

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX GARCIA AND PASTOR MINDAROZA, ACCUSED-APPELLANTS.

G.R. Nos. L-45280-81. June 11, 1981

Ponente: GUERRERO, J.

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GUERRERO, J.:

Before Us for automatic review is the Joint Decision Rendered by the Court of First Instance of Laguna and San Pablo City, 8th Judicial District, Branch III, in Criminal Cases Nos. 708-SP and 709-SP, imposing the death penalty on Felix Garcia y Mindaroza and Pastor Mindaroza y Tiquiz.

The complaint in Criminal Case No. 708-SP charged herein appellants with the crime of rape committed as follows:

"That on or about June 1, 1975, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, with lewd design, by means of force, violence and intimidation and with the use of a deadly weapon, raped complainant LYDIA CATIBOG in the following manner to wit: both accused dragged the complainant towards a secluded area and once there the accused Felix Garcia violently tore and removed the dress of complainant, while his co-accused Pastor Mindaroza removed her panty, forcing her to lie down, placing himself on top of her while Pastor Mindaroza held her feet, and did then and there wilfully, unlawfully and feloniously had carnal knowledge of her against her will."

The complaint in Criminal Case No. 709-SP charges:

"That on or about June 1, 1975, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, with lewd design, by means of force, violence and intimidation and with the use of a deadly weapon, raped complainant LYDIA CATIBOG in the following manner, to wit: both accused dragged the complainant towards a secluded place and after accused Felix Garcia has raped her, he held the feet of the complainant while the accused Pastor Mindaroza placed himself on top of her, and did then and there wilfully, unlawfully and feloniously had carnal knowledge of her against her will."

Both complaints were signed by the complainant and her mother, Julia Montalbo, who assisted her. The charges in the two criminal cases having been founded upon the same facts, the lower Court tried both cases jointly.

The prosecution's version of the incident is as follows: On June 1, 1975, at about 4:00 o'clock in the afternoon, the fourteen-year old complainant Lydia Catibog was in her stepfather's coconut plantation untying one of their cows tethered to a coconut tree about 100 meters from their house. It was then that the two accused Felix Garcia and Pastor Mindaroza, complainant's barriomates and both well-known to her, took hold of her, covered her mouth, threatened her with a knife, and dragged her to a banana plantation about seven meters away. There, both accused forced complainant to lie down and took turns in raping her. It was Felix who did it first while Pastor held complainant's feet. Felix tore her dress, slashed her panty with a knife and pulled it down, took off his trousers, placed himself on top of complainant, kissed her, touched her breasts and inserted his penis into her vagina.

Complainant felt pain in her female organ. When it was Pastor's turn, Felix held complainant's legs. Pastor kissed complainant, touched her breasts, and inserted her penis into complainant's vagina. All this time, complainant tried to free herself and was crying. After the accused had satisfied their carnal desires, Felix made a remark to the effect that he had already avenged his brother ("naipaghiganti na raw ang kanyang kapatid") and warned complainant not to tell anyone of what happened, otherwise she would be killed. Both accused left. Complainant then raised her panty and pulled down her dress, both torn and blood-stained and walked towards her home. On the way, she met Danilo Diamante.

Complainant did not reveal immediately the matter to her mother or stepfather. Her mother came to know of the incident only thirteen (13) days later, or on June 14, 1975. Complainant's mother immediately called a family conference and it was decided that charges would be filed. On the very same day, the rape was reported to the authorities, to the Barrio Captain and Police, and complainant was internally examined at the San Pablo City Hospital. The Medico-Legal Certificate, which is on record, contains the following findings:

"Healed laceration at 3:00 o'clock position.

Hymen - ruptured.

Vaginal opening admits one finger freely.

Smear for spermatozoa - Negative."[1]

As for the accused Felix Garcia's remark above-mentioned, he was referring to an incident that took place on February 3, 1975 when his brother Raymundo Garcia embraced complainant, which resulted in the filing of charges against said Raymundo at the City Hall. The case was amicably settled later when Raymundo asked complainant's mother for forgiveness and executed a statement (Exhibit "A") wherein he acknowledged his misdeed and promised that he would not repeat the same.

The defense had quite a different story to tell, that accused Felix Garcia and complainant had been sweethearts more or less one year prior to the incident in question. They had love trysts in the banana plantation where they had met for about fifteen (15) times and complainant allowed Felix to kiss her and have sexual intercourse with her. However, because complainant always insisted that the act should be done in a standing position to avoid pregnancy, there was never any penetration. One such rendezvous took place four days before June 1, 1975 when Felix met complainant again in the banana plantation to make love. Complainant took off her panty and pulled her dress up while Felix unzipped his pants. They were embracing each other and trying to have sexual intercourse in a standing position when they heard someone laugh. It turned out that accused Pastor Mindaroza, first cousin of Felix Garcia, was watching them. Pastor ran away, but complainant was angry at Felix, pushed him and said, "Walanghiya ka, bakit mo ibinibilad ako!" She also said that she would bring a complaint against Felix. It was only four days later, or on June 1, 1975, when Pastor and Felix saw each other again, this time at the house of their grand-father, but they did not converse.

The trial Court accorded full credence to the testimony of the offended party and rendered the joint decision now under review, the dispositive portion of which is hereinbelow quoted:

"WHEREFORE, the court finds both accused guilty beyond reasonable doubt of the crimes charged in the aforesaid two informations.

