

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE ALFECHE Y TAMPARONG, ALIAS WILLY, AND JOHN DOE, ACCUSED, DANTE ALFECHE Y TAMPARONG, ACCUSED-APPELLANT.

G.R. No. 124213. August 17, 1998

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PER CURIAM:

Condemned to suffer the death penalty in each of two counts of rape by the Regional Trial Court of Ormoc City, Branch 12, in its Joint Decision[1] of 22 August 1995 in Criminal Cases Nos. 4615-0 and 4616-0, accused-appellant Dante Alfeche y Tamparong (hereafter DANTE) seeks the reversal of his conviction as we review the judgment now on automatic appeal to us pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659.[2]

The two cases were commenced by complaints signed by complainant Analiza Duroja (hereafter ANALIZA). The accusatory portion of the complaint in Criminal Case No. 4615-0 reads as follows:

That on or about the 18th day of September 1994, at around 11:00 o'clock in the morning, in Brgy. Can-adieng, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused DANTE ALFECHE y Tamparong, Alias WILLY and JOHN DOE, in conspiracy with one another, treachery, and taking advantage of superior strength, by means of violence and intimidation, with the use of a knife, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant herein ANALIZA A. DUROJA, a 17 year old lass, against her will.

In violation of Article 335, Revised Penal Code.

The complaint in Criminal Case No. 4616-0[3] is similarly worded except as to the date and time the crime was committed, that is, "on or about the 11th of September 1994, at around 10:30 in the evening." Only DANTE was apprehended. His co-accused Willy and John Doe have remained at large.

DANTE waived preliminary investigation.[4] Upon arraignment, he entered a plea of innocence.[5] Since the two cases involved the same parties and common evidence, the trial court ordered their consolidation and joint trial.[6]

The witnesses for the prosecution were ANALIZA, Sergio Dy, Francisca Duroja, Dr. Merly Tan, Dr. Regino Mercado, Dr. Rosemarie Cam, and Luz Lucero. The defense relied on the testimonies of DANTE, PS/Insp. Roel Acidre, Teresita Acain, Josephine Ollave, and Betty Oroca.

ANALIZA started working as a domestic helper for Sergio Dy and his family in Barangay Can-adieng in Ormoc City, Leyte, on 9 March 1994. On 11 September 1994, at about 10:30 p.m., the Dy spouses were at Ipil, Leyte, attending a meeting of the Couples for Christ. Their two grown-up children were not at home either. Only ANALIZA and her one-year-old ward were left in the Dy residence. In accordance with her employer's instructions, she locked only the kitchen door and placed a chair to the front door but kept it unlocked, as the Dys did not bring a key to the door. ANALIZA was watching television in the sala when she heard a sound from the front door, then somebody, whom she recognized as a certain Willy suddenly held her hand, gagged her mouth,

and pointed a knife at her. Willy had two companions, but she recognized only one of the two, namely, DANTE. While she was thus gagged and held at the point of a knife, DANTE approached her and boxed her on her side, as a result of which she lost consciousness.[7]

Upon regaining consciousness some thirty minutes later, ANALIZA found her short pants removed and her private part bleeding, which was unusual because she was not menstruating before she was attacked. She immediately washed her private part and took a bath.[8]

Her employers arrived at 12:30 a.m. the following day, but ANALIZA did not report the incident to them. Neither did she inform the authorities or her mother, who lived some houses away, because she was ashamed and also afraid of DANTE's threat that he would kill her mother if she told anyone about the incident.[9]

ANALIZA had not engaged in sexual intercourse prior to this assault.[10]

Again, on 18 September 1994, at about 11:00 a.m., ANALIZA was alone with her ward in the Dy residence. She was sautéing pork when suddenly, the three accused again intruded into the house through the back door. Willy held her hand and gagged her mouth, while John Doe first turned off the stove and then laid her on the floor and pointed a knife at her. Thereupon, DANTE knelt on her legs, undressed her, inserted his private part into hers, and made a "push and pull motion." Some five minutes later, DANTE stood up and immediately put on his pants. ANALIZA saw a whitish substance on her organ, which came from DANTE. The latter then placed her left hand on a table and drove a nail into it. DANTE and his companions forthwith left. The incident affected her work; nevertheless, she was able to finish preparing lunch for her employers, who arrived at noon.[11]

ANALIZA reported to the police that her hand was injured, and sought medical attention therefor. She related nothing about the rape for fear that Dante would make good his threat to kill her mother. It was only after she took poison several times that her mother came to know of the rapes. She tried to kill herself because she was then pregnant and ashamed of what had happened to her. She gave birth to a boy on 27 May 1995.[12]

Dr. Regino Mercado, City Health Officer of Ormoc City, examined ANALIZA on 18 September 1994 and found a "[p]unctured wound over the base of left 4th posterior finger." He then issued a medical certificate.[13] According to him, the injury could have been caused by a sharp instrument, possibly a nail; and his interview of ANALIZA confirmed his theory. ANALIZA did not inform him who caused the injury. He further observed that ANALIZA seemed frightened and depressed, which he attributed to her recent ordeal. On cross-examination, Dr. Mercado stated that ANALIZA did not tell him that she was raped. Neither did she complain of pain in her vagina, nor did she request an examination of her private part.[14]

