PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOPE LIWANAG Y BUENAVENTURA, SANDY SIMBULAN Y GARCIA AND RAMIL VENDIBIL Y CASTRO, ACCUSED. LOPE LIWANAG Y BUENAVENTURA, ACCUSE...

G.R. No. 120468. August 15, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Lope Liwanag y Buenaventura, and his co-accused Randy Simbulan and Ramil Vendibil, were charged with the crime of highway robbery with multiple rape in an Information[1] which reads, thus:

> That on or about the 27th day of April, 1992, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an icepick, conspiring and confederating together and mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously, take, rob and divest from the complainant, Corazon Hernandez y Delfin the amount of P60.00; That on the occasion thereof, the above-named accused, conspiring and confederating together and each of them mutually helping and aiding one another and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously one at a time have carnal knowledge of the said complainant, inside the Levitown Subdivision, Parañaque, Metro Manila, against her will and consent;
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> That accused Randy Simbulan y Garcia, who is allegedly 14 years old, has acted with discernment in the commission of the offense; and
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> That the aggravating circumstance of that means employed or circumstance brought about which add ignominy to the natural effect of the act where one of the accused, by means of force and intimidation, caused the victim to suck his penis made the effect of the crime more humiliating to the victim, attended the commission of the offense.
>
> CONTRARY TO LAW.

During the arraignment, all of them pleaded “not guilty” to the charge. Accused Randy Simbulan and Ramil Vendibil were earlier released on recognizance, and were later ordered rearrested for their failure to appear at the scheduled hearings. However, the warrants for their arrest were not implemented. Trial on the merits, thus, ensued only against accused-appellant Lope Liwanag y Buenaventura.

Complainant Corazon Hernandez was on her way home to Parañaque at around 1:00 o’clock in the early morning of April 27, 1992. Upon reaching the tricycle terminal at Doña Soledad St., Better Living Subdivision, Parañaque, Metro Manila, she was offered by tricycle driver Ramil Vendibil a “special trip”, which means that she would be brought right in front of her house. She agreed and boarded the tricycle. While they were about to leave, Randy Simbulan and Lope Liwanag also rode the tricycle behind the driver. When they reached India Street, Lope Liwanag entered the sidecar and sat beside complainant. He immediately grabbed complainant’s shoulder,

pointed an instrument at the side of her neck, and declared a hold-up. Surprised and fearing for her life, complainant told accused-appellant that she only had sixty pesos (P60.00) in her bag. Accused-appellant Lope Liwanag instructed Randy Simbulan to get her bag.

While the tricycle was traversing the road leading to the municipal building of Parañaque, accused-appellant informed complainant that since they could not get anything from her anyway, she might as well submit herself to them. Then, accused-appellant began kissing complainant and touching her private parts. Randy Simbulan, meanwhile, inserted his finger into complainant's vagina.

As they were entering Levitown Subdivision, accused-appellant ordered complainant to act naturally while they passed the guardhouse. Once they got through, accused-appellant asked her to give in to his desire, and then, he again began touching her private parts. Complainant answered that she would rather be killed than accede to his desire. This prompted accused-appellant to hit her with an icepick on the abdomen.

Upon reaching a vacant lot, accused-appellant ordered Vendibil to stop the tricycle. He then tried to strangle complainant, causing her to fall down from her seat and lose consciousness. When she regained consciousness, she was forced to board the tricycle. Again, they rode around the village. Accused-appellant tried to strangle her with a bandana and ordered her to remove her underwear. When she refused, accused-appellant himself removed her underwear, opened his pant zipper and forced her to sit on his lap. Complainant struggled, so accused-appellant ordered the tricycle to stop and dragged complainant out. Accused-appellant then brought complainant to a grassy vacant lot and forced himself on her. After satisfying his lust, they again boarded the tricycle and accused-appellant informed complainant that his companions would follow. Complainant's pleas were in vain. After a few minutes of driving around, they came upon another vacant lot where accused-appellant and Vendibil dragged complainant. There, Vendibil forced complainant to put his penis into her mouth. Unsatisfied, Vendibil forced her to lie down and succeeded in having sexual intercourse with her while accused-appellant and Simbulan watched. Thereafter, Simbulan took his turn. After he satisfied his lust, they talked of killing complainant.