In Crim. Case No. 708-SP: the accused Felix Garcia and Pastor Mindaroza are charged with rape with the qualifying circumstance of 'with the use of a deadly weapon,' defined and penalized under Art. 335, par. 3, Rev. Penal Code as amended by R.A. 2632 and R.A. 4111, with reclusion perpetua to death. This is borne out by the facts on the record. The evidence also shows that after Felix Garcia had raped the victim with the help

of his co-accused Pastor Mindaroza, the latter in turn with the help of Felix Garcia, abused the girl. In accordance with settled jurisprudence, this circumstance, although not alleged in the information, may be considered as a generic aggravating circumstance which would call for the imposition of the prescribed penalty in its maximum period, which in accordance with Art. 63, par. 2, No. 2, Rev. Penal Code, should be the greater penalty of death. Since also it is settled that once conspiracy is shown, each is guilty as principal not only of the rape committed by an accused but also of that committed by his co-defendant (People vs. Villa, 81 Phil. 193; People vs. Alfaro, 91 Phil. 404; People vs. Soriano, L-29057, Oct. 30, 1970, 35 SCRA 450; People vs. Cañete, No. L-30491, Jan. 21, 1972, 43 SCRA 14) each of the two accused Felix Garcia as principal by direct participation and Pastor Mindaroza as principal by indispensable cooperation should each be sentenced in criminal case No. 708-SP to suffer the penalty of death, jointly and severally to indemnify the offended party in the sum of P12,000.00 as moral damages, without subsidiary imprisonment in case of insolvency and to pay the costs.

In Crim. Case No. 709-SP, the two accused are charged with rape with the use of a deadly weapon and the allegation that after accused Felix Garcia has raped the victim, the other accused Pastor Mindaroza with the help of Felix Garcia abused the girl, another circumstance which according to Art. 335, Par. 3, Rev. Penal Code qualifies the crime. This latter circumstance will be appreciated against the accused only as a generic aggravating circumstance which as observed in the preceding paragraph raised the impossible penalty to greater penalty which is death. Also as observed above, defendant Felix Garcia is liable for the rape committed by Pastor Mindaroza. Hence, the accused Pastor Mindaroza as principal by direct participation and Felix Garcia, as principal by indispensable cooperation, should each be sentenced in crim. case No. 709-SP to suffer the penalty of death, jointly and severally to indemnify the offended party in the sum of P12,000.00 as moral damages, without subsidiary imprisonment in case of insolvency and to pay the costs.

However, in view of the provision of PD 603 (The Child and Youth Welfare Code) Art. 192 thereof, the proceedings herein are suspended and the accused Felix Garcia, born May 2, 1956, and Pastor Mindaroza, born August 6, 1955, are hereby committed to the National Training School for Boys (Vicente Madrigal Rehabilitation Center) Tanay, Rizal, until they shall have reached twenty-one (21) years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the said government agency. In view of the seriousness of the crimes committed and the severity of the impossible penalty, the Director of the aforementioned institution is hereby directed to exercise utmost caution in the safekeeping of the herein accused to forestall possible escape. They should be brought before this Court at the latest upon their reaching the age of 21 to be dealt with in accordance with Art. 197 of said PD 603.

SO ORDERED.

City of San Pablo, February 11, 1976."[2]

Pursuant to the foregoing judgment, Felix and Pastor were committed to the National Training School for Boys (Vicente Madrigal Rehabilitation Center) in Sampaloc, Tanay, Metro Manila. On June 21, 1976, the Court a quo was informed by the Officer-In-Charge of the said rehabilitation center, Mrs. Constancia G. Bolinao, in a letter dated June 4, 1976, that Felix "left the institution without permission on May 29, 1976 at about 2:00 p.m." [3]

On the other hand, Pastor Mindaroza reached the age of twenty-one (21) years on August 6, 1976, and on September 8, 1976, the Department of Social Welfare, through the above-named Officer-In-Charge of the Vicente Madrigal Rehabilitation Center, submitted to the lower Court a Final Report dated September 4, 1976 as follows:

"PASTOR MINDAROZA, who was 21 years of age, last August 6, 1976, accused in the above-entitled was admitted to the National Training School for Boys (Vicente Madrigal Rehabilitation Center), Sampaloc, Tanay, Rizal on March 5, 1976 as per order of this Honorable Court dated February 24, 1976 pursuant to the provisions of Presidential Decree No. 603.

As per institutional procedure minor upon admission was placed at the Reception Cottage where he was oriented with the rules and regulations of the center as well as the programs and services provided for him towards his total rehabilitation. The importance of the privileges given as provided for by the Presidential Decree 603 were clearly stressed to enable him to have aspiration to make good to merit his early release from the center. During sessions with minor he verbalized his willingness to undergo such process and promised to cooperate.

We are glad to inform this Honorable Court that minor has maintained his exemplary behavior since his admission. He has acted remarkably in accordance with the rules and regulations we have in the center. Members of the Rehabilitation Team concurred that he is cooperative, trustworthy, obedient, hardworking and industrious in the performance of his task thereby making him likeable to almost everyone. Aside from his task in the cottage and in the field minor was involved in different activities last summer such as recreational activities like basketball, monthly social and also outings at the different historical spots.

Having availed of the services of the National Training School for Boys Rehabilitation Team geared towards his total rehabilitation he gradually reacted positively to all of the therapeutic programs given him.

Regarding his spiritual development, Pastor was observed to be a devoted Catholic. He attended masses every Sunday and Holidays of Obligation.

He is presently engaged in tailoring as his chosen vocational course wherein he acquired skills and shows marked interest in it.

Record shows that he was visited occasionally by his parents and siblings for which he was so happy and thankful. Such visits had encouraged him to behave properly. Inquiries regarding the plans of his parents revealed that they expressed their intense desire to have minor with them and will be working in a construction which job is now waiting for him. The parents promised to give the love, care and attention due him.

Frequent session with minor revealed his eagerness and desire to rejoin his family and is amenable to his parents' plans. He has the determination to leave behind the dubious pasts and do what is right and honest in order to live peacefully with dignity and respect in the community where he properly belongs.

WHEREFORE, premises considered, pursuant to the provisions of Presidential Decree No. 603, it is respectfully recommended that the case handed down by this Honorable Court against herein accused, PASTOR MINDAROZA, be dismissed and definitely terminated and that he be discharged from the National Training School for Boys (Vicente Madrigal Rehabilitation Center), Sampaloc, Tanay, Rizal to the care and custody of his parents, Mr. & Mrs. Apolinario Mindaroza of Bo. San Pedro, San Pablo City.