Sergio Dy, ANALIZA's employer, declared that he was not at his home on 11 September 1994 between 8:00 and 11:00 p.m., as he was at a prayer meeting of the Couples for Christ in Ipil, Leyte. He instructed ANALIZA to close the door and windows of the house while he was away; and that if she felt sleepy while he was still away, she should place a chair at the door to shut it so that he could get inside the house without waking her. He arrived home at around 11:00 p.m. ANALIZA did not complain of any unusual incident. On 18 September 1994 between 9:00 and 11:00 a.m., Sergio was attending to his business at the corner of Hermosilla and Real Streets in Ormoc City. He had lunch at home at around noon, but again ANALIZA did not inform him of any unusual incident while he was away. On cross-examination, Sergio added that it was only sometime in March 1995 that ANALIZA told him that a person nailed her hand and that she was pregnant, but she never informed him that she was raped.[15]

According to Francisca Duroja, her daughter ANALIZA was a "tomboy" and had, therefore, no boyfriend. She first learned that ANALIZA was pregnant when the latter attempted suicide by drinking poison sometime in

March 1995 at the office of Engineer Lucero. She brought her daughter, who was already in a serious condition, to the Ormoc District Hospital. At the hospital ANALIZA explained that she attempted suicide because she became pregnant after she was raped; and she identified her assailants as DANTE, Willy, and an unknown person. Francisca and her daughter then went to the police to complain about the incident. After the rape charges were filed in court, a certain Joe Burgos came to her house and offered, allegedly on behalf of DANTE, to settle the cases amicably, but she rejected the offer.[16]

Dr. Merly Tan, a medical officer of the Department of Obstetrics and Gynecology at the Ormoc District Hospital, testified that ANALIZA was previously “handled” by the medical department when she attempted suicide. Later, or on 31 March 1995, she examined ANALIZA in connection with the rape incident. Her findings were summarized as follows:

PHYSICAL EXAMINATION:

Abdomen – globularly enlarge[d] as to 8-9 months ACG

INTERNAL EXAMINATION - admits two fingers with ease.

Hymen - with 2,4,7,11 o'clock laceration (old healed)[17]

According to Dr. Tan, the hymenal lacerations could have been caused by sexual intercourse. Her examination of ANALIZA's uterus disclosed that the fetus was about 8 to 9 months old; however, since ANALIZA said that she was raped in September 1994, or about six months prior to the examination, Dr. Tan doubted her findings and requested an ultrasound test,[18] the result of which was not shown to her.[19]

Dr. Rosemarie Cam, who was responsible for ANALIZA's pre-natal care, declared that ANALIZA's child was born on 27 May 1995 and could have been conceived on 11 September 1994 or 18 September 1994. She could not be certain as to the period of conception because she was unaware of ANALIZA's menstrual cycle. On cross-examination, she opined that it was also possible that the child was conceived earlier than 11 September 1994.[20]

DANTE had another story to tell.

He is a native of Zamboanga, grew up in Davao City, and came to be in Ormoc City because of his business of selling dried fish. He arrived in Ormoc City during the first week of January 1993 and stayed in the house of Mylene Ablen in Barangay Can-adieng, which was separated by a chapel from ANALIZA's house. ANALIZA, who was also known as Ethel in that Barangay, used to go to Ablen's house to play computer games. Soon they became sweethearts. During the last week of January 1993, he took her to the Shalom Lodging House where he gave her P200, and they had sexual congress. They repeated their tryst in February 1993. They stopped seeing each other when he got involved with Naomi Marilao, whom he considered his common-law wife. He later lived with Teresa Acain, whom he met because Teresa's mother retailed dried fish. He maintained a relationship with these three women only.[21]

It was on 24 August 1994 that he eloped with Teresa Acain. Accompanied by a certain Babie, they went to the house of Josephine Ollave at Barangay Patag, Ormoc City, where they stayed until the end of September 1994. At around 10:30 p.m. of 11 September 1994, he was at Josephine's house with Teresa and the other occupants thereof. Throughout his stay at Josephine's house, he never went to Ormoc City proper.[22]

However, on 16 September 1994, at around 6:00 p.m., he met with ANALIZA at the Boy Scout Canteen. He then asked her to check-in with him at the Rajah Lodging House because he had a reserved room there. She acquiesced, but once there he noticed that her “tummy was already hard and that turned [him] off.” He asked her

whether it was true that three persons had trespassed her house and raped her. She confirmed the story, added that her hand had been pierced with a nail, and even showed him the location of her wound. But she did not divulge the identity of her assailants, much less accuse him of perpetrating the offense. She then asked for money, and he gave her P40. He first learned of the charge against him on 29 March 1995 when he was arrested.[23] DANTE denied knowing any Willy or John Doe.

