

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSEPH PAMBID Y CORNELIO, ACCUSED-APPELLANT.***G.R. No. 124453. March 15, 2000*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-124453/>**MENDOZA, J.:**

This is an appeal from the decision[1] of the Regional Trial Court, Branch 81, Quezon City, finding accused-appellant Joseph Pambid y Cornelio guilty beyond reasonable doubt of two (2) counts of statutory rape and sentencing him to suffer the penalty of reclusion perpetua, with all the accessory penalties, and to indemnify the victim, Maricon Delvie C. Grifaldia,[2] in the amount of P50,000.00 plus costs for each count of rape.

On the basis of a complaint[3] filed by Maricon Delvie C. Grifaldia, six years old, assisted by her mother, Delia Calzada Grifaldia, the Quezon City Prosecutor's Office filed an information charging accused-appellant Joseph Pambid with two counts of rape allegedly committed as follows:

That on or about the period comprising April and May, 1993, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, with lewd designs, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, MARYCON DELVIE GREFALDIA Y CALZADA, a minor, 6 years old, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.

When arraigned, accused-appellant pleaded not guilty, whereupon, trial commenced.

The evidence for the prosecution shows that accused-appellant, 23 years old, and Maricon, six years old and a Grade 1 student, were neighbors at Purok 3-A Luzon Avenue, Barangay Culiati, Quezon City, their houses fronting each other. The two incidents of rape happened sometime between April and May 1993. The first rape took place when, one day, as it was almost sundown, Maricon was on her way home after having been sent on an errand. As she was nearing her house, accused-appellant pulled her and took her to his house. As soon as they were inside the house, accused-appellant got a knife from the kitchen and, at knifepoint, ordered Maricon to remove her short pants, then ordered her to lie on the bed while issuing threats that he would beat her up. At first, accused-appellant inserted his forefinger into Maricon's vagina. He then inserted his penis and commenced the sexual act, but was interrupted by the arrival of his mother who asked why the door was closed. At that point, accused-appellant hurriedly hid the knife under the bed and asked Maricon to leave. Because of accused-appellant's threat, Maricon never reported the incident to anyone.[4]

The second rape happened one morning in the house of Antonia Adovera, accused-appellant's aunt, which is situated beside accused-appellant's house. Accused-appellant saw Maricon on her way to a nearby store. As nobody was present, accused-appellant took Maricon to his aunt's house. He ordered her to remove her clothes and to lie down on the sofa. Accused-appellant then went on top of her and inserted his penis into her vagina. Thereafter, he licked her private parts. She was later released and allowed to go home, but not before she was warned not to tell anyone what had happened to her.[5]

On May 20, 1993, Maricon and her mother, Delia, went to the house of Melita Calzada Ervi, who is Delia's sister. Melita told Delia how her daughter, Lady Ann Calzada, who was then 10 years old, was nearly raped on May 17, 1993 by their neighbor, Boni Tolentino, then aged 15. Maricon suddenly interrupted them and told her mother: "Ako po mama, me ginawa sa akin ang anak ng kumare ninyo, si Bong-bong" (referring to accused-appellant). Maricon narrated to them the two rape incidents. It was then that Delia realized why sometime on April 5, 1993, Maricon had a high fever and experienced difficulty in urinating ("pahinto-hinto ang ihi") and irritations in her private parts. Delia then confronted Angelita C. Pambid, accused-appellant's mother, who insisted that accused-appellant was not capable of committing such act. Delia also confronted accused-appellant's brother, Renato Pambid, who then went to his father's house in Caloocan to look for accused-appellant.[6]

On May 21, 1993, Delia brought the matter to the attention of the barangay tanod who reported it to the police. Accused-appellant was arrested in his house by PO1 Ricardo B. Sibayan and PO3 Wilfredo Nazareno. He was positively identified by Maricon as the person who had abused her. Thereafter, accused-appellant was taken to the Criminal Investigation Division (CID), Camp Karingal, Sikatuna Village, Quezon City and turned over to the investigating officer, PO3 Felix Dulin, who took the sworn statement of Delia. In a letter dated May 21, 1993, Chief Insp. Jaime Q. Peralta referred the case to the City Prosecutor of Quezon City.[7]

On the same day, May 21, 1993, Maricon went to the Philippine National Police (PNP) Crime Laboratory Service for medical examination. Dr. Florante F. Baltazar, PNP Chief Inspector and Medico-Legal Officer, examined Maricon. His report (Exh. A)[8] contains the following findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child subject. Breasts are undeveloped. Abdomen is flat and tight.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pale brown labia minora presenting in between. On separating the same, disclosed an elastic, fleshy-type hymen with deep, healed laceration at 3 o'clock. External vaginal orifice admits the tip of the examining little finger.

Peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma.

Dr. Baltazar's findings showed that Maricon is in a non-virgin physical condition which could have been caused by the insertion of a foreign object or by sexual intercourse. He clarified that strenuous physical activities could only produce scratches on the private parts and not deep laceration of the hymen.[9]

The defense evidence consists of denial, alibi and plea of insanity. Accused-appellant did not testify. It was his father and mother who testified for him.

According to Angelita C. Pambid, accused-appellant's mother, accused-appellant was not home during the time the first incident of rape was alleged to have happened. After he was scolded and beaten up by his elder brother Renato for refusing to fetch water, on March 14, 1993, he went to Bagong Bayan, Caloocan City, and stayed with his father, who was estranged from his mother. Although accused-appellant came home on April 15, 1993, it was

only to get some clothes, then he left to stay with his aunt. It was only on May 20, 1993 that accused-appellant returned home. The following day, May 21, 1993, Delia Grifaldia went to accused-appellant's house, accompanied by two policemen, two civilians and some barangay officials. Accused-appellant was then brought to the police precinct for investigation. Angelita Pambid said that Delia Grifaldia had been her neighbor for the past 15 years.[10]

Jesus Q. Pambid, accused-appellant's father, corroborated his wife's claim that accused-appellant was not living with his mother in March 1993. He also said that sometime in April 1993, he learned that accused-appellant was residing somewhere in Don Antonio Subdivision, Fairview, Quezon City, and worked as a helper of a meat vendor in Nepa Q-Mart. Jesus admitted, however, that on three separate occasions within the month of April 1993, accused-appellant stayed in his mother's house. He said that, in one of those occasions, he even accompanied his son to get clothes in the house of Angelita Pambid. On May 21, 1993, he learned from his older son, Renato, that accused-appellant had been apprehended for having allegedly raped Maricon. He claimed, however, that accused-appellant was mentally ill, and that was the reason why the latter did not go to school. In fact, according to him, both his maternal aunt and brother had previously been confined at the National Mental Hospital in Mandaluyong City.[11]

The defense also presented psychological report (Exh. 1), dated July 15, 1994, of a psychologist, Rosalina V. NUESTRO, which stated:

Current assessment of subject's mental capacity is gauged along the Mild Mental Retardation level. A 21-point discrepancy between the 2 major scales favoring the Verbal Scale and both intra and intertest variabilities are present to indicate mental inefficiency. Pre-morbid level is believed to be higher.

Analysis shows impairment on areas which measure his social intelligence, inductive reasoning and viso-motor functions. Range of general information, judgmental capacity, deductive and ability to solve simple arithmetical problems are very poorly functioning. He is also not so keen in observing details in his surrounding and in differentiating the essential from the non-essential likeness of objects and forms. On the other hand, average score is obtained in the Digit Span, however, only his recall on recent events is adequate but he has difficulty in remembering the most remote events.

Projective profile shows an immature individual who is so rigid and constricted in his emotional make-up which renders him unable to relate well with his fellow-beings. He likewise identifies with the opposite sex and with much younger age level signifying sexual difficulty and immaturity. His immaturity fits also hamper his capacity to make sound judgment that is guided more by impulse rather than by intellect.

Flattening of affect is likewise discerned. Sterility of thought process is also evident.

Distortion of the Gestalten and poorly synthesized drawing of human figures are noted which may indicate the presence of dissociative process in which, in a way, he loses his integrative capacity. It also reflects his inability to meet or deal effectively with reality. Ego ineffectiveness is likewise reflected.[12]

Dr. Noemi Angeline E. Jularbal of the National Center for Mental Health, Mandaluyong City, also examined accused-appellant. Her findings and recommendations were contained in a report (Exh. 2), dated September 21, 1994, which states that:

PSYCHIATRIC EXAMINATION RESULT:

Evaluation shows that patient had suffered from Insanity or Psychosis classified under Schizophrenia. This mental disorder is characterized by poor self-care, perceptual aberrations in the form of hallucinations and delusions. There is marked impairment in intellectual, social and vocational functioning. Insight and judgment are impaired.

He is likewise suffering from Mental Retardation. This is described as a subnormal level of intellectual functioning.

At present, he is behaved and manageable. He is deemed competent to stand court trial.