It is also requested that for its information and guidance this office be advised of whatever action this Honorable Court may deem proper regarding this matter."^[4]

The foregoing favorable recommendation notwithstanding, the Court a quo on November 4, 1976 pronounced the judgment of conviction insofar as Pastor Mindaroza was concerned. Pertinent portions of the "Promulgation of Judgment (on Pastor Mindaroza)" are quoted hereinbelow:

"Under Section 197 of PD 603 the court is given the authority either to dismiss the case or to pronounce the judgment of conviction. It is the painful task of the court to decide on the latter course and to pronounce the judgment of conviction. It is impelled by the following considerations (a) the seriousness of the offenses committed (b) the degree of perversity demonstrated by the herein accused in the commission of the crimes as narrated in the decision (c) the herein accused was 19 years, 9 months and 25 days when he abused the victim, age 14. The court therefore is pronouncing judgment on the herein accused Pastor Mindaroza by the reading of the position in the presence of the accused.

"In view of the death penalty imposed in each of these cases, let the records of these case be forwarded to the

Supreme Court for review."[5]

Thereafter, Pastor Mindaroza was committed to the National Bilibid Prisons at Muntinlupa, Rizal.[6]

At the outset, the first question arises as to whether the provisions of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, was correctly applied by the trial court to the accused-appellants. Said Code, which was approved on December 10, 1974, took effect six months after its approval,[7] or on June 8, 1975.[8] Before the cut-off date, the law in force was Article 80 of the Revised Penal Code under which a minor "under sixteen years of age at the date of the commission of a grave or less grave felony" was entitled to the benefit of suspended sentence. On the other hand, P.D. 603 granted the benefit of suspended sentence to a youthful offender defined in the first paragraph of its Article 189 as one "who is over nine years but under twenty-one years of age at the time of the commission of the offense."

The records show that at the time the alleged crime was committed on June 1, 1975, appellants were both nineteen (19) years old, the accused Garcia having been born on May 2, 1956 and Mindaroza on August 6, 1955. A week after the commission of the crime on June 1, 1975, P.D. 603 took effect on June 8, 1975. On the question whether P.D. 603 may be given retro-activity, We rule that since P.D. 603 is more favor-able to the accused in that the sentence against them may be suspended, said Decree may be given retroactive effect, not only with the end in view of giving force and effect to the laudable policies for which the P.D. otherwise known as the Child and Youth Welfare Code was promulgated, one of which is that of exerting every effort to promote the child's welfare and enhance his opportunities for a happy and useful life,[9] but also in the light of the provisions of Article 22 of the Revised Penal Code, as follows:

Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

The trial court was therefore correct in applying P.D. 603, suspending the sentence on the two accused and committing them to the National Training School for boys (Vicente Madrigal Rehabilitation Center) Tanay, Rizal, until they shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the said government agency. The Director of the aforementioned institution was also directed to exercise utmost caution in the safekeeping of the herein accused to forestall possible escape in view of the seriousness of the crimes committed and the severity of the imposable penalty.

As indicated earlier the accused Felix Garcia left the institution without permission on May 29, 1976 but he was apprehended three years later by the police of San Pablo City on December 13, 1979 and brought before the Court on January 8, 1980 and the judgment of conviction was read and promulgated to said accused Felix Garcia, imposing upon him the penalty of death and to indemnify the offended party jointly and severally with the accused Pastor Mindaroza the sum of P12,000 as moral damages and to pay the costs.[10] He was likewise committed to the National Penitentiary on January 8, 1980.

The promulgation of judgment on the accused Pastor Mindaroza[11] is assailed by the defense counsel as illegal and a complete nullity, contending that pursuant to the provisions of Presidential Decree No. 603, said accused is entitled to the dismissal of the case insofar as he is concerned and to be finally discharged, on the basis of the Final Report of the Department of Social Welfare dated September 4, 1976.

The contention is meritorious.

P.D. No. 603 took effect six months after December 10, 1974. Since then, most of the provisions in its Chapter III

on Youthful Offenders have been amended by Presidential Decrees Nos. 1179 and 1210, which became effective on August 15, 1977 and October 11, 1977, respectively. The pertinent provisions of P.D. 603, prior to the subsequent amendments, are the following:

Art. 196. Dismissal of the case. ? If it is shown to the satisfaction of the court that the youthful offender whose sentence has been suspended, has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, upon recommendation of the Department of Social Welfare, it shall dismiss the case and order his final discharge

Art. 197. Return of the Youthful Offender to Court. - Whenever the youth-ful offender has been found incorrigible or has wilfully failed to comply with the conditions of his rehabilitation programs, or should his continued stay in the training institution be inad-visable, he shall be returned to the committing court for the pronouncement of judgment.

When the youthful offender has reached the age of twenty-one while in commitment, the court shall determine whether to dismiss the case in accordance with the next preceding article or to pro-nounce the judgment of conviction.

In any case covered by this article the youthful offender shall be credited in the service of his sentence with the full time spent in actual commitment and detention effected under the provi-sions of this Chapter.[12]

There is no doubt as to the applicability of the foregoing provisions to appellant Pastor Mindaroza. Amending Article 80 of the Revised Penal Code, the first paragraph of Article 189 of P.D. 603, prior to its amendment by P.D. 1179, defined a youthful offender as one who is over nine years but under twenty-one years of age at the time of the commission of the offense.[13] Having been born on August 6, 1955,[14] appellant Mindaroza was nineteen years and ten months old at the time he was supposed to have committed the crime for which he was found guilty by the trial Court.

We find that the Court a quo erred in failing to comprehend the implications of the second paragraph of Article 197 of P.D. 603. It is clear from said provision that the trial court has two alternative courses of action with respect to a youthful offender whose sentence it had suspended and who is returned to the court upon his reaching the age of majority, and these are: (1) to dismiss the case and order the final discharge of said offender, or (2) to pronounce the judgment of conviction. In plain and simple language, it is either dismissal or sentence. As to the first course of action, the second paragraph of Article 197 makes an explicit referral to Article 196. Thus, when the offender has reached twenty-one, the Court should dismiss the case and discharge the offender if:

- (1) he has behaved properly and has shown his capability to be a useful member of the community; and
- (2) the dismissal and discharge is recommended by the Department of Social Welfare.