On cross-examination, DANTE disclosed that while in transit at Cebu City, he met Mylene Ablen and her husband, who told him that there was a good business in Ormoc City. He was then traveling with card gamblers, being himself a hustler. In Ormoc City, Mylene told him that ANALIZA could be “easily gotten” if she was given money; hence, he surmised that ANALIZA was no longer a virgin. He then courted ANALIZA, and soon they became sweethearts. While he admitted having asked Joe Burgos for help, he denied having asked the latter to seek an amicable settlement of the case.[24]

Teresita Acain, DANTE’s alleged lover since June 1994 and who claimed to be married to him, testified that she was supposed to go to Tacloban City on 24 August 1994. Instead, she eloped with DANTE. Accompanied by Betty Oroca, they went to the residence of Josephine Ollave in Barangay Patag, Ormoc City, where they stayed until 27 September 1994. On 11 September 1994, at around 10:00 p.m., she and DANTE were just about to go to sleep at Josephine’s house. She could recall no instance when he left the room where they were staying. On 18 September 1994, at about 11:00 a.m., she and DANTE were cleaning Josephine’s house and tending to the pigs.[25]

Josephine Ollave recalled that on 24 August 1994, at around 7:00 p.m., her sister Betty, together with DANTE and a certain Teresa, came to her house in Barangay Patag. She remembered the date because it was her son’s birthday. Betty asked her to allow the couple to stay over because they had just eloped. Josephine acceded to the request. On 11 September 1994, at about 10:00 p.m., she was at home with her husband, DANTE, and Teresa. On 18 September 1994, at around 11:00 a.m., she, her husband, DANTE, and Teresa were tending to the hogs; after which DANTE went inside the house. DANTE and Teresa left her house during the last week of September 1994. On cross-examination she informed the court that her house was only a 30- to 40-minute ride away from Ormoc City by motorcab.[26]

Police Inspector Roel Acidre, Commanding Officer of the Mobile Force Company of Ormoc City Police Command based in Camp Downes, Ormoc City, testified that on 18 September 1994, at around 8:00 p.m., Francisca Duroja and her daughter ANALIZA came to report that the latter’s hand was pierced with a nail by DANTE. Acidre told the two to go to any hospital for medical treatment and bring the result for appropriate legal action, but they never returned to the police station.[27]

Betty Oroca testified that at around 4:00 p.m. of 16 February 1995 she saw DANTE enter the Boy Scout Canteen in Ormoc City while she was eating at the said establishment. She asked DANTE to join her for snacks, and the latter obliged. Later ANALIZA arrived, and DANTE approached her. Betty heard DANTE invite ANALIZA to a lodging house. Betty left the canteen and proceeded to Zenaida’s Inn where she was to meet her boyfriend. At past 7:00 p.m. she saw DANTE proceed to the Rajah Lodging House. Afterwards, while Betty was having dinner with her boyfriend at the Inn, she saw ANALIZA go to that same lodging house.[28]

Perceiving an attempt by the defense to destroy ANALIZA’s credibility by portraying her as a prostitute and a woman of loose morals, the prosecution sought to prove ANALIZA’s good moral character by presenting Luz Lucero as rebuttal witness. The 61-year-old Luz worked as a secretary to her husband and as a councilwoman in her barangay. She has known ANALIZA since the latter was a little girl, as ANALIZA lived only two houses away from their house. ANALIZA worked at the Lucero residence, washing clothes. About once a week, she

would join the Luceros for a stroll at the plaza and for picnics. Later, she worked at the Dy residence; but after completing her chores for the Dys, ANALIZA would still play with the Lucero children at the latter's house. Luz never saw this girl in the company of male friends despite her tomboyish behavior. ANALIZA could not be a prostitute; for if she were, Luz would not have allowed her children to befriend the former.[29]

The trial court found the defense witnesses and the tale they spun not credible enough. It could not believe that DANTE, a fish vendor without "extraordinary looks," could hook a 17-year-old virgin while he was still a stranger in her place; or that the same woman would jump to bed with him on the first opportunity to do so. On the other hand, it found ANALIZA to be a more credible witness, especially that she told her story in between sobs. Moreover, her positive testimony prevailed over DANTE's alibi. It found sufficient reason for her delay in reporting her experience, and recognized that after drawing courage she went on to endure a public trial. It opined that even if DANTE and ANALIZA were sweethearts from January to February 1993, he could still have raped her on 11 and 18 September 1994. And although she was unconscious during the alleged rape on 11 September 1994, it believed that the circumstances, when collectively considered, were sufficient to establish the crime of rape.

The trial court appreciated the aggravating circumstances of nighttime (in the case of the first rape) and dwelling against DANTE. It also recognized that the offense was committed by three persons and with the use of a knife. It then imposed the supreme penalty of death; thus:

WHEREFORE, decision is hereby rendered in criminal case No. 4615 finding the accused DANTE ALFECHE guilty beyond reasonable doubt of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. Appreciating the aggravating circumstance of dwelling with no mitigating circumstance to offset it, this court imposes upon the same DANTE ALFECHE the penalty of DEATH. Decision is also hereby rendered in criminal case no. 4616 finding the accused DANTE ALFECHE guilty beyond reasonable doubt of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. Appreciating the aggravating circumstance of dwelling and nighttime with no mitigating circumstance to offset any of the two, this court imposes upon the said DANTE ALFECHE the penalty of DEATH. Further, the said Dante Alfeche is directed to indemnify ANALIZA DUROJA the sum of THIRTY THOUSAND PESOS in criminal case no. 4615 and the further sum of THIRTY THOUSAND PESOS in criminal case no. 4616 as compensation for moral damages, and to pay the cost.