Complainant pleaded for her life and, in desperation, she offered them money in exchange for her life. Accused-appellant asked her if she can produce P10,000.00, but she said she could not. Accused-appellant lowered his demand to P5,000.00. They negotiated until they finally agreed on the sum of P2,000.00. Accused-appellant instructed complainant to deliver the money at Guadalupe, Makati. She was to place the amount inside a bag together with a sandwich she was to buy at Burger Machine. They agreed to meet at 11:30 that same morning. When they finally let go of her, complainant proceeded to a church. At daybreak, she went home and told her mother the whole incident. Together, they proceeded to the Fort Bonifacio police station and reported the matter. The police, in turn, devised an entrapment operation.

At the appointed hour, complainant went to Guadalupe, Makati, bringing with her an envelope containing pieces of plain paper. Accused-appellant arrived after 45 minutes. Complainant handed the envelope to him, then she ran away. Accused-appellant also ran and boarded a bus, but he was collared and arrested by the police.

Dr. Louella Nario, Medico Legal Officer of the National Bureau of Investigation conducted an examination on the complainant and issued a medical certificate[2] with the following findings:

> Extragenital Physical Injuries:
>
> Abrasions, linear, leg, right, upper third, anterior aspect, 4.8 cms., in length and left, lower third, anterior aspect, 4.7 cm. in length.
>
> Contused abrasion, epigastric region, 2.4 x 0.3 cm.

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> Contusions, reddish, mandibular region, right side, 1.8 x 1.5 cm. and left side, 2.0 x 1.0 cms.; neck, lateral aspect, right side, 5.5 x 0.5 cms., and 9.8 x 0.5 cms. and 2.5 x 0.5 cms. deltoid region, left side, 2.4 x 1.3 cms. purplish, deltoid region, left side, 4.2 x 2.5 cms.
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> Genital Examination:
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> Pubic hair, fully grown, abundant. Labia majora and minora, gaping. Fourchette, lax. Vestibular mucosa, congested, with fresh superficial abrasion at the fossa navicularis. Hymen, thick, short, intact. Hymenal orifice, annular, admits a tube, 2.0 cms., in diameter with moderate resistance. Vagina walls, tight. Rugosities, prominent.
>
> Conclusion:
>
> 1. The above-described extragenital physical injuries noted on the body of the subject at the time of examination.
>
> 2. Genital injury present.

Accused-appellant denied the accusation against him. He claimed that at around 12:00 o'clock midnight of April 27, 1992, he was at his house at Texas Street, Better Living Subdivision, Parañaque, Metro Manila. His uncle, Emilio Changco, dropped by and, together with Ponciano Buenaventura and Hermenegildo Liwanag, they had a drinking session up to 3:00 o'clock in the morning. At around 4:00 o'clock in the morning, Changco left and accused-appellant went to sleep. He woke up at 7:30 in the morning to prepare for his trip to San Miguel, Bulacan to see his grandfather.

He alleged that while waiting for a ride in front of Jollibee at Guadalupe, Makati, he was arrested by policemen in civilian clothes for being a rebel soldier, based on a mark on his right fist indicating his membership in the Guardians Luzon, an association of soldiers. He was brought to Fort Bonifacio where he allegedly met for the first time Randy Simbulan and Ramil Vendibil. He claimed that the three of them were beaten and subjected to electric shocks. He also claimed that policemen forced his co-accused to point to him.

On April 17, 1995, a decision[3] was rendered by the Regional Trial Court of Makati, Branch 138, the dispositive portion of which reads:

> WHEREFORE, the Court finds accused Lope Liwanag y Buenaventura GUILTY beyond reasonable doubt of having violated Presidential Decree No. 532, known as the Anti-Piracy and Anti-Highway Robbery Law of 1974. Considering that on the occasion of the highway robbery, rape was committed, a situation which calls for the imposition of death penalty under Presidential Decree No. 532 but which penalty was still proscribed at the time of the commission of the offense alleged in the Information, said accused is hereby sentenced to suffer the penalty of reclusion perpetua, the penalty next lower in degree (People v. Miranda, 235 SCRA 202). He is further ordered to indemnify the complainant Corazon Hernandez of the amount of One Million Pesos (P1,000,000.00) representing moral damages; P20,000.00 as litigation expenses and attorney's fees and to return the P60.00 taken from her. Filing fees due on the award shall be a lien on the amount which may be recovered by the complainant from the accused.
>
> As to the two other co-accused, Randy Simbulan and Ramil Vendibil, trial of the case shall therefore continue.