For pronouncement of judgment, however, Article 197 makes no reference to any particular provision, hence at first blush it would appear that the authority of the court to pronounce the sentence is absolute. It was probably for this reason that the Court a quo proceeded, despite Article 196, to promulgate its sentence on appellant Mindaroza, apparently under the notion that the same could be done provided the Court could give its own grounds or justifications. Herein lies the error of the trial Court. The very application of Article 196 to cases of dismissal and discharge necessarily implies that if Article 196 does not apply, i.e., if the requi-sites for its application are not fulfilled, the court should proceed to pronounce the sentence. In the last analysis, therefore, the final disposition of the case as far as the trial court is concerned, which as stated earlier involves the matter of deciding between dismissal and sentence, rests on how the provisions of Article 196 apply to the case at hand.

Article 196 speaks of facts, circumstances or events obtaining after the court has issued the order of commit-ment

of the youthful offender or, in other words, after the criminal case has been tried and the minor found guilty. In effect, from the time the trial court issues such order of commitment, it is as if the past is temporarily set aside and the youthful offender is given a new lease in life, so that with proper help and guidance, he may yet prove himself to be a useful member of society. What solely becomes of material consequence to the court is what transpired during the period of the youthful offender's commitment. Antecedent matters such as those mentioned by the Court *a quo* in the instant case, namely, the seriousness of the offenses committed, the degree of perversity demonstrated by the accused in the commission of the crimes, and the age of the accused at the time the offenses were perpetrated, do not have any bearing at all in the determination of whether the case is to be dismissed or sentence is to be pronounced on the defendant.

In the case at bar, that the requisites of Article 196 have been satisfied as to appellant Mindaroza needs no lengthy discussion. A mere perusal of the detailed and complete Final Report of the Department of Social Welfare (now the Ministry of Social Services and Development) through the Officer-In-Charge of the Vicente Madrigal Rehabilitation Center where Mindaroza was committed, suffices to convince Us that under the law, said appellant should now be finally discharged and the case against him dismissed. The Report contains nothing which may, in the slightest, be deemed as adverse or prejudicial to Mindaroza. On the contrary, the language used therein could not have been more favorable and commendatory.

Notwithstanding what has been said above, however, Our task is not concluded by the finding that herein appellant Pastor Mindaroza should be discharged pursuant to Article 197 in relation to Article 196 of the Child and Youth Welfare Code, for the same Code explicitly provides:

Art. 198. The final release of a child pursuant to the provisions of this Chapter shall not obliterate his civil liability for damages. Such release shall be without prejudice to the right for a writ of execution for the recovery of civil damages.

The civil liability for damages referred to is apparently that obligation created by or arising from the crime, otherwise known as *ex delicto*,^[15] the imposition of which is mandated by Articles 100, 104(3), 107 and 345(1) of the Revised Penal Code,^[16] and is based upon a finding of the guilt of the accused. For the purpose, therefore, of deciding the impossibility of the civil liability on said appellant under Article 198 above-quoted, We must review the trial Court decision, particularly that aspect thereof finding Mindaroza guilty of the crime charged.

The appeal centers on the alleged existence of reasonable doubt warranting the acquittal of the appellants in that: (1) there was undue delay in reporting the alleged rape, and (2) the evidence for the prosecution is improbable, incredible and inconsistent, especially on the force and violence allegedly employed.

After carefully going over the records, however, We find that We are in accord with and, therefore, affirm the trial Court's evaluation of the evidence, to wit:

"The court has carefully examined the testimony of complaining witness and has not found a single detail in her story that runs counter to human nature and experience. On the contrary, her entire version of the incident - locale, occasion, opportunity and the manner the act was committed - is inherently credible. The court also had opportunity to observe that the complaining witness was a young, innocent-looking girl who testified shyly and in a soft voice in a very straightforward manner. The court therefore accords full credence to the testimony.

"The motive that the accused would attribute to the complaining witness for filing the complaint against them - revenge against Felix Garcia for allegedly exposing her to embarrassment before Pastor Mindaroza - is hardly persuasive for it is contrary to human nature that a young girl would expose her sorry plight with all the embarrassment that it entails for a relatively minor thing as self-satisfaction of revenge. The defense though ingenious is puerile in that while suggesting that complaining witness resorted to this charge to save face, it overlooked the fact that a resort to this device was costlier in terms of besmirched reputation and humiliation.

"Now let us analyze defendant Garcia's version. According to Felix Garcia, he did not have to rape Lydia Catibog because she was his sweetheart. In fact, according to him, he had love trysts with Lydia on no less than 15 occasions and during those times he tried to have sexual intercourse with her but was unable to insert his penis into the girl's vagina because they were doing it in a standing position. Granting that Lydia was a young virgin, the chances still are that Felix Garcia, being a young man, would have made a penetration out of so many attempts. Besides, it stands to reason that after so many failures in the standing position, Felix would not be lacking in imagination to suggest and resort to the more conventional position of lying down.

"Felix Garcia also testified that it was not on June 1, 1975 but four (4) days before that date that Lydia and he had a love tryst at the banana plantation, and that it was on this occasion that his co-accused Pastor Mindaroza chanced upon them (Sess. Oct. 30 & Nov. 11, 1975). Now, in his statement Exh. C, taken June 14, 1975, he stated that they were sweet-hearts for almost a year (Q. No. 10); that one week after they became sweet-hearts, he and Lydia petted (Q. No. 11) the second week, she gave her body to him (Q. No. 11) by having sexual inter-course in standing position (Q. No. 12), and it was on the second outing that Pastor Mindaroza surprised them (Q. 15, marked Exh. C-1). Now, if these were true, they were surprised by Pastor Mindaroza about the end of June, 1974, not 4 days before June 1, 1975 as testi-fied to by Felix Garcia on the witness stand.

"On the other hand, the accused Pastor Mindaroza claimed that he sur-prised them (Felix Garcia and Lydia Cati-bog) in a compromising situation about the end of May, 1975 (Sess. Nov. 11, 1975). This coincides with Felix Garcia's testi-mony, 4 days before June 1, 1975. Yet, Pastor Mindaroza in his statement, Exh. D, declared that he saw Felix and Lydia embracing each other in the month of March (Q. No. 13, marked Exh. D-1).