REMARKS AND RECOMMENDATIONS:

He is recommended to undergo regular monthly out-patient check-ups at the National Center for Mental Health.[13]

Dr. Jularbal testified that she found accused-appellant to have very poor attention, a blunt facial expression and is easily distracted. According to her, accused-appellant was often deep in thought, hypoproductive and kept on mumbling things to himself. Accused-appellant also exhibited subnormal intellectual functioning which made him experience hallucinations and delusions. Her conclusion was that it was possible that, at the time of the alleged rapes, accused-appellant was suffering from mental illness. Dr. Jularbal also said that at the time she prepared her report, accused-appellant was no longer psychotic nor actively hallucinating, and that he was aware of the case filed against him as he cooperated with his legal counsel who prepared his defense.[14]

On the basis of the evidence presented, the trial court rendered its decision, on January 24, 1996, finding accused-appellant guilty of two counts of rape. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused JOSEPH PAMBID y CORNELIO guilty beyond reasonable doubt for two counts of rape penalized under Article 335 of the Revised Penal Code and, conformably with said provision, hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties of the law and to indemnify the complainant Marycon Delvie Grefaldia, the sum of P50,000.00 plus costs for each count of rape.

The period during which the accused is under preventive imprisonment shall be credited to him in full.

SO ORDERED.

Hence this appeal, seeking reversal of accused-appellant's conviction.

First. Accused-appellant capitalizes on Maricon's statement, made at some point during her testimony, that she was only "fingered," i.e., accused-appellant merely poked his finger into her vagina. This, he contends, puts in doubt her claim that he succeeded in having sexual intercourse with her. He also makes much of the fact that Maricon failed to inform her family of the incident immediately after she was allegedly violated.

This contention is without merit. Maricon had no motive to falsely claim that she had been raped by accused-appellant if this was not true. We have ruled that a young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give details of the assault on her dignity, cannot be easily dismissed as mere concoction.[15] If her story had only been contrived, she would not have been so composed and consistent throughout her entire testimony in the face of intense and lengthy interrogation.[16] Maricon's testimony is likewise corroborated by medical findings of hymenal lacerations. The evidence on record thus supports the trial court's finding that accused-appellant is guilty of raping Maricon. Appellate courts will generally not disturb the factual findings of the trial court since the latter is in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment, unless it is shown that the trial court has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.[17]

It is true that the supposed dates of the two rape incidents were not alleged in the information. But, as held in *People v. Dimapilis*,[18] under Rule 110, §§6 and 11 of the Rules on Criminal Procedure, an information is

sufficient as long as it states the statutory designation of the offense and the acts or omissions constituting the same, since in rape cases, the time of commission of the crime is not "a material ingredient of the offense." It is thus sufficient if it is alleged that the crime took place "as near to the actual date at which the offense(s) are committed as the information or complaint will permit." We also ruled that in rape cases, victims of rape hardly retain in their memories the dates, number of times and manner they were violated. In the same vein, to be material, discrepancies in the testimony of the victim should refer to significant facts which are determinative of the guilt or innocence of the accused, not to mere details which are irrelevant to the elements of the crime, such as the exact time of its commission in cases of rape, and are not grounds for acquittal.[19] Moreover, accused-appellant entered his plea during arraignment without objecting to the sufficiency of the information. He thus waived objection on this ground, as provided in Rule 117, §8.

On the other hand, the alleged discrepancy in Maricon's testimony ^¾ whether she had been raped or merely "fingering" by accused-appellant ^¾ is more apparent than real. What she said was that accused-appellant touched her private parts and then had sexual intercourse with her. Thus, Maricon testified:

Q

And Miss Witness, you said that you know Bongbong for quite a long time, now, this Joseph Pambid @ Bongbong the accused, do you remember if he has done anything in your person?

A

Yes, sir.

Q

Now Miss Witness, what did Joseph Pambid @ Bongbong do to you?

A

He inserted his organ inside mine, sir.

Q

Where did this happen Miss Witness?

A

In their house, sir.

Q

And could you possibly recall Miss Witness when the incident happened, if you know?

A

No, sir.

Q

Now, Miss Witness, you said that the accused Joseph Pambid inserted his organ into your vagina, will you please inform this Honorable Court how Joseph did the act to you?

A

He lay on top of my chest, sir.

Q

And after the accused Joseph Pambid lay on top of your chest, what did he do?

A

I removed my short and he also removed his short and he inserted his organ into my vagina, sir.

Q

Now, you said that the accused Joseph Pambid lay on top of you and then he removed his short and you also removed your short, what kind of short are you wearing?

A

I cannot remember, sir.

Q

And which came first Miss Witness, the removal of your short or Joseph Pambid's removal of his short?

A

The removal of his short, sir.

Q

Can you remember Miss Witness, what kind of short Joseph Pambid was wearing?