Aggrieved by the trial court's decision, accused-appellant interposed the instant appeal assigning as errors the following:

> 1. The trial court erred in convicting accused-appellant notwithstanding the fact that he was deprived of his constitutional right to effective and competent counsel, and, consequently, other constitutional rights afforded an accused;

> 2. The trial court erred in convicting accused-appellant notwithstanding that there was no sufficient evidence positively identifying him as the perpetrator of the crime charged;
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> 3. The trial court erred in convicting accused-appellant in spite of the inconsistencies that tainted the evidence for the prosecution;
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> 4. The trial court erred in convicting accused-appellant in spite of the improbability of the manner by which the crime was allegedly committed;
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> 5. The trial court erred in convicting accused-appellant inspite of complainant's failure to offer any resistance prior to and even during her alleged rape; and
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> 6. The trial court erred in disregarding the defense of accused-appellant as a mere alibi.

Accused-appellant submits that he was deprived of his constitutional right to counsel under Article III, Section 14, (2) of the 1987 Constitution which provides, thus:

> In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, x x x. (Italics supplied)

As a consequence, accused-appellant claims that from the time he was arrested up to the time of his conviction, he was deprived of his other constitutional rights, particularly his right to be secure in his person against unreasonable searches and seizures,[4] his right to preliminary investigation,[5] and his right to bail.[6]

In addition, accused-appellant claims that the assistance extended to him by his former counsel was ineffective to the extent that private complainant, as well as prosecution witnesses SPO1 Armando P. Sevilla and Editha Hernandez, were hardly cross-examined, while Dra. Louella Nario was not cross-examined at all.

In any case, accused-appellant claims that he could not have committed the crime being imputed to him as he was engaged in a drinking session at the very moment when the alleged crime was committed.

Accused-appellant maintains that the trial court erred in convicting him because: 1) the prosecution failed to provide sufficient evidence positively identifying him as the perpetrator of the crime; 2) inconsistencies tainted the prosecution evidence; 3) the manner by which the crime was committed was improbable; and, 4) complainant failed to offer any resistance prior to and even during her alleged rape.

This appeal revolves primarily on the issue of whether accused-appellant was denied his constitutionally guaranteed right to be heard by himself and counsel. He argues that his right to be heard through his counsel means that he should be effectively assisted by counsel throughout the proceedings, from the time he was arrested up to the time judgment is rendered.

The records show that at the start of the proceedings before the trial court, accused-appellant was represented by counsel de officio, Atty. William T. Uy of the Public Attorney's Office. In the middle of the trial, accused-appellant retained the services of counsel de parte Atty. Bienvenido R. Brioso, replacing Atty. Uy. After the trial court rendered the judgment of conviction, Atty. Brioso filed the Notice of Appeal on behalf of accused-appellant. Atty. Brioso, however, failed to file the appellant's brief because of the refusal of accused-appellant's mother to transmit the entire records of the case to him. Thus, accused-appellant was required to manifest whether he still desired to be represented by Atty. Brioso in this appeal. Upon accused-appellant's failure to reply, Atty. Francis Ed. Lim was appointed counsel de officio.

There is no dispute that accused-appellant was provided with a counsel de officio who assisted him during the arraignment and conducted the cross examination of all prosecution witnesses as well as his direct examination. Thereafter, from the time he was cross-examined up to the presentation of other defense witnesses, he was

assisted by a counsel of his choice.

Accused-appellant's citation of People v. Holgado[7] and Powell v. Alabama,[8] insofar as the right to be heard by counsel is concerned, is misleading. Both cases only defined the "right to be heard by counsel" as "the right to be assisted by counsel." It cannot be inferred from these cases that "the right to be heard by counsel" presupposes "the right to an intelligent counsel." The requirement is not for counsel to be "intelligent", but to be effective.