"Defendants' version of the incident is not only inherently unbelievable but categorically belied by Lydia Catibog when she declared that nobody has ever courted her nor had she ever a sweetheart (Sess. Sept. 9, 1975) that before June 1, 1975 she never had any love tryst with the accused Felix Garcia (Sess. Oct. 7, 1975). Defendants' testimonies are also pockmarked with contradictions by their written statements given to the police as shown above." [17]

It is, nevertheless, contended in the Joint Brief for Appellants that the unusual silence of the offended party for thirteen (13) days following the alleged incident negates the probability of the commission of rape against her, and that if there was any threat at all to complainant's life, it had ceased to be imminent as she was able to go home to avail of the protection and sympathy of her mother, stepfather, brothers and sisters. It is argued that if it were true that com-plainant had been raped by appellants, she should have lost not time in seeking justice and retribution. Instead, she admitted that these rape cases were filed only after she learned that appellants were allegedly spreading the news that she was no longer a virgin.

We agree with counsel for appellants that "the conduct of the woman immediately following the alleged assault is of utmost importance as tending to establish the truth or falsity of the charge of rape." This Tribunal has so held in *U.S. vs. Flores*. [18] Thus, it was stressed in the case of *People vs. Ordonio* [19] that "(t)he course of conduct followed by the party aggrieved from the time of the alleged perpetration of the deed must be carefully scrutinized." In *People vs. Savellano*, [20] it was held that "(t)he conduct of (complainant) in reporting immediately to the barrio captain that she had been ravished negates appellant's claim that she had voluntary sexual intercourse with him." And in *People vs. Ilagan, et al.*, [21] also a rape case, the accused were acquitted by this Court with the following ob-servations:

"x x x if the complainant had really been raped in the early morning of March 28, 1967, she would have shown that same morning manifestations of the outrage per-petrated against her. It is strange that she showed no signs of agitation or dis-turbance. She remained calm and silent. She did not complain to the two municipal policemen who were present thereat. She did not even confide to her close lady friends and companions her

trouble or pre-dicament. This is not the normal behavior of a woman who had just been violated it indeed she had."

Nevertheless, the silence of the offended party in a case for rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Other relevant facts and circumstances must likewise be considered to determine the veracity of the accusations.

Thus, as correctly stated by the Solicitor General in his well-written Brief for the People, it is not unusual for a rape victim to prefer to suffer in silence and keep to herself the shocking and embarrassing experience of her defloration, rather than report the crime and subject herself to public ridicule and contempt and additional shame and humiliation in having to recall and testify on the manner in which her honor was desecrated. Indeed, this is especially true and to be expected of a young provinciana like the fourteen-year old complainant. Due regard must also be given to the testimony of complainant that the accused made threats on her life. We have no reason to disbelieve complainant, who testified thus:

"Q Again, what did he say?

A That I must not tell anyone, sir. 'Huag daw akong magsumbong' because I would be killed." [22]

Q Did you tell your mother or your step-father what happened to you?

A I did not, sir.

Q Why?

A I was afraid of Felix and Pastor, sir.

Q Why were you afraid of Pastor and Felix?

A Because I was threatened by Felix and Pastor. " [23]

Q After this incident happened, what did you feel or how did you react on this incident (sic)?

A I could not eat and I have sleepless nights, I could not work and I felt ashamed in facing people and I became a frightened person.

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Q You stated that you became ashamed to the people, why?

A Because of what happened to me, sir.

Q You likewise mentioned that you are always frightened, why do you have to be frightened always?

A Because I was threatened by Felix and Pastor.

Q In the previous hearing of this case, you testified that you are taking care of three (3) cows and you used to herd the same cows to the coconut plantation everyday, now, are you still doing the same chore everyday from the time this crime was committed by the accused?

A Not anymore, sir.

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Q Why?

A Because I am afraid to go out to the coco-nut plantation.

Q Whom are you afraid of?

A Felix and Pastor, sir."[24]

The fear engendered by the threats and the desire to avoid further shame were more than sufficient to re-train the young girl from exposing her gruesome experience, and her family would not have come to know of the outrage committed against her had she not learned later that the accused, adding insult to injury, told complainant's cousin, one Guillermo Bunsol, that she was no longer a virgin (laspag na).[25] This prompted her to confide in her mother,[26] telling her that she did not do so earlier for fear of the threats on her life.[27] Complainant's mother immediately summoned her other children for a family conference and they all decided to file charges.[28]

Considering the foregoing, the interval of thirteen days from the time of the incident to the time it was reported to the barrio captain on June 14, 1975 does not, to Our mind, constitute undue delay which could render the rape charges against herein accused doubtful. The explanation of complainant is not only completely credible, but is likewise corroborated by other evidence on record.

Julia Montalvo testified during the direct examination that her daughter, the complainant Lydia Catibog, had become "always lonely" and "could not eat very well at home." On June 14, 1975, Lydia finally unburdened herself and told her (Julia) of how she was raped by the two accused thirteen (13) days before. Julia asked Lydia why she did not confide earlier and the latter answered that she was afraid of the accused because of their threats to kill her. Immediately, Julia called all her other children - Willy, Jose, Erlinda and Pepito, all surnamed Catibog - to talk about the matter and decide upon what action to take. They all agreed that a complaint should be filed against the offenders. They all went to the barrio captain, then to the police headquarters where Lydia was asked to give a statement. On the same day, too, Lydia was examined by a doctor.[29]

On the alleged improbability, incredibility and inconsistency in the evidence for the prosecution, the defense points to a discrepancy in the Affidavit of complainant and her testimony in Court as to who held the knife when she was dragged by the accused to the banana plantation. In the Affidavit, complainant stated that "si Felix ay may hawak na lansita,"[30] while in Court she testified that Pastor was pointing a knife at her.[31] It appears from the record, however, that complainant has adequately explained away this seeming inconsistency. An examination of the transcript of stenographic notes shows that during her cross-examination, complainant was asked:

