complainant that he would kill her if complainant mentioned the incident to his wife or to complainant's parents.

On March 19, 1976, during the birthday of complainant's mother, a party was held in the house of the latter. Accused Rudelino Lao was present on that occasion. At about 8:00 p.m. that evening, complainant went down the house in order to go to her grandmother's house to find out if her 7-month old sister was sleeping. While on her way, accused suddenly appeared and gagged her mouth. She was threatened with fistic blows if she would not submit to his desire. Because of the threats and force employed by the accused in holding her body, the accused succeeded in having sexual intercourse with her. Again, complainant was warned that accused would kill her should she reveal the incident to the wife of the accused or her parents.[1]

On July 29, 1976, complainant, upon the urgings of her mother, went to the clinic of Dr. Jose Cola who examined the complaining woman and found that the complainant was six (6) months pregnant. It was only after such findings that Marina Olaquir revealed for the first time that she was allegedly raped. Prior to the discovery of the doctor of her pregnancy, she never told anyone, including her parents of the alleged sexual assault. (*tsn, pp. 4-5, February 16, 1977*).

On August 14, 1976, complainant executed an affidavit before the police, tagging the accused as the person who allegedly

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[1] pp. 3-4, Brief for Appellee.

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abused her. This was already five (5) months after the supposed rape.[2]

During trial, the mother of complainant testified that complainant and the accused were close to each other as sometimes the accused would ask the complainant what was there to eat in the house; that after March 1976, such attitude between the accused and the complainant never changed and that they were still carrying on as if nothing happened; that sometimes accused would request the complainant to do something for him; and that complainant's mother never suspected that something was wrong between the accused and the complainant. (*tsn, pp. 13-15, February 16, 1977*).

Additionally, a letter, in Visayan dialect, purportedly written by the accused was delivered to the mother of complainant during trial, the translation of which reads as follows:

"Manong Dado and Manang Sepa:

Manoy, Manang, perhaps you might not believe me that when I wrote this letter I felt no shame from my mates in the jail when I shed tears while writing. It is a fact that here in jail I always cry because of the hardship and the loneliness of living without freedom. Hence, Manoy, Manang, many a time have I called your names for forgiveness.

Please forgive me. I would even go to the extent of kissing your heals to prove to you and to make you believe that I really regret and repent over the transgressions I have committed. Manoy, Manang, have pity on me. You very well know I am poor. I have a duty towards my wife and my children who need my efforts so that all of us may live and survive.

Therefore, Manoy, Manang, in your discretion and judgment rests my freedom. Pity and forgiveness. I await that in the darkness of the jail.

Lastly, I very fervently hope that in your deep slumber you will be awakened by a dream about my pleas for pity and mercy.

RODY LAO"

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[2] p. 3, Brief for Defendant-Appellant.

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In acquitting the accused of rape committed on March 19, 1976 (Case No. DC-0156), the lower court stated that it was not satisfied that force motivated the offended party in yielding to Rudelino that night of March 19, the reason being:

"x x x That night was supposedly the birthday celebration of her mother. She was said to have been abused at a place which was around 35 meters from the house of her parents. x x x She was able to identify him when he whispered in a subdued voice, yet there was not sign of protest. x x x Also from the house of the grandparents of the offended party to the house of the latter was only 30 meters. It is indeed inconceivable that what she only did was to repair to the small hut where her younger sister was then sleeping and then cried without in any manner revealing the incident either to her mother or anybody considering that she was said to have been abused the second time."[3]

The defense contends that the trial court made an error when it believed complainant's testimony regarding the supposed rape on March 7, 1976, and discredited her with regards to the supposed rape on March 19, 1976. We agree with the defense.

As to the alleged rape on March 7, 1976, the supposed offended woman did not make any manifest resistance expected of a woman defending her honor and chastity. This is fatal, especially in this case where it is admitted that the accused was not armed with any weapon and that he was a small man, only 5 feet and two inches tall and weighed only 46 kilos.

Complainant testified that her only attempts at resistance were mere attempts to rise which We believe are not the manifest resistance required and expected of a woman defending her honor and chastity. In *People vs. Lago*[4] We said:

"The mere initial resistance of the offended party is not the manifest and tenacious resistance that the law requires her, to justify the conclusion that the intercourse complained was not voluntary."

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[3] pp. 27-28, Decision.

[4] 45 O.G. 1356.

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It is not disputed that complainant revealed the incident after she was found to be six (6) months pregnant, and it was already five (5) months after the supposed rapes. In *People vs. Castro*, We held:

"Miguela did not reveal immediately to her mother and sister that she was raped. It was five (5) months after the alleged rape, when she was not menstruating and her abdomen had been enlarged that she, upon discovery by the midwife, disclosed that she had sexual intercourse with Castro even prior to December 15, 1967. That is another circumstance which engendered doubt as to the alleged rape."[5]

We have also held:

"There are serious doubts as to the commission of the rape when a fifteen (15) year old girl revealed the incident about four months from the incident."[6]

It is likewise a matter of record that the mother of complainant admitted that after the alleged rapes, the accused and the complainant never changed their attitudes towards one another and they still carried on their usual relations as if nothing happened. This observation only meant that there was no sexual assault made by Rudelino Lao on Marina Olaquir. If there was sexual intercourse, it was with the consent of complainant.

As regards the letter of apology, if it was indeed written by the accused, this cannot be considered as an apology for committing rape. If ever accused asked for apology, it was because he and complainant were cousins and that he was a married man.

The complainant gave birth on October 19, 1976 (*tsn, p. 86, November 18, 1976*). That was only seven months from the dates of the supposed rapes. She however stated that she had no sexual contact with Rudelino Lao previous to March, 1976. Granting *arguendo* that the accused did have sexual intercourse,

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[5] 58 SCRA 473.

[6] *People vs Lopez*, L-48197, Nov. 19, 1976.

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albeit mutually and voluntarily with the complainant on March 17, 1976, this would only be seven months to the date of delivery of the child. The child would therefore be premature and could hardly survive in a barrio without medical assistance. However, a disinterested witness, Elisa Lavador, a mother of seven, who attended to the birth of the child testified that the child was normal. If the child was indeed normal and full term, it goes without saying that the child was conceived in January of 1976, or nine (9) months previous to the birth of the aforesaid child.

Moreover, the conclusion that the child was conceived in January of 1976, is supported by the findings of Dr. Jose Cola, a prosecution witness who testified to the fact that when he examined the complainant on July 29, 1976, she was already six (6) months pregnant (*tsn, p. 5, October 13, 1976*). The logical date of conception did not coincide with the alleged occasions of rape. Such being the case, the child could not have been the child of Rudelino Lao. Hence, there is no factual and legal basis for declaring the accused as the father of the child.

WHEREFORE, the decision appealed from should be, as it is hereby REVERSED and the accused-appellant is acquitted of the crime charged.

SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos, Escolin, and *Cuevas, JJ.*, concur.