A

No, sir.

Q

Now Miss Witness, would you please inform this Honorable Court how Joseph Pambid inserted his organ into your vagina?

A

He held his organ and he inserted, he even inserted his finger, sir.

Q

Now Miss Witness, which came first, the insertion of the organ of Pambid into your vagina or the insertion of his finger into your vagina?

A

His finger first, sir.

Q

And Miss Witness, after the accused inserted his organ into your vagina, what did he do?

A

He was pumping, sir.

Q

Now Miss Witness, this incident that you are talking [about] happened at the house of Joseph Pambid, is it not?

A

Yes, sir but it did not consummate because his mother arrived and she was asking why the door was closed.

Q

Now Miss Witness, was that the first time that the accused did that to you at their house?

A

Yes, sir.

Q

Now Miss Witness, were there other persons aside from you and Joseph Pambid at the time that Joseph Pambid, the accused, inserted his organ into your vagina?

A

None, sir, except his mother who saw the incident, sir.

Q

Now Miss Witness, did you not shout and ask for help when Joseph Pambid inserted his organ into your vagina?

A

No, sir because he told me that he would kill me by spanking.

Q

Miss Witness, when that first incident happened inside the house of Joseph Pambid, how were you able to enter the house of Joseph Pambid?

A

Because we were supposed to play with my cousin when he pulled me inside the house, sir.

Q

And what time was that, Miss Witness, when Joseph Pambid pulled you and brought you inside their house?

A

In the afternoon, sir.

Q

Now, where was your mother then at the time that you were brought by Joseph Pambid inside their house?

A

She was working at the City Hall, sir.

Q

How about your father, where was he then?

A

He is also working, sir.

Q

And how about your brothers and sisters, where were they?

A

They were attending to our baby.

Q

Now Miss Witness, will you please demonstrate before the Honorable Court how Joseph Pambid removed your short?

A

He asked me to stand up sir and I pulled down my short.

Q

Who pulled down your short, is it you or Joseph Pambid?

A

I was the one, sir.

Q

And aside from your short, were you wearing any panty?

A

Yes, sir.

Q

And how about your panty, was it also removed?

A

Yes, sir.

Q

Who removed your panty?

A

He, sir.

Q

And after he removed your panty, what next step did he do?

A

He made me lie down, sir and asked me to spread my legs.

Q

And after that, he lay down on [top of you]?

A

Yes, sir.

Q

And then he inserted his organ to your vagina?

A

Yes, sir.

Q

At the time that the accused Joseph Pambid inserted his organ into your organ, nobody was present inside the premises except both of you?

A

None, sir.

Q

Now, after Joseph Pambid was able to consummate his act of sexually [abusing] you, what did he do after that?

A

After that, I told him that I do not like anymore and then, he told me last na lang ito and then, I told him I will leave na lang and then, he said no.

Q

Now Miss Witness, after you told the accused that you are going to leave him and he answered no, what else did he do to you?

A

And then he still [lay] on top of me, sir.

Q

You said that he still [lay] on top of you, what did he do after he lay on top of you?

A

None anymore, we already wear our shorts, sir.

Q

Did he not insert his organ again into your vagina?

A

Not anymore, sir.

Q

Now Miss Witness, you said about this incident, can you recall what month this first incident happened?

A

No, sir.

Q

Could it be possible Miss Witness, that the first incident happened in May or April of 1992?

A

No, sir because that was a long time ago.

Q

You said Miss Witness, that the accused abused you several [times], when was the second time that the accused abused you for several times?

INTERPRETER:

At this juncture, witness cannot answer.

FISCAL MIRANDO:

(Continuing)

Where did the accused Joseph Pambid [do] the sexual abuse to you?

A

In the house of Lola Tonia.

Q

And this Lola Tonia is [your] Lola or of the accused?

A

The accused, sir.

Q

And where is the house of Lola Tonia located?

A

Beside their house, sir.

Q

And you were brought inside the house of Lola Tonia by the accused?

A

Yes, sir.

Q

And after the accused brought you inside the house of his Lola Tonia, what did he do to you?

A

He removed my shorts and then he lay on top of me, sir.

Q

And Miss Witness, how was the accused able to bring you inside the house of his Lola Tonia?

A

Because there was nobody there in the house of Lola Tonia.

Q

So when you said you were inside the house of Lola Tonia there was nobody inside except of you?

A

Yes, sir.

Q

Now, what time more or less was this Miss Witness, when you were brought inside the house of Lola Tonia?

A

I do not know, sir, but it was almost dusk.