Jurisprudence defined the meaning of "effective counsel" only in the light of Article III, Section 12 (1) of the Constitution, which refers to the right of persons under custodial investigation. In People v. Lucero,[9] the rationale for this constitutional right was elucidated by this Court, to wit:

> The 1987 Constitution requires that a person under investigation for the commission of a crime should be provided with counsel. We have constitutionalized the right to counsel because of our hostility against the use of duress and other undue influence in extracting confessions from a suspect. Force and fraud tarnish confessions and render them inadmissible. In providing for said right, this Court has held in the same case that when the Constitution requires the right to counsel, it did not mean any kind of counsel but effective and vigilant counsel. The requirements of effectiveness and vigilance of counsel during that stage before arraignment were for the purposes of guarding against the use of duress and other undue influence in extracting confessions which may taint them and render them inadmissible. (Italics supplied)

On the other hand, Article III, Section 14 (2) of the 1987 Constitution requires that the accused shall enjoy the right to be heard by himself and counsel. The reason for the latter provision was explained in People v. Holgado, thus:

> One of the great principles of justice guaranteed by our Constitution is that "no person shall be held to answer for a criminal offense without due process of law", and that all accused "shall enjoy the right to be heard by himself and counsel." In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one de oficio for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own.[10] (Italics supplied)

In essence, the right to be heard by counsel simply refers to the right to be assisted by counsel for the purpose of ensuring that an accused is not denied the collateral right to due process, a fundamental right which cannot be waived by an accused. The underlying basis for due process is the concept of fairness, without which there can be no justice. In other words, there can be no due process accorded an accused if he is not given the right to be heard through counsel or assisted by counsel. It follows that in order to be heard, and therefore be accorded due process, the assistance given by counsel must be "effective" as implied in the rationale of Article III, Section 14 (2). In this sense, this Court subscribes to American jurisprudence when it held that "[t]he right of an accused to counsel is beyond question a fundamental right. Without counsel, the right to a fair trial itself would be of little consequence, for it is through counsel that the accused secures his other rights. In other words, the right to counsel is the right to effective assistance of counsel."[11]

In the light of the above ratiocination, accused-appellant contends that the right to be heard by counsel is the right to effective assistance of counsel. Citing Strickland v. Washington,[12] accused-appellant contends that the assistance rendered by counsel is ineffective or is defective if the following elements are present: (1) that

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counsel's performance was deficient, which requires a showing that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment; and (2) that the deficient performance prejudiced the defense, which requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial which result is reliable. Accused-appellant claims that the assistance afforded him by his counsel during the course of the trial was "ineffective" since the counsel de officio failed to safeguard his rights necessary for the reversal of his conviction.

One of the rights which accused-appellant contends his counsel de officio failed to safeguard was his right to be secure in his person against unreasonable searches and seizures as enshrined in the Bill of Rights. He claims that his right was violated when he was arrested without a warrant which his counsel should have contested.

Accused-appellant's argument is not well-taken. As reiterated in People v. Costelo:[13]

> [A]ppellant's failure to quash the information, his participation in the trial and presenting evidence in his behalf, placed him in estoppel to make such challenge. He has patently waived any objection or irregularities and is deemed as having submitted himself to the jurisdiction of the court. It should be noted that the legality of arrest affects only the jurisdiction of the court over the person of the accused. Consequently, if objection on such ground is waived, the illegality of the arrest is not sufficient reason for setting aside an otherwise valid judgment rendered after the trial, free from error. The technicality cannot render the subsequent proceedings void and deprive the State of its right to convict the guilty when the facts on the record point to the culpability of the accused. (Italics supplied)

Any objection involving a warrant of arrest must be made before he enters his plea, otherwise the objection is deemed waived.[14]

Accused-appellant, likewise, claims that he was deprived of his right to a preliminary investigation. Had his counsel de oficio been effective, he should have filed the proper motion on his behalf.

There is no merit in this contention.

Considering that accused-appellant submitted himself to the jurisdiction of the trial court, he is deemed to have waived his right to preliminary investigation.

As aptly stated in People v. Buluran:[15]

> The failure to accord appellants their right to preliminary investigation did not impair the validity of the information nor affect the jurisdiction of the trial court. While the right to preliminary investigation is a substantive right and not a mere formal or technical right of the accused, nevertheless, the right to preliminary investigation is deemed waived when the accused fails to invoke it before or at the time of entering a plea at arraignment. It appearing that appellants only raised the issue of lack of preliminary investigation during appeal, their right to a preliminary investigation was deemed waived when they entered their respective pleas of not guilty.[16]

Accused-appellant next contends that he was deprived of his right to bail. He contends that had his counsel de officio been effective, he would have filed the proper motion.