Since the penalty imposed was death, this case was brought to us for automatic review and judgment.[30]

In his Appellant's Brief, DANTE contends that the trial court gravely erred (a) in convicting him for two counts of rape and sentencing him to suffer the death penalty in each; and (b) in holding him liable to pay the complainant P60,000 as civil indemnity.

DANTE maintains that the alleged rape on 11 September 1994 was not proved beyond reasonable doubt because ANALIZA was unconscious at the time and could not therefore testify as to the pertinent circumstances. On the other hand, the Office of the Solicitor General (OSG) claims that there were sufficient established circumstances to constitute an unbroken chain leading to no other hypothesis than that DANTE was guilty of the crime charged, and that these circumstances were sufficient to convict him. These circumstances were as follows:

(a) While Analiza was watching television at her employer's house on September 11, 1994 at around 10:30 in the evening, three (3) persons entered the house; (b) One of the men whom she knew as Willy suddenly held her hand, gagged her mouth and pointed a knife at her; (c) Another man whom she recognized as appellant approached her and boxed her at her side; (d) Because of appellant's punch, Analiza lost consciousness; she regained consciousness about thirty (30) minutes later; and (e) When she woke up, Analiza felt something unusual; she noticed that her shorts had been removed and her vagina was bleeding. (Citations omitted).

We agree with DANTE that the first alleged rape was not sufficiently proved. Since rape is not normally committed in the presence of witnesses,[31] the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.[32] Said testimony must be clear and positive to prove that the acts which constitute the elements of rape were committed.[33] Although ANALIZA was unconscious when the first rape was allegedly committed, she could have described circumstances constituting an unbroken chain of events that would indicate that the offense was actually perpetrated by the accused.[34] In this case, ANALIZA's unconsciousness broke the chain of events from which we could have inferred the occurrence of the offense. ANALIZA's testimony says as much:

PROS. FULACHE

Q Why do you say that you do not know what was the cause of the bleeding in your sexual organ?

COURT

Q Before you became unconscious, were you bleeding already?

A Not yet, Your Honor.

COURT

Continue.

PROS. FULACHE

So that you did not know what happened when you were unconscious?

COURT

Of course.

WITNESS

A I did not know anything, Sir.[35]

As regards the second rape, DANTE again argues that the offense was never proved beyond reasonable doubt. The uncorroborated testimony of ANALIZA cannot be a basis for conviction.[36] Moreover, her testimony was contrary to human experience because the activities of the rapists, from their turning off the stove in the kitchen to the forced sexual intercourse, presumably coupled with resistance from her, "could not have been accomplished in nine (9) minutes, even with military precision." Another source of doubt was her activity when the accused entered the kitchen. She testified that she had not yet prepared lunch; but, on cross-examination, she said that she was sautéing vegetables, which she later changed to pork. DANTE maintains that the discrepancies are material because ANALIZA took pains to specify the acts of the accused in relation to what she was doing at the time; hence, her testimony as to what she was doing must be as consistent as her insistence on the alleged acts of the accused.

The OSG states that the inconsistencies relied upon by DANTE refer to collateral and minor matters, which do not detract from ANALIZA's positive testimony. Even the most candid witnesses have been known to make inconsistent statements; but these do not necessarily impair their credibility and, instead, may even be a badge of truthfulness. What is significant is that ANALIZA categorically stated that the accused entered her employer's house and sexually assaulted her.

We believe that the aforementioned details – the accused's length of stay and the dish ANALIZA was preparing – are insignificant. Since it was not shown that ANALIZA looked at a watch before and after the accused's assault,

she could not be expected to give an accurate appraisal of the accused's length of stay. Furthermore, a misestimation of time is too immaterial to discredit the testimony of a witness, especially where time is not an essential element or has no substantial bearing on the fact of the commission of the offense.[37] Likewise, since several months passed before ANALIZA told her story to the trial court, she could not be expected to remember what dish she was preparing at the time unless the same had a significant connection with the events that transpired on that date.

As the OSG emphasizes, the victim should not be presumed to have total recall of the incident.[38] Indeed, this Court cannot, in rape cases, expect the poor victim to give an accurate account of the traumatic and dreadful experience that she had undergone.[39] Neither inconsistencies on trivial matters nor innocent lapses affect the credibility of a witness.[40] On the contrary, they may be considered badges of veracity or manifestations of truthfulness on material points in the testimony.[41] Put in another way, minor inconsistencies even tend to strengthen rather than weaken the credibility of a witness because they erase any suspicion of rehearsed testimony.[42] At any rate, the circumstances mentioned by DANTE do not touch upon the area of inquiry, that is, the acts allegedly perpetrated by the accused which constituted the offense.