Q

Now, Miss Witness, that [once] inside the house of his Lola Tonia, he told you again to remove your shorts, are we made to understand that you are again wearing shorts at the time you were brought to the house of Lola Tonia?

ATTY. MALABAGUIO:

There was no testimony that she was asked to remove [her shorts], your Honor.

COURT:

Reform.

FISCAL MIRANDO:

(Continuing)

Q

What were you wearing when Joseph Pambid brought you to the house of Lola Tonia?

A

I cannot remember, sir because that was a long time ago.

Q

Were you wearing shorts, dress, pants, if you can recall, Miss Witness?

A

NAo, sir, I cannot remember.

Q

Now, after you were brought inside the house of Lola Tonia by the accused, what did he do?

A

He removed my clothes sir, and asked me to spread my legs.

Q

You said that the accused asked you to remove your clothes, did you remove your clothes?

A

No, sir because I was going home at that time.

Q

Were you wearing panty when you were inside the house of Lola Tonia?

A

Yes, sir.

Q

Now, inside the house of Lola Tonia, did the accused ask you to remove your panty?

A

Yes, sir.

Q

In other words, Miss Witness, on that second incident inside the house of Lola Tonia, the accused did not insert his organ into your vagina?

A

He inserted, sir.

Q

Now, which is true now Miss Witness, inside the house of Lola Tonia, the accused inserted his organ into your vagina or he did not, or allowed you to leave?

A

He inserted his organ into my vagina, sir.

Q

Now, who removed your panty?

A

I was the one sir, but I wore it again because I don't like anymore.

Q

You said a while ago Miss Witness, that the accused inserted his organ into your vagina, how did Joseph Pambid @ Bongbong insert his organ into your vagina?

A

He made me lie down and then he inserted his organ into my vagina and I told him I do not like it and so he told me to go home.

Q

But Miss Witness, was he [able] to insert his organ into your vagina?

A

Yes, sir.

Q

Now Miss Witness, when you speak of organ of the accused Joseph Pambid, you are referring to his penis or (titi)?

A

Yes, sir.

Q

And you said that the second time you were abused by the accused, you were made to lie down, where did he made you lie down?

A

In a bench, sir.

Q

Was your vagina hurt when the accused inserted his organ into your vagina?

A

Yes, sir.

Q

And did you not ask for help or shout when . . . the accused Pambid inserted his organ into your vagina?

A

No, sir because he told me that he would kill me with spanking.

Q

But there is nobody inside the house of Lola Tonia except you?

A

None, sir.

....

Q

Now, was there still another occasion Miss Witness, that you were raped or sexually abused by Bongbong, the accused, Miss Witness?

A

None, sir.

Q

So, in other words Miss Witness, you were sexually abused by the accused twice, first in the house of Joseph Pambid @ Bongbong and the second is in the house of Lola Tonia?

A

I do not know anymore, sir.[20]

....

Q

Ms. Witness, during the last hearing, you testified that the second time you were sexually abused by the accused was at the residence of Aling [Tonia]?

A

Yes, sir.

Q

Now, before you were brought inside the house of Aling [Tonia], what were you doing?

A

None, sir, he just pulled me so that we can enter the house of Aling [Tonia].

Q

What were you doing when the accused pulled you?

A

I was doing my errand.

Q

You mean to say you were being sent by your mother to a store?

A

Yes, sir.

Q

What were you going to buy in the store?

A

My mama asked me to buy some ice.

Q

Now, you mean to say, on your way to the store, the accused grabbed you and brought you [to] the house of Aling [Tonia]?

A

Yes, sir.

Q

Now, was that in the morning or in the afternoon?

A

In the afternoon.

....

Q

After you were sexually abused by the accused at the house of Aling [Tonia], what did he do to you?

A

He placed his penis inside my organ and then he inserted his finger.

Q

Now, after Joseph Pambid inserted his "tete" or organ inside your vagina, and after he placed his finger in your organ, what else did he do to you?

A

He kissed my vagina.

Q

And at that time accused inserted his organ or "tete", was [he] on top of you?

A

Yes, sir.

Q

And Miss Witness, after he inserted his organ [into] your vagina, and after he touched your private parts, what else did he do to you?

A

I told him that I will go home but he again told me that he will do another act.

....

Q

Did you finally decide to report the sexual abuse that was done to you by Joseph Pambid?

A

Yes, sir.

Q

To whom did you report the sexual abuse done to you by Joseph Pambid?

A

To my mama.

Q

Why did you finally arrive [at the] conclusion to report these abuse that was done to you by Joseph Pambid?

A

I was afraid so I reported the matter to my mother.