"Q In this Exhibit '1' you stated Felix was the one provided with a knife, now at the hearing on August 26, 1975, page 16, transcript of record you made an answer like this: 'No, sir, Pastor was holding a knife (lanseta).' Which is true, the one you stated in this Exhibit '1' that Felix to be the one (sic) holding the knife or Felix (should be Pastor) as you alleged during the hearing dated August 26?"[32]

to which she answered:

"A They were alternately holding it, sir. (Halili po sila ng hawak)."[33]

Complainant's explanation is entirely probable. More-over, We do not deem the discrepancy to be of such serious nature that could impair the testimony of complainant. What is material is that force was applied on her and she was intimidated by the accused with the use of a knife, a deadly weapon. Furthermore, and We quote from the recently decided case of *People vs. Gonzales, et al.*: [34]

"x x x the affidavits were not pre-pared by the witnesses and could contain certain inaccuracies in the interpretation of their declarations. 'An affidavit pre-pared for a man to swear to will not always disclose the whole facts, and will often-times and without design incorrectly describe, without the deponent detecting it,

some of the occurrences narrated.' (2 Moore on Facts, p. 1098). 'Being taken ex parte, it is al-most always incomplete and inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject.' (Id., pp. 1094-95)."

The defense likewise seeks to destroy the credibi-lity of prosecution witness Danilo Diamante. This wit-ness testified that in the afternoon of June 1, 1975, on his way home from gathering firewood in the land of Cresenciano Exconde, complainant's stepfather, he met the two accused who were "walking briskly"; that he greeted them and asked where they had been, and Felix answered, "diyan lang"; that he asked the accused why they were hurrying, but neither gave a reply; that proceeding on his way home, he saw complainant from a distance of about 10 meters, and observed that her hair was disheveled and she was crying; that he asked com-plainant why she was crying but the latter did not answer, so he went on his way.[35] Witness Diamante is the brother-in-law of complainant's brother, Pepito Catibog.

Diamante's relation to complainant, aside from being a remote one, does not necessarily render his testimony unreliable as one emanating from a biased source. We have held in the case of *People vs. Padiernos*[36] that: "While witnesses may be said to be interested by reason of their relationship with one of the parties, their declarations should not be disregarded or rejected capriciously on the ground of bias alone where - as in the present case - they are reasonable, consistent and supported by the facts and circumstances." Such is Diamante's testimony in the case at bar.

It is true, as the defense points out, that there is an inconsistency in the testimony of witness Diamante. Records show that during cross-examination, the trial Judge asked Diamante if he noticed anything unusual in complainant's dress when he saw her on June 1, 1975 and he replied: "None, your Honor." [37] He was asked again by the defense counsel:

"Q Her dress (was) not torn?

A It had a tear, sir (witness pointing at the level of the upper breast).

Q A while ago when you were asked by the Court about the condition of her clothing x x x, you said x x x that there was nothing unusual at all x x x in her dress, will you please explain to the Court why now you said that the upper portion of the dress was torn? x x x

A What is correct is that it had a tear on the breast area, sir, upper breast area." [38]

We rule that the contradictory statements are not of such a magnitude as to destroy the credibility of Diamante or the veracity of his declarations.

The defense finds it improbable that, coming upon complainant in tears, witness Diamante did not do any-thing to help her. We do not agree. In the first place, Diamante testified that he asked complainant why she was crying, but got no reply.[39] Complainant her-self, in her testimony, stated that Diamante "greeted me but I did not understand what he said." [40] It cannot, therefore, be said that Diamante did not show any concern at all towards complainant. In the second place, it is very probable that Diamante did not do anything to help her because she did not tell him what happened to her.

The defense further complains that the alleged knife, and the dress and panty of complainant, were not presented in evidence. The non-presentation of the knife, however, does not negate the existence of intimidation. As We stated in another prosecution for rape where a bolo was used by therein accused to inti-midate his victim, "(c)onsidering that the bolo was in the hands of appellant and presumably belonged to him, it should not be a

cause for wonder why complainant could not present it in evidence. It was not likely that appellant would just leave it at the scene of the crime." Likewise, the non-presentation of the torn and blood-stained dress and underwear of complainant does not destroy the case for the prosecution, there being sufficient and convincing evidence to prove the rape charges beyond reasonable doubt.

The fact that no spermatozoa was found on complainant when she was medically examined hardly comes as a surprise. Thirteen (13) days had already elapsed from the time of the rape to the time Dr. Aleli Eubinag conducted the examination of the genital area of complainant on June 14, 1975. This Tribunal has ruled that the absence of spermatozoa does not render doubtful the commission of rape where several hours had elapsed before the offended party was examined.^[41]

The evidence on record does not support the contention of the defense that the description of the manner by which complainant was raped makes the commission of rape impossible especially considering that complainant was a virgin. Complainant, who was just a young girl of fourteen at the time of the incident, could easily have been overpowered by two adult males. With one of the assailants holding complainant's legs, the other would not have a difficult time consummating the act of sexual intercourse. If one man can succeed in having carnal knowledge of a woman against her wishes, with more reason can two men do the same.

In fine, the accused Pastor Mindaroza should and must be released immediately from the New Bilibid Prisons, Muntinlupa, Rizal to ensure and enable his fullest development physically, mentally, emotionally, morally and socially in a healthy and normal manner and in conditions of freedom and dignity as a rehabilitated and useful citizen of society.

As to the other accused Felix Garcia who escaped from the Rehabilitation Center barely three months from the time he and his co-accused Pastor Mindaroza were received at the said Center, and was finally arrested by the Police after three years, it is clear that he has wilfully failed to comply with the conditions of his rehabilitation program, and the provisions of Article 197, par. 1 of P.D. 603 cited earlier must govern his case.

In promulgating the judgment of conviction against the accused Felix Garcia, imposing upon him death penalty in each of the two cases, Criminal Case No. 708-SP and Criminal Case No. 1309-SP, the Court was impelled to do so on the following considerations; (a) the seriousness of the offense committed (b) the degree of perversity demonstrated by the herein accused in the commission of the crimes as narrated in the decision (c) the herein accused 19 years, when he abused the victim, age 14. We reiterate Our holding indicated and explained earlier that such antecedent matters do not have any bearing at all in the determination of whether the case is to be dismissed or sentence is to be pronounced on the defendant. We rule that the trial court erred in considering the above considerations. The only considerations according to Article 197 cited above for the return of the youthful offender to the committing court for the pronouncement of judgment are that the said offender has been found incorrigible or has wilfully failed to comply with the conditions of his rehabilitation programs or should his continued stay in the training institution be inadvisable.