DANTE also asserts that the element of force or intimidation indispensable in rape was not proved beyond reasonable doubt. ANALIZA testified that one of the accused, who was never identified, pointed a knife at her while DANTE was raping her. This testimony was inconsistent, uncorroborated, and incredible. Furthermore, ANALIZA gave no information on where or how she was threatened with the knife, or what the unidentified accused was doing with the knife while DANTE was raping her. She also failed to prove any struggle against her attackers, which would preclude a finding that force or intimidation was employed.[43]

The OSG claims that force and intimidation attended the commission of the second rape, consisting in (1) Willy's holding ANALIZA's hand, gagging her mouth, and keeping her immobile on the floor; (2) John Doe's pointing a knife at her; and (3) DANTE's kneeling on her legs, further immobilizing her.

We reiterate that for rape to exist, it is not necessary that the force or intimidation employed in accomplishing the crime be so great or of such character as could not be resisted. What is necessary is that the force or intimidation be sufficient to consummate the purpose which the accused had in mind.[44] We have also held that intimidation is addressed to the mind of the victim, and must be viewed according to her perception and judgment at the time of the commission of the offense.[45] ANALIZA elaborated on how she was held down by the three assailants. Regardless of how she was threatened with a knife, ANALIZA made it clear that she could not resist the accused's attack.

DANTE next disputes the application of the principle that "no woman in her right senses would concoct a tale so repugnant to her virtue and undergo the rigors of a public trial concerning her very honor," because "this is no guaranty that all self-inflicted indignities are for the sake of truth." [46] He theorizes that the said principle is applicable when the victim is between 12 and 16 years old and "clad in the armor of innocence." A kindred test of the complainant's credibility is her conduct after the alleged sexual assault. Such conduct must be consistent with human behavior; otherwise, the complainant's uncorroborated testimony is deemed incredible.[47] DANTE maintains that ANALIZA's behavior after the rape rendered her allegations incredible.

The OSG contends that there is no standard human response to a crime; hence, ANALIZA's opting to finish her chores after she was raped should not discredit her testimony. ANALIZA also gave a plausible explanation for her failure to report the rape, that is, she was ashamed and afraid.

We disagree with DANTE's view that the complainant's age is the basis for the application of the aforequoted principle. He even concedes that the precept has been employed in cases involving 17- and 18-year-old victims, as

well as married women, where the circumstances so warrant.[48] Therefore, it is the totality of the circumstances, and not the victim's age alone, which determines whether the principle should be applied.

Anent the victim's conduct following the alleged rape, there is no standard form of behavior in this regard. In one case, after having been raped, the victim accepted a P20 bill from the rapist and then went home.[49] In another case, some twelve hours after the rape, the victim accompanied her sister to attend a wake; and there she played card games and jumped with joy whenever she won.[50] In a few other cases, the victims merely kept silent about their harrowing experience despite opportunities to divulge the same.[51] In these examples the oldest of the victims was 16 years old, but we will not jump into the sweeping conclusion that the victim's age is the controlling factor in upholding her credibility. It is more correct to state that the victim's discernment of the consequences of the rape, in relation to her reaction to the offense, influences our assessment of the victim's trustworthiness. Thus, in a case where the alleged victim was an adult, the absence of any manifestation of her outrage demonstrated the dubiousness of the charge[52] because the victim in such a case could be deemed to have sufficient recognition of the impact on her of the offense.

ANALIZA was only 17 years old when she was sexually assaulted. Her educational attainment is Grade VI.[53] She lived most of her life as a servant of one household or another.[54] It was not shown that she was a woman of above average intelligence.

We must not discredit her story of rape merely because after the rape she did other things which could not be expected from one who had just been raped. In the first incident, ANALIZA simply washed her bloodied private part after she regained consciousness; and in the second incident, she finished her cooking. We have said before that the workings of the human mind when placed under emotional stress are unpredictable, and that people react differently. In such a given situation, some may shout; some may faint; and some may be shocked into insensibility; while others may openly welcome the intrusion.[55]

As to ANALIZA's failure to immediately report her ordeal, the same was due mainly to her feeling of shame. We keep in mind the fact that ANALIZA grew up in the province under a code of behavior characterized by shyness and chastity. We also take judicial notice of the Filipina's inbred modesty and antipathy in airing publicly things which affect her honor.[56] Indeed, there are many victims of rape who would rather keep to themselves forever than make public a painful and humiliating secret.[57]

Appreciating the foregoing circumstances together, we cannot expect ANALIZA to act in accordance with the norms of behavior demanded of mature women.[58]

A review of her testimony convinces us with moral certainty that DANTE raped her on 18 September 1994. Further strengthening our conclusion is the fact that the trial judge gave full faith and credit to her testimony. It is doctrinally entrenched that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the witness stand and determine whether they are telling the truth or not.[59] As we stated in *People v. De Guzman*: [60]

[T]he trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.[61]

Furthermore, no ulterior motive was shown by DANTE why ANALIZA would concoct a story of rape and openly accuse him thereof. It is settled that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[62]

Against ANALIZA's story, DANTE has his alibi and tangential attack on the moral character of ANALIZA whom he pictured to us to be a prostitute.