Q

Where did you report the abuse done by the accused?

A

At the house of my cousin.

Q

What is the name of your cousin?

A

Lady.

Q

And this Lady that you are referring to, is [she] the daughter of the sister of your mother?

A

Yes, sir.

Q

What did you report to your mother?

A

My mama asked me if Joseph Pambid abused me and I answered yes, mama.

Q

How did that conversation regarding sex abuse come into the picture?

A

When I went to the house of my cousin, that is the time that I told it to my mother.

Q

Why did you tell the sexual abuse done to you by Joseph Pambid?

A

Because I was already afraid so I reported the matter to my mother.

Q

Who were present when you reported this matter to your mother?

A

My cousin Lady and her mother.

Q

Do you remember that your cousin Lady also informed your mother and her mother that there was an attempt to rape her by another person?

A

Yes, sir.

Q

And that was the time that you reported this incident that happened to you, to your mother?

A

Yes, sir.

Q

And who [was] that person if you know, who made the attempt to abuse the person of your cousin named Lady?

A

Boni.

Q

Do you know the real name of this Boni?

A

No, sir.

Q

Where is this Boni residing?

A

He was residing in front of the house of my cousin.

Q

Will you be able to identify the person of Joseph Pambid who abused you twice during the time of April and May, 1993?

A

Yes, sir.

Q

Will you please point that person who abused you sexually?

A

Witness pointing to a young [man] and when asked, [identified] himself by the name of Joseph Pambid.[21]

Maricon was cross-examined by defense counsel but her foregoing testimony remained unshaken. She reiterated that on the second occasion of rape, accused-appellant first inserted his finger into her vagina and, thereafter, his penis.

ATTY. MALABAGUIO:

. . . .

Q

And what happened after that, what did he do, if any?

A

He [lay] down on top of me, sir.

Q

Did he ever use his hands in caressing your body?

A

Yes, sir. He even inserted his finger inside my vagina and afterwards, he placed his penis inside my organ, sir.

Q

Which hand did he use in touching your vagina, was it his left hand or his right hand?

A

He used his pointing finger, sir.

Q

How were you able to see that he used his pointing finger [since] you were in a lying position?

A

Because I saw it, sir.

Q

Are you saying Miss Witness that when he [lay] on top of you, you were able to see the finger he used in entering your vagina?

A

Yes, sir.

Q

How were you able to see?

A

Because according to him he used his pointing finger, sir.

Q

Are you saying that he informed you that he was using his pointing finger when doing such act?

A

Yes, sir.

Q

Now, you said that Bongbong also inserted his organ inside your vagina, how are you sure that it was not the finger of Bongbong which penetrated your vagina?

A

Because I saw it, sir.

Q

When Bongbong was doing the act, you were facing Bongbong, is that correct?

A

Yes, sir.

Q

And you were looking [at] his face, is that correct?

A

Yes, sir.

Q

So, when Bongbong was lying on top of you, your attention was on his face, is that correct?

A

Yes, sir.

Q

You were not focusing your attention to other things, only at the face of Bongbong, while Bongbong was lying on top of [you]?

A

Yes, sir.

Q

Did you remember how long did it take Bongbong to do such act lying on top of you?

A

No more, sir.

Q

After that, what happened?

A

After he [lay] on top of me, he inserted his finger [into] my organ and then he instructed me to go home, sir.[22]

On re-direct-examination, she clarified that as to the first incident of rape, accused-appellant inserted his penis in her vagina and thereafter "fingered" her.

Q

And you said Miss Witness, that you saw the organ or the "titi" of Bongbong after he removed his shorts, is it not Miss Witness?

A

No, sir.

Q

Now Miss Witness, you said that on the first incident, Bongbong inserted his hintuturo inside your vagina?

A

Yes, sir.

Q

Now Miss Witness, you also testified that Bongbong also inserted his organ (titi) inside your vagina, is it not?

A

Yes, sir.

Q

Which comes first, the insertion of the finger of Bongbong inside your vagina or the insertion of the organ to your vagina?

A

He inserted his organ first, sir.

Q

Now Miss Witness, this first incident which you said you were abused sexually by Bongbong inside their house particularly on the bed, nobody is present except the two of you?