The next point to consider is whether the penalty of death imposed upon the accused Felix Garcia in each of the two criminal cases for rape is correct. The judgment under review sentenced said accused in Criminal Case No. 708-SP to the penalty of death, applying Article 335, paragraph 3 of the Revised Penal Code as amended by R.A. 2632 and R.A. 4111, considering the circumstance of "with the use of a deadly weapon" as qualifying and the fact that the rape was committed by two persons as a generic aggravating circumstance, which in accordance with Article 63, paragraph 2, No. (1) of the Revised Penal Code raises the penalty to the maximum period which is death. And in Criminal Case No. 709-SP wherein the accused were also charged with rape with the use of a deadly weapon, the lower court considered the fact that after accused Garcia raped the victim, the other accused

Mindaroza abused the girl with the help of accused Garcia also as a generic aggravating circumstance which raises the imposable penalty to the greater penalty of death.

As amended by Republic Act 2632 approved June 18, 1960 and Republic Act No. 4111 on June 20, 1964, Article 335 of the Revised Penal Code reads as follows:

"Art. 335. When and how rape committed. - Penalties. Rape is committed by having carnal knowledge of a woman under any of the follow-ing circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death."

In the prosecution of the cases at bar, two circumstances are present, namely: 1. use of deadly weapon and 2. that two persons committed the rapes. The first was alleged in the information while the second was proved at the trial. In both cases, the Court appreciated the first as a qualifying circums-tance and the second as a generic aggravating circumstance, in accordance with settled jurisprudence according to the trial court.

We do not agree. Under the law above quoted, either circumstance is qualifying. Where the two circumstances are present, there is no legal basis to consider the remaining circumstance as a generic aggravating circumstance for either is not considered as such under Article 14 of the Revised Penal Code enumerating what are aggravating circumstances. Hence, the correct penalty is the lesser penalty, which is reclusion perpetua there being no aggravating or mitigating circumstance, pursuant to Article 63, paragraph 2, No. 2, Revised Penal Code.

WHEREFORE, in view of all the foregoing, the sentence of death imposed upon the accused Pastor Mindaroza is hereby SET ASIDE and he is hereby discharged and released immediately from confinement. The judgment of conviction against the accused Felix Garcia is hereby AFFIRMED but modified in that the penalty of death in each of the two rape cases is reduced to reclusion perpetua in both cases. The remaining portions of the decision under review shall stand and are hereby affirmed.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Fernandez, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Aquino, J., see dissent.

Concepcion, Jr., J., on leave.

[1] Exhibit "B", Folder of Exhibits.

[2] Joint Decision, pp. 17-20; Record of Criminal Case No. 708-SP, pp. 38-41. Articles 192 and 197 of P.D. 603 referred to in the Joint Decision have been amended by P.D. 1179 and P.D. 1210 which became effective on Aug. 15, 1977 and October 11, 1977, respectively.

[3] Record of Criminal Case No. 708-SP, p. 44

[4] Ibid., pp. 52-54.

[5] Promulgation of Judgment (on Pastor Mindaroza), pp. 4-5, underscoring supplied; Record of Criminal Case No. 708-SP, pp. 68-69.

[6] Record of Criminal Case No. 708-SP, p. 70.

[7] Article 213, P.D. 603.

[8] People vs. Casiguran, 94 SCRA 244, 248

[9] Article 1, par. 1, P.D. 603.

[10] Rollo, pp. 174-180

[11] Records of Criminal Case No. 708-SP, pp. 64-69.

[12] Underscoring supplied. The second paragraph of Article 197 has been amended by P.D. 1179 to add the following sentence: "In the latter case, the convicted offender may apply for probation under the provisions of Presidential Decree Numbered Nine Hundred and Sixty-Eight."

[13] As amended, the first paragraph of Article 189 now reads as follows: "A youthful offender is a child, minor or youth, including one who is emancipated in accordance with law who is over nine years but under eighteen years of age at the time of the commission of the offense."

[14] Birth Certificate issued by the Local Civil Registrar of San Pablo City, Exhibit 3, Folder of Exhibits.

[15] See Article 1157, No. 4, and Article 1161, New Civil Code of the Philippines; and Article 100, et seq., Revised Penal Code.

[16] People vs. Peña, L-36435, December 20, 1977, 80 SCRA 589, 599.

[17] Decision, pp. 13-16.

[18] 26 Phil. 262; quoted in People vs. Hayag, L-38635, Nov. 17, 1980.

[19] L-33829, Dec. 19, 1975, 68 SCRA 397, 399.

[20] L-31227, May 31, 1974, 57 SCRA 320, 328.

[21] L-36560, May 28, 1975, 64 SCRA 170, 176-177.

[22] t.s.n., Sept. 9, 1975, p. 12.

[23] t.s.n., Ibid., p. 20.

[24] t.s.n., Ibid., pp. 25-28.

[25] t.s.n., August 4, 1975, pp. 6-7; Sept. 9, 1975, p. 21.

- [26] Ibid.
- [27] t.s.n., August 4, 1975, p. 15.
- [28] Ibid., p. 8; t.s.n., Sept. 9, 1975, p. 22.
- [29] t.s.n., August 4, 1975, pp. 4-14.
- [30] Exhibit "1", Folder of Exhibits, p. 7.
- [31] t.s.n., August 26, 1975, pp. 24-25.
- [32] t.s.n., October 7, 1975, p. 6.
- [33] Ibid., p. 8.
- [34] L-40727, September 11, 1980.
- [35] t.s.n., August 26, 1975, pp. 3-15.
- [36] L-37284, February 27, 1976, 69 SCRA 484, 491.
- [37] t.s.n., August 26, 1975, p. 11.
- [38] Ibid., p. 15.
- [39] Ibid., p. 9.
- [40] t.s.n., September 9, 1975, p. 18.
- [41] People vs. Carandang, L-31012, Aug. 15, 1973, 52 SCRA 259; People vs. Jaime Jose, et al., L-28232, Feb. 6, 1971, 37 SCRA 450.