His alibi must fail not only because he was positively identified by ANALIZA as the one who raped her on 18 September 1994, but also because he was unable to prove the requisites of the defense of alibi. For alibi to prosper it is not enough to prove that the accused was somewhere else when the crime was committed, but he must also demonstrate that it was physically impossible for him to have been at the crime scene at the time the crime was committed.[63] Per his own evidence, DANTE was just in another barangay (Patag) in Ormoc City on 18 September 1994. He did not dare show how far is that to Barangay Can-adieng where the rape took place.

As to the suggestion that ANALIZA was a prostitute, that alone, even if it be conceded, cannot absolve him of his liability for rape. First, prostitutes can be victims of rape.[64] Second, it was not shown that ANALIZA remained a prostitute up to 18 September 1994. Our own meticulous review of the evidence convinces us that ANALIZA was not a prostitute; and the testimony of DANTE on this is simply incredible in itself, let alone the fact that we do not find him to be a credible person. For evidence to be believed it must not only proceed from the mouth of a credible witness, but must also be credible in itself.[65] To us, DANTE is a confessed scoundrel portraying himself to be a veritable Casanova whose story is gravid with implausibilities.

The only issue left is the penalty which may be imposed on DANTE for the rape on 18 September 1994. The trial court imposed the death penalty pursuant to Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, in view of the finding that the crime was committed by three persons and with the use of a knife, and was attended with the aggravating circumstance of dwelling.

It must be first observed that the complaints in Criminal Cases Nos. 4615-0 and 4616-0 charge DANTE and his co-accused with rape "in violation of Article 335, Revised Penal Code, instead of "Article 335, Revised Penal Code, as amended by R.A. No. 7659." Before Article 335 was amended by R.A. No. 7659 the penalty for rape when committed with the use of a deadly weapon or by two or more persons was reclusion perpetua to death. Its third paragraph read:

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.

This paragraph was not touched by R.A. No. 7659. Nevertheless, from the ratification on 2 February 1987 of the Constitution until the effectivity of R.A. No. 7659 on 31 December 1993[66] the imposition of the death penalty was constitutionally prohibited pursuant to Section 14(2), Article III of the former.[67]

The complaints in the cases below do not use the language of the law, viz., "with the use of a deadly weapon or by two or more persons." In lieu of "deadly weapon," the complaints use "knife"; and, there is no specific allegation that the crime was committed by "two or more persons," but only an allegation of conspiracy among the three accused. These allegations are, however, sufficient for purposes of the above-quoted third paragraph of Article 335.

A "deadly weapon" is any weapon or instrument made and designed for offensive or defensive purposes, or for the destruction of life or the infliction of injury; or one which, from the manner used, is calculated or likely to produce death or serious bodily harm.[68] In our jurisdiction, it has been held that a knife[69] is a deadly weapon.

Also, since the complaints charge three persons with the crime of rape, namely, DANTE, alias Willy, and John Doe, who allegedly acted in conspiracy, it is too plain and obvious that “two or more persons” are alleged to have committed the crime. The evidence proved that, indeed, the three acted in concert to commit the crime of rape on 18 September 1994 charged in Criminal Case No. 4615-0.

The foregoing notwithstanding, it is timely to remind prosecutors to exercise due care in the preparation of complaints or informations to the end that circumstances which by specific provisions of law change the nature of the crime or upgrade the penalty therefor must be specifically alleged using the language of the law.[70]

Parenthetically, we also note that the complaints allege treachery as an aggravating circumstance. Under Article 14 of the Penal Code treachery is applicable only to crimes against persons. At the time ANALIZA was raped, rape was a crime against chastity, although under the Anti-Rape Law of 1997 (R.A. No. 8353), approved on 30 September 1997, rape is already a crime against persons.

By way of conclusion, we do not hesitate to rule that in Criminal Case No. 4615-0, the crime was committed with the use of a deadly weapon and by two or more persons under the third paragraph of Article 335 of the Revised Penal Code, as amended. The generic aggravating circumstance of dwelling[71] justified the imposition of the greater penalty of death.[72] Dwelling was clearly established during the cross-examination of ANALIZA’s mother by the defense. Thus:

Q Is it not a fact that Analiza was staying in the house of her employer Mr. and Mrs. Dy, the whole year of 1994?

A Yes, sir.

Q And being employed as domestic helper, Analiza would stay in the house of Mr. and Mrs. Dy day and night?

A Yes, sir.

Q And only very seldom that Analiza goes to your house?

A Yes, sir.[73]

Dwelling is considered an aggravating circumstance because primarily of the sanctity of privacy the law accords to human abode. The dwelling need not be owned by the victim.[74] Thus, in *People v. Basa*,[75] dwelling was appreciated, although the victims were killed while sleeping as guests in the house of another. As aptly stated in *People v. Balansi*: [76] “[O]ne does not lose his right of privacy where he is offended in the house of another because as [an] invited guest [or a housemaid as in the instant case], he, the stranger, is sheltered by the same roof and protected by the same intimacy of life it affords. It may not be his house, but it is, even for a brief moment, “home” to him. He is entitled to respect even for that short moment.”