A

Yes, sir.[23]

In any case, the alleged discrepancy concerns mere matters of details which can be expected to happen when a young girl, aged six and inexperienced, is asked to narrate in court how she was violated. Such minor inconsistencies, far from detracting from the veracity of her testimony, in fact, tend to bolster it.[24]

Second. Accused-appellant's mother claimed that her son was in the house of his father in Bagong Bayan, Caloocan City, when the first incident of rape allegedly happened in Barangay Culiati, Quezon City. This assertion, however, is inconsistent with her testimony on cross-examination that on April 15, 1993, accused-appellant came back and never left home thereafter.[25] Even Jesus Pambid, accused-appellant's father, confirmed in his direct examination that on three occasions during the month of April 1993, accused-appellant stayed in the house in Culiati, and that, at one time, he even accompanied accused-appellant to get some clothes. More importantly, the testimonies of accused-appellant's parents were contradicted by Maricon who, on cross-examination, said that when accused-appellant forcibly took her to his house and raped her, she saw the latter's mother outside the house. Nor can we believe the claim of Angelita Pambid that her son could not have raped Maricon a second time in Antonia Adovera's house over Maricon's consistent claim that accused-appellant indeed raped her.

As we have held time and again, the testimony of rape victims who are young and immature deserves full credence,[26] specially if they are without any motive to testify falsely against accused-appellant.[27] In this case, accused-appellant offered no evidence to show that Maricon was impelled by any ulterior motive to fabricate a story of defloration against him. The fact that Maricon failed to immediately inform any member of her family about the two rape incidents was understandable considering the threats made by accused-appellant.[28]

Third. In the alternative, it is contended that accused-appellant is exempt from criminal liability by reason of insanity. The defense claims that accused-appellant was suffering from schizophrenia and mild mental retardation.

We find accused-appellant's plea of insanity unacceptable. To begin with, his shift of theory, from denial and alibi to plea of insanity, made apparently after realizing the futility of his earlier defense, is a clear indication that his defenses are nothing but mere concoctions.[29]

While Art. 12(1) of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless he has acted during a lucid interval, the presumption, under Art. 800 of the Civil Code, is that every man is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it.[30] He must show that he was completely deprived of reason when he committed the crime charged. As held in *People v. Bañez*,[31] "the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability."

Based on this standard, we find that accused-appellant failed to discharge this burden. A careful review of the records show the following circumstances which militate against accused-appellant's claim of insanity:

As to the first incident of rape, it is established that accused-appellant closed the door upon entering his house, apparently so that he would not be seen with Maricon. Then, he got a knife from the kitchen and pointed it at the child. When he heard his mother get into the house, he stopped having intercourse with Maricon, hid the knife

under the bed and told the child not to report the incident to anyone, otherwise, he would kill her.

As to the second incident of rape, accused-appellant kept threatening Maricon as he forced himself on her while they were in the house of Antonia Adovera.

By the totality of his acts, accused-appellant showed that he was fully conscious of what he was doing.

The bare testimony of accused-appellant's father that accused-appellant suffered some mental illness during childhood and that both his maternal aunt and his brother had been previously confined at the National Mental Hospital is inadequate to prove that accused-appellant was completely deprived of reason when he raped Maricon. Neither do the psychological report and the result of the psychiatric examination indubitably establish that accused-appellant was insane immediately before or at the time of the commission of the crime.

The psychiatric examination showed that accused-appellant was found suffering from schizophrenia. When such mental illness completely deprives the offender of the consciousness of his acts, then it shall be an exempting circumstance. It may also be considered mitigating under Art. 13(a) of the Revised Penal Code if it diminishes the exercise of his will power. In this case, however, the defense failed to conclusively establish that accused-appellant was suffering from schizophrenia or any mental illness that could diminish his will power at the time immediately preceding or during the commission of the crime. Acts penalized by law are always presumed to be voluntary, and it is improper to conclude that a person acted unconsciously in order to relieve him of liability, unless his insanity is conclusively proved.[32] It was, therefore, error for the trial court to appreciate the mitigating circumstance of insanity in favor of accused-appellant.

Fourth. The trial court convicted accused-appellant of rape committed on two separate occasions although there was only one information filed against him. It ruled that, on the first occasion of rape, accused-appellant committed the crime with the use of a deadly weapon for which the penalty is reclusion perpetua to death, but the court sentenced him to reclusion perpetua only in view of the suspension of the death penalty at the time the crime was committed. The trial court awarded Maricon Delvie C. Grifaldia, the sum of P50,000.00, plus costs, for each count of rape.

This is error. The Constitution specifically provides that the accused must "be informed of the nature and cause of the accusation against him,"[33] in order for him to prepare his defense.

In *People v. Manalili*,[34] we held:

The hornbook doctrine in our jurisdiction is that an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him.

The trial court, in its decision, merely noted that since accused-appellant did not object to having been charged with two counts of rape in one information, "he may be convicted of two offenses of rape." [35] The trial court failed to consider, however, that accused-appellant could not have objected to the validity of the information or raise the issue of duplicity of offenses since the information does not charge him with more than one offense or occasion of rape.