The contention is without any merit. As ruled by this Court in People v. Manes:[17]

> The issue of bail has been rendered academic by the conviction of the accused. When an accused is charged with a capital offense, or an offense punishable by reclusion perpetua, or life imprisonment or death, and evidence of guilt is strong, bail must be denied, as it is neither a matter of right nor of discretion.

In the case of Strickland,[18] the United States Supreme Court:

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to secondguess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.

In showing the ineffectiveness of the assistance rendered by counsel de officio, accused-appellant points out the following:

> The private complainant, whose testimony was the principal basis of the conviction, was hardly cross-examined. The same is true with prosecution witnesses SPO1 Armando P. Sevilla and Editha Hernandez. In fact, prosecution witness Dra. Louella Nario was not cross-examined at all.
>
> As a result of the insufficient cross-examination of the witnesses for the prosecution, particularly the private complainant, the defense of the accused-appellant failed to bring to the attention of the trial court several matters which amplify the improbability, if not impossibility, in the complainant's testimony on how the crime was allegedly committed. Thus, the defense was not able to highlight several crucial points, among which are: (1) the impossibility that the alleged crime, particularly the rape, was committed in a populated area - an inhabited and well-developed subdivision in Parañaque, with a 24-hour store (Burger Machine) at that - without being noticed; (2) the fact that, assuming that accused-appellant had carnal knowledge of the complainant, the latter did not offer any form of resistance; and (3) the impossibility that after the crime charged was allegedly committed, accused-appellant and his co-accused gentlemanly accompanied complainant to a place of her choice (the church).
>
> Moreover, several questions remained unanswered. For example (1) What time did the complainant report the incident to the police?; (2) How long did the police plan the alleged entrapment?; (3) Were there other officers involved in the entrapment?; and (4) Why was the money and other materials used for entrapment not presented in evidence?
>
> Furthermore, there were also no attempts to impeach the testimony of the private complainant on the scene of the crime through the use of contradictory evidence as provided in the Rules. For instance, accused-appellant's counsel could have presented a resident of the subdivision where the crime was allegedly committed to describe the area. Such witness can establish: (1) whether or not the area where the crime was allegedly committed was indeed too dark for anyone to notice the commission of the alleged crime; (2) whether or not the houses in the subdivision are indeed too far apart that occurrences outside one house would not be discernible from within; and (3) whether or not the location of the houses in the subdivision is such that it would indeed be useless for a woman, faced with the threat of rape to even attempt to ask for help.

We are not convinced. The assistance extended by Attorney Uy of the Public Attorney's Office was sufficiently effective. As noted by the Office of the Solicitor General, to wit:

> The pertinent transcripts of stenographic notes would show that appellant's counsel de oficio, Atty. William Uy, cross-examined the private complainant extensively as well as two other prosecution witnesses (SPO1 Sevilla and Edith Hernandez). That said counsel opted not to cross-examine the prosecution expert witness, Dr. Louella Nario, is of no moment because said witness merely explained in court her findings and conclusions that she had arrived at after conducting the medical examination on the private complainant [Exhibit C] (TSN,

> March 30, 1993, pp. 10-12). In fact, at one point, Atty. Uy raised an objection to the private prosecutor's question on how private complainant's genital injuries were sustained for being incompetent to answer, which objection was impliedly sustained by the trial judge (Ibid., p. 13).

In assessing the effectiveness of counsel's assistance, the Strickland standard invoked by accused-appellant is too stringent for application in Philippine judicial setting. Strickland only seeks to ensure that the adversarial testing process is present in a case by requiring that the assistance rendered by counsel be "effective". The presence of an adversarial testing process, in other words, ensures that the trial is fair by according the accused due process through the "effective" assistance of counsel.

While fairness is likewise the object of Article III, Section 14 (2) of the Philippine Constitution, the assistance afforded by counsel to an accused in light of the Philippine constitutional requirement need only be in accordance with the pertinent provisions of the Rules of Court, the Code of Professional Responsibility and the Canons of Professional Ethics. In Philippine judicial setting, a counsel assisting an accused is presumed to be providing all the necessary legal defense which are reasonable under the circumstances in accordance with said norms.