170 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

AQUINO, J.:

The lower court found Felix Garcia and Pastor Minda-roza to have committed two rapes against Lydia Catibog, 14, on June 1, 1975, when the two accused, first cousins, born respectively, on May 2, 1956 and August 6, 1955, were nine-teen years and one month and nineteen years and ten months old.

The circumstances that the rapes were committed with the use of a deadly weapon and by two persons were alleged in the information and were proven.

Article 335 of the Revised Penal Code, as amended, imposes reclusion perpetua for simple rape, and reclusion perpetua to death for rape "committed with the use of a deadly weapon or by two or more persons".

The lower court held that the imposable penalties on the two accused are two death penalties because the rapes were qualified by the use of a deadly weapon and the other qualifying circumstance, which is the commission of the rape by two persons, should be considered as a generic aggravating circumstance.

The trial court suspended the sentence on the two accused and ordered their confinement in the National Training School for Boys (Vicente Madrigal Rehabilitation Center) located at Barrio Sampaloc, Tanay, Rizal until they reached the age of twenty-one years.

The lower court applied the Child and Youth Welfare Code (Presidential Decree No. 603), which took effect on June 8, 1975 and modified article 80 of the Revised Penal Code. Article 189 of that Code regards as a youthful offender entitled to a suspended sentence one who is over nine years but under twenty-one years at the time of the commission of the offense.

Presidential Decree No. 1179, which took effect on August 15, 1977, amended section 189 by regarding as a youthful offender one who is over nine years but under eighteen years of age at the time of the commission of the offense (*Vir-tuoso, Jr. vs. Municipal Judge of Mariveles, Bataan*, L-47841, March 21, 1978, 82 SCRA 191; *People vs. Casiguran*, L-45387, November 7, 1979, 94 SCRA 244).

Article 192 of the Child and Youth Welfare Code (before it was amended) provides that "if after hearing the evidence in the proper proceedings, the court should find that the youth-ful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the governments or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed".

Parenthetically, it should be noted that article 192 was amended by Presidential Decree No. 1179 by requiring the youthful offender to file an application for suspension of his sentence and by providing that those who had previously enjoyed suspension of sentence or those convicted of an offense punished by death or life imprisonment are not entitled to the benefits of a suspended sentence.

The trial court erred in applying to these cases the Child and Youth Welfare Code. Since the rapes were committed on June 1, 1975 or before the effectivity of the said Code, these cases are governed by article 80 of the Revised Penal Code under which a youthful offender is one who was below sixteen years at the time the offense was committed.

So, the confinement of Garcia and Mindaroza in the correctional institution was a mistake. They are not entitled to suspended sentences under article 80 which is the law applicable to their case.

Garcia's case. - The officer-in-charge of the training school in a letter dated June 4, 1976 informed the lower court that Garcia left the institution without permission on May 29, 1976. He did not return. The lower court issued on June 21, 1976 a warrant for Garcia's arrest. He was arrested on December 13, 1979.

The lower court in its order of January 8, 1980 convicted Garcia of two rapes and imposed upon him two death penalties. The said judgment was promulgated by reading to Garcia the decision of February 11, 1976.

The lower court reasoned out that it had to pronounce the judgment of conviction upon Garcia because of the gravity of the offenses committed by him and the degree of perversity exhibited by him in the commission of the rape.

A copy of that order of January 8, 1980, promulgating the judgment of conviction against Garcia, together with the certificate of promulgation, was forwarded to this Court and received by mail on February 5, 1980.

The lower court did not err in convicting Garcia of two rapes but it erred in sentencing him to two death penalties.

The death penalties were improperly imposed because under article 335 of the Revised Penal Code, as amended, the circumstance that the rape was committed by two or more persons is always a qualifying circumstance. It cannot be regarded as a generic aggravating circumstance. It is not among the aggravating circumstances enumerated in article 14 of the Revised Penal Code.

As already noted, the trial court held that the rapes were qualified by the use of a deadly weapon. It regarded the other qualifying circumstance (commission of the rapes by two persons) as a generic aggravating circumstance. I am of the opinion that that is erroneous.

No generic aggravating circumstances attended the commission of the two rapes. Hence, the imposable penalty is only reclusion perpetua, or the lesser penalty (Art. 63[2], Revised Penal Code).

Garcia should be sentenced to two reclusion perpetuas and to a total indemnity of P24,000.

Mindaroza's case. - The officer-in-charge of the training school in her final report dated September 4, 1976, or after Mindaroza had reached the age of twenty-one, said that during his stay in the institution his behavior was exemplary. He chose tailoring for his vocation (p. 53, Record).

The officer-in-charge recommended that the case against Mindaroza be dismissed and terminated and that he be discharged from the rehabilitation center and entrusted to his parents (p. 53, Record).

The lower court in its order of September 10, 1976 directed the officer-in-charge of the rehabilitation center to surrender Mindaroza to the chief of police of San Pablo City so that the said officer could have custody of Mindaroza "for further proceeding in accordance with PD No. 603" (p. 58, Record).

In another order dated November 4, 1976, the lower court, instead of dismissing the case against Mindaroza and ordering his release, "pronounced judgment" on him "by the reading of the decision" in his presence, meaning the decision wherein it was stated that the two rapes were punishable by death (p. 68, Rollo).

The lower court assumed that in Mindaroza's case it had the option "either to dismiss the case or to pronounce judgment of conviction" under article 197 of the Child and Youth Welfare Code.

The lower court justified its pronouncement of the judgment of conviction upon Mindaroza (instead of releasing him) by citing the gravity of the offenses committed by him and the degree of perversity which he exhibited in the commission thereof.

As already stated, the trial court erred in suspending Mindaroza's sentence. As in the case of Garcia, Mindaroza should be sentenced to two reclusion perpetuas.

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