Thus, although it was shown that accused-appellant raped Maricon on two occasions, nonetheless, he can be convicted for one count of rape only.

WHEREFORE, the decision of the Regional Trial Court, Branch 81, Quezon City, is SET ASIDE and another one

is rendered finding accused-appellant Joseph Pambid y Cornelio GUILTY of one (1) count of rape, sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay complainant Maricon Delvie C. Grifaldia P50,000.00 as civil indemnity and P50,000.00 as moral damages, plus costs.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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- [1] Per Assisting Judge Ignacio M. Capulong.
- [2] Also "Marycon Delvie Grefaldia" in some parts of the record.
- [3] RTC Records, p. 1. The original criminal complaint was dated May 24, 1993.
- [4] TSN (Maricon Delvie Grifaldia y Calzada), pp. 2-8a, Nov. 18, 1993.
- [5] Ibid., pp. 8a-12; pp. 2-4, Nov. 29, 1993.
- [6] TSN (Maricon Delvie Grifaldia y Calzada), pp. 4-5, Nov. 29, 1993; TSN (Delia Calzada Grifaldia), pp. 2-6, July 19, 1993; pp. 2-10, Aug. 2, 1993; TSN (Melita Calzada Ervi), pp. 2-6, Aug. 31, 1993; Salaysay of Delia Calzada Grifaldia dated May 21, 1993 (Exh. B), RTC Records, pp. 143-144.
- [7] TSN (PO3 Felix Dulin y Alfa), pp. 2-5, Oct. 7, 1993; TSN (PO1 Ricardo B. Sibayan), pp. 2-5, Nov. 16, 1993; Affidavit of PO1 Ricardo B. Sibayan dated May 21, 1993, RTC Records, p. 10.
- [8] RTC Records, p. 142.
- [9] TSN (Dr. Florante F. Baltazar), pp. 2-5, Oct. 21, 1993.
- [10] TSN (Angelita C. Pambid), pp. 2-7, Aug. 29, 1994.
- [11] TSN (Jesus Q. Pambid), pp. 2-7, Sept. 15, 1994.
- [12] RTC Records, pp. 202-203.
- [13] RTC Records, pp. 191-192.
- [14] TSN (Dr. Noemi Angeline E. Jularbal), pp. 3-9, Dec. 13, 1994.
- [15] *People v. Molas*, 286 SCRA 684 (1998).
- [16] *People v. Perez*, 296 SCRA 17 (1998).
- [17] *People v. Baygar*, G.R. No. 132238, November 17, 1999; *People v. Ablog*, G.R. No. 124005, June 28, 1999.

[18] 300 SCRA 279 (1998).

- [19] *People v. Sancha*, G.R. No. 131818-19, February 3, 2000 citing *People v. Maglente*, G.R. Nos. 124559-66, April 30, 1999.
- [20] TSN, pp. 5-12, Nov. 18, 1993. (Underscoring added)
- [21] TSN, pp. 2-5, Nov. 29, 1993. (Underscoring added)
- [22] TSN, pp. 7-8, April 19, 1994. (Underscoring added)

[23] TSN, p. 3, April 26, 1994.

[24] *People v. Padilla*, 301 SCRA 265 (1999); *People v. Gementiza*, 285 SCRA 478 (1998).

[25] TSN, p. 11, Aug. 29, 1994.

[26] *People v. Carullo*, G.R. No. 129289, July 29, 1999; *People v. Pineda*, G.R. Nos. 118312-13, July 28, 1999.

[27] *People v. Ibalang*, 286 SCRA 387 (1998).

[28] *People v. Torio*, G.R. Nos. 132216 & 133479, November 17, 1999; *People v. Sacapaño*, G.R. No. 130525, September 3, 1999; *People v. Dizon*, G.R. No. 128889, August 20, 1999.

[29] *People v. Balgos*, G.R. No. 126115, January 26, 2000 citing *People v. Trimor*, 243 SCRA 129 (1995); See *People v. Amamangpang*, 291 SCRA 638 (1998).

[30] *People v. Catanyag*, 226 SCRA 293 (1993).

[31] 301 SCRA 248 (1999), citing *People v. Formigones*, 87 Phil. 658 (1950).

[32] *People v. Rafanan, Jr.*, 204 SCRA 65 (1995) citing *People v. Formigones*, *supra*.

[33] Const., Art. III, §14, par. 2.

[34] 294 SCRA 220, 252 (1998).

[35] Rollo, p. 30.

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