In this regard, a counsel assisting an accused is guided by the following provisions of Section 20 of Rule 138 of the Rules of Court:

> Sec. 20. Duties of attorneys. -- It is the duty of an attorney:
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> x x x x x x x x x
>
> (c) To counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law;
>
> (d) To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law;
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> x x x x x x x x x
>
> (h) Never to reject, for any consideration personal to himself, the cause of the defenseless or oppressed;
>
> (i) In the defense of a person accused of crime, by all fair and honorable means, regardless of his personal opinion as to the guilt of the accused, to present every defense that the law permits, to the end that no person may be deprived of life or liberty, but by due process of law. (Italics supplied)

The following canons of the Code of Professional Responsibility, likewise, provide:

> Canon 2 -- A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.
>
> x x x x x x x x x
>
> Canon 12 -- A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.
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> x x x x x x x x x
>
> Canon 17 -- A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.
>
> Canon 18 -- A lawyer shall serve his client with competence and diligence.
>
> x x x x x x x x x

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> Canon 19 -- A lawyer shall represent his client with zeal within the bounds of the law.

Lastly, the Canons of Professional Ethics provide:

> 4. A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason and should always exert his best efforts in his behalf.
>
> 5. It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise, innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law.
>
> 15. x x x x x x x x x
>
> The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

The above-cited norms are more than adequate to guide a counsel's conduct in the performance of his duty to assist a client in an effective manner as required by Article III, Section 14 (2). Said constitutional provision is patterned after the Sixth Amendment of the American Constitution. As in Article III, Section 14 (2), the Sixth Amendment refers simply to "counsel," not specifying particular requirements of effective assistance. It relies instead on the legal profession's maintenance of standards sufficient to justify the law's presumption that counsel will fulfill the role in the adversary process that the Amendment envisions. The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.[19]

Coupled with the presumption that counsel's performance was reasonable under the circumstances, as long as the trial was fair in that the accused was accorded due process by means of an effective assistance of counsel, then the constitutional requirement that an accused shall have the right to be heard by himself and counsel is satisfied. The only instance when the quality of counsel's assistance can be questioned is when an accused is deprived of his right to due process. Otherwise, there is the danger that questioning counsel's acts or omissions in the conduct of his duties as counsel for an accused may breed more unwanted consequences than merely upholding an accused's constitutional right or raising the standard of the legal profession.

In the case at bar, accused-appellant's right to due process has been observed and the trial was conducted in a fair manner. Corollarily, this Court sees no reason to doubt or overcome the presumption that counsel de officio reasonably assisted accused-appellant in accordance with the prevailing norms of professional conduct and his sworn duties as an officer of the court.

Based on the findings of the trial court, accused-appellant was not at all prejudiced by the alleged ineffectiveness of his counsel. The alleged failures by his counsel to safeguard his rights from the time he was arrested up to the time he was sentenced and the alleged inadequacies in the direct and cross-examinations of prosecution witnesses were ultimately inconsequential to the eventual outcome of the case. If at all, the outcome was the result of the strength of the prosecution evidence rather than the failures and inadequacies in the conduct of the defense as

shown by the following:

First, counsel's decision to adopt the defense of denial and alibi as part of the trial strategy merely highlighted the strength of the prosecution evidence. While its adoption may have been dictated by the factual circumstances of the case as perceived by accused-appellant, however, denial is an inherently weak defense vis-à-vis the positive and categorical assertion of prosecution witnesses. In fact, the trial court found accused-appellant's denial to be self-serving.

Like denial, accused-appellant's alibi was not looked upon with favor by the trial court. Not only is it one of the weakest defenses due to its being capable of easy fabrication, it also cannot prevail over witnesses' positive identification of accused-appellant as the perpetrator of the crime. In any event, for the defense of alibi to prosper, it is not enough that the accused can prove his being at another place at the time of its commission, it is likewise essential that he can show physical impossibility for him to be at the locus delicti.[20] The trial court found accused-appellant's and his witnesses' testimonies on the former's alibi unconvincing.