Premises considered, his conviction in Criminal Case No. 4615-0 and the penalty imposed, death, must stand. Four members of this Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; but they nevertheless submit to the ruling of the majority of the Court that the law is constitutional and the death penalty should be imposed in the case at bar.

Lastly, we note that the trial court awarded moral damages only without the civil indemnity provided for in Article 345 of the Revised Penal Code. Pursuant to that Article and the latest case law,[77] ANALIZA should be awarded P75,000 as indemnity. As to moral damages, a conviction for rape may properly carry with it an award therefor.[78] Here we find the award justified because ANALIZA was compelled to attempt suicide out of shame of what had happened to her and of the resulting pregnancy. Given this extreme consequence of DANTE’s offense, we raise the award of moral damages from P30,000 to P50,000. In addition, ANALIZA is entitled to an award of exemplary damages in the amount of P10,000 in view of the presence of one aggravating

circumstance.[79] Furthermore, since ANALIZA begot a child by reason of the rape, DANTE must acknowledge and support the offspring pursuant to Article 345 of the Revised Penal Code in relation to Article 201 of the Family Code.[80]

WHEREFORE, judgment is hereby rendered REVERSING the judgment in Criminal Case No. 4616-0 and ACQUITTING accused-appellant DANTE ALFECHE y Tamparong on ground of reasonable doubt. However, the judgment in Criminal Case No. 4615-0 convicting said accused-appellant of the crime of rape committed on 18 September 1994 and sentencing him to suffer the penalty of death is AFFIRMED, with the modification that (1) an indemnity is hereby imposed in the amount of P75,000; (2) the award of moral damages is increased from P30,000 to P50,000; and (3) exemplary damages in the amount of P10,000 is also awarded in favor of the victim ANALIZA DUROJA.

Accused-appellant is further ordered to acknowledge and support the offspring born of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of the case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing and Purisima, JJ., concur.
Regalado, J., on official leave.

[1] Per Judge Francisco H. Escaño, Jr. Original Record (OR) in Criminal Case No. 4615-0 [hereafter 1 OR], 114-127; Rollo, 17-30.

[2] Entitled, An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, other Special Penal Laws, and for other Purposes, which took effect on 31 December 1993; *People v. Simon*, 234 SCRA 555, 569 [1994] .

[3] OR in Criminal Case No. 4616-0 [hereafter 2 OR], 2-3

[4] 1 OR, 4; 2 OR, 4.

[5] 1 OR, 20; 2 OR, 19.

[6] 1 OR, 22; 2 OR, 21.

[7] TSN, 11 July 1995, 10-12, 32-33, 39-41.

[8] *Id.*, 13-14.

[9] *Id.*, 15, 44-46.

[10] *Id.*, 30.

[11] TSN, 11 July 1995, 17-24, 46-54.

[12] Id., 24-29, 31.

[13] 2 OR, 7.

[14] TSN, 12 July 1995, 12-18.

[15] TSN, 12 July 1995, 19-29.

[16] Id., 31-38, 43.

[17] 1 OR, 8.

[18] An ultrasound examination was apparently conducted by Dr. Arnel P. Sydiongco (1 OR, 12; 2 OR, 11), but Dr. Sydiongco was not presented as a witness by the prosecution.

[19] TSN, 12 July 1995, 7-11.

[20] Id., 47-57.

[21] TSN, 25 July 1995, 13-22. The Resolution by Assistant City Prosecutor Fermin A. Nepomuceno mentioned that accused-appellant had a common-law wife, Loreta Plaza, who lived in Aurora, Zamboanga del Sur, and another from Tinago Street, Ozamis City; Resolution, 3; 1 OR, 6; 2 OR, 6.

[22] TSN, 25 July 1995, 22-26.

[23] Id., 27-32.

[24] Id., 33-42.

[25] TSN, 24 July 1995, 12-19.

[26] TSN, 25 July 1995, 4-12.

[27] TSN, 24 July 1995, 4-10.

[28] TSN, 26 July 1995, 8-14.

[29] Id., 18-29.

[30] Article 47, REVISED PENAL CODE, as amended by R.A. No. 7659; Sections 3(e) and 10 of Rule 122, Rules of Court.

[31] *People v. Matrimonio*, 215 SCRA 613, 628 [1992] .

[32] *People v. Tismo*, 204 SCRA 535, 553 [1991].

[33] See *People v. Arciaga*, 98 SCRA 1, 18 [1980] .

[34] *People v. Alvero*, 224 SCRA 16, 27 [1993] ; *People v. Genobia*, 234 SCRA 699, 706 [1994] .

[35] TSN, 11 July 1995, 17.

[36] Citing *People v. Ariarte*, 60 Phil. 326, 328 [1934] .

[37] *People v. Empleo*, 226 SCRA 454, 470 [1993] .

- [38] *People v. Mandap*, 244 SCRA 457, 463-464 [1995] .
- [39] *People v. Alib*, 222 SCRA 517, 529 [1993].
- [40] *People v. Sibug*, 229 SCRA 489, 497 [1994]; *People v. Pamor*, 237 SCRA 462, 475 [1994] .
- [41] *People v. Castor*, 216 SCRA 410, 418 [1992].
- [42] *People v. Ramos*, 222 SCRA 557, 573 [1993].
- [43] Citing *People v. Dayag*, 56 SCRA 439, 449 [1974] ; *People v. Barbo*, 56 SCRA 459, 467 [1974] ; *People v. Ilagan*, 64 SCRA 170, 175-176 [1975] .
- [44] *People v. Matrimonio*, supra note 31, at 630; *People v. Antonio*, 233 SCRA 283, 299[1994] .
- [45] *People v. Pamor*, supra note 40, at 472.
- [46] Citing *People v. Flores*, 23 SCRA 309, 326[1968] .
- [47] Citing *United States v. Flores*, 26 Phil. 262, 268-269 [1913] ; *People v. Ordonio*, 68 SCRA 397, 399 [1975]; *People v. Villapaña*, 161 SCRA 72, 80 [1988] ; *People v. Castillon*, 217 SCRA 76, 87-88 [1993] .
- [48] Brief for the Appellant, 12; Rollo, 81.
- [49] *People v. Raptus*, 198 SCRA 425 [1991].
- [50] *People v. Lim*, 206 SCRA 176 [1992] .
- [51] *People v. Soronio*, 204 SCRA 741[1991] ; *People v. Plaza*, 242 SCRA 724 [1995]; *People v. Vargas*, 257 SCRA 603 [1995]. In *People v. Hortillano*, 177 SCRA 729 [1989] , the victim's parents asked her why she got home late, and instead of informing them that she was raped, she fabricated the story that she finished an assignment at school. See also *People v. Remoto*, 244 SCRA 506 [1995].
- [52] *People v. Arciaga*, supra note 33, at 16.
- [53] TSN, 11 July 1995, 36.
- [54] TSN, 26 July 1995, 22.
- [55] *People v. Cabradilla*, 133 SCRA 413, 418-419 [1984] ; *People v. Matrimonio*, supra note 31, at 630.
- [56] *People v. Corpuz*, 222 SCRA 842, 858 [1993] .
- [57] *People v. Matrimonio*, supra note 31, at 632
- [58] See *People v. Vargas*, supra note 51, at 609-610; *People v. Corea*, 269 SCRA 76, 88-89 [1997] .
- [59] *People v. Garcia*, 209 SCRA 164, 172-173 [1992] .

[60] 188 SCRA 407 [1990] .

- [61] Supra, at 410-411 [1990] ; See also *People v. Delovino*, 247 SCRA 637, 646-647 [1995] .
- [62] *People v. Simon*, 209 SCRA 148, 159 [1992] ; *People v. Castor*, supra note 41, at 419; *People v. Rostata*, 218 SCRA 657, 676-677 [1993] ; *People v. Lase*, 219 SCRA 584, 595 [1993] .
- [63] *People v. Penillos*, 205 SCRA 546, 560 [1992] ; *People v. Buka*, 205 SCRA 567, 584 [1992] ; *People v. Casinillo*, 213 SCRA 777, 791 [1992] ; *People v. Florida*, 214 SCRA 227, 239 [1992] .

[64] *People v. Rivera*, 242 SCRA 26, 37 [1995]; *People v. Barera*, 262 SCRA 63, 77 [1996] .

[65] *People v. Eslaban*, 218 SCRA 534, 543 [1993] ; *People v. Maongco*, 230 SCRA 562, 573[1994]; *People v. Quiño*, 232 SCRA 400, 405 [1994] ; *People v. Villagonzalo*, 238 SCRA 215, 229 [1995] ; *People v. Pidia*, 249 SCRA 687, 701 [1995] .

[66] *Supra* note 2.

[67] Section 19(1), Article III, Constitution.

[68] *Black's Law Dictionary*, Fifth ed., 359.

[69] *U.S. v. Tan-seco*, 4 Phil. 382, 384 [1905] ; *People v. Gan*, 46 SCRA 667, 678 [1972] ; *People v. Opera*, 102 SCRA 755, 762 [1981]; *People v. Garcia*, 105 SCRA 6, 34 [1981] ; *People v. Tripoli*, 181 SCRA 279, 284 [1990]; *People v. Lucas*, 181 SCRA 316, 327-328 [1996]; *People v. Bahuyan*, 238 SCRA 300, 342, 348 [1994] ; *People v. Balsacao*, 241 SCRA 309, 315 [1995] ; *People v. Ponayo*, 261 SCRA 61, 67-68 [1996]; *People v. Pade*, 261 SCRA 773, 779 [1996] .

[70] See *People v. Manhuyod*, G.R. No. 124694, 20 May 1998.

[71] Article 14(3) Revised Penal Code.

[72] Article 63, Revised Penal Code.

[73] TSN, 12 July 1995, 43.

[74] *People v. Parazo*, 272 SCRA 512, 523-524[1997] .

[75] 83 Phil. 622 [1949] .

[76] 187 SCRA 566, 575[1990] .

[77] *People v. Victor y Penis*, G.R. No. 127903, 9 July 1998.

[78] Article 2219(3), Civil Code.

[79] Article 2230, Civil Code.

[80] See *People v. Bayani*, 262 SCRA 660, 687-689 [1996] .

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