In the instant case, accused-appellant claims that he was engaged in a drinking session with some persons at their house in Texas Street, Better Living Subdivision at about the time when the crime was committed until 3:00 o'clock in the morning. However, Better Living Subdivision is adjacent to Levitown Subdivision, where the rape was committed. In fact, it was in Better Living Subdivision where complainant was robbed and sexually molested prior to being raped at Levitown Subdivision.

Second, accused-appellant also points to alleged discrepancies between some of complainant's accounts in her sworn statement and some of her declarations in her direct testimony regarding the position of accused relative to that of complainant, the kind of instrument used to threaten complainant and the person who got complainant's money. The apparent discrepancies, however, only refer to immaterial or irrelevant details. Complainant was consistent in her narration in her sworn statement as well as during her direct examination and even in the cross-examination regarding the roles played by the three accused in the commission of the crime.

A Sinumpaang Salaysay or a sworn statement is merely a short narrative subscribed to by the complainant in question and answer form. Thus, it is only to be expected that it is not as exhaustive as one's testimony in open court. The contradictions, if any, may be explained by the fact that an affidavit can not possibly disclose the details in their entirety, and may inaccurately describe, without deponent detecting it, some of the occurrences narrated. Being taken ex-parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries. It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford her a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her.[21]

In People v. Mangat,[22] this Court has reiterated the doctrine that discrepancies between sworn statements and testimonies made at the witness stand do not necessarily discredit the witness. Sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Testimonies given during trials are much more exact and elaborate. Thus testimonial evidence carries more weight than statements/affidavits.

Third, accused-appellant alleges that complainant failed to offer any resistance prior to or even during her alleged rape thereby concluding that it could have been consensual. She did not ask for help when the alleged rape took

place in a populated area. She likewise did not try to escape when she had the opportunity to do so.

This Court finds the above argument specious and unmeritorious. It should be noted that accused-appellant was brandishing an icepick which clearly showed his readiness to use the same by hitting complainant with it. Besides, she testified that she was already weak and tired to be able to do anything against three malefactors who were stronger than her. It would have been foolhardy for complainant to resist the accused considering her weakened condition. The workings of a human mind placed under emotional stress are unpredictable and people react differently - some may shout, some may faint, and some may be shocked into insensibility while others may openly welcome the intrusion. In any case, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety.[23]

Lastly, complainant positively pointed at accused-appellant as one of the perpetrators of the crime. Accused-appellant could not show any reason why complainant would point him as one of the perpetrators of the crime. It is settled that where there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a crime, the testimony is worthy of full faith and credit.[24]

The trial court ordered accused-appellant to pay complainant moral damages in the amount of P1,000,000.00. This award must be reduced to P50,000.00. The purpose of this award is not to enrich the victim but to compensate her for injuries to her feelings. Moreover, moral damages for rape is fixed at P50,000.00.[25]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Makati, Branch 138, finding accused-appellant Lope Liwanag guilty of violating P.D. No. 532 and sentencing him to suffer the penalty of reclusion perpetua, to indemnify complainant Corazon Hernandez P20,000.00 as litigation expenses and attorney's fees and to return the P60.00 is AFFIRMED with the MODIFICATION that the amount of moral damages is reduced to P50,000.00. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Records, p. 1.

[2] Records, p. 16.

[3] Penned by Judge Sixto Marella Jr.

[4] Constitution, Article III, Sec. 2.

[5] Rules of Court, Rule 112, Sec. 3.

[6] Rules of Court, Rule 114, Sec. 3.

[7] 85 Phil. 752 (1950).

[8] 287 U.S. 45, 68 (1932).

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[9] 244 SCRA 425 [1995].

[10] See Note 7.

[11] Kimmelman v. Morrison, 477 US 365, 91 Led 2d 305, 106 S Ct 2574.

[12] 466 U.S. 674 [1984].

[13] 316 SCRA 895 [1999].

[14] People v. Buluran, 325 SCRA 476 [2000].

[15] Ibid.

[16] Ibid.

[17] 303 SCRA 231 [1999].

[18] Supra.

[19] See Note 12.

[20] People v. de Vera, 308 SCRA 75 [1999].

[21] People v. Lusa, 288 SCRA 296 [1998].

[22] 310 SCRA 101 [1999].

[23] People v. Peñero, 276 SCRA 564 [1997].

[24] People v. Manuel, 298 SCRA 184 [1998].

[25] People v. Dreu, G.R. No. 126282, June 20, 2000.

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