PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY PEREZ Y NAGSAGARAY, ACCUSED-APPELLANT.

G.R. No. 129213. December 02, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision dated October 29, 1996 of the Regional Trial Court, Branch 3, of Baguio City[1] in Criminal Case No. 10271-R finding accused, Gerry Perez y Nagsagaray, guilty of the crime of rape, imposing upon him the penalty of reclusion perpetua and directing him to pay the offended party the sum of P50,000.00 as moral damages and to pay the cost.

In an Information dated August 14, 1992, Gerry Perez y Nagsagaray was charged by Regular Special Counsel Evelyn C. Tagudar of the crime of rape allegedly committed as follows:[2]

> "The undersigned Regular Special Counsel hereby accuses GERRY PEREZ y NAGSAGARAY, of the crime of RAPE, at the instance, relation and written complaint of MARIFE TICUAN y MANUIT, a minor, five (5) years of age. Copies of her statement are hereto attached and made an integral part of this Information, committed as follows:
>
> That on or about the 12th day of August, 1992, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, and by means of force or intimidation, have carnal knowledge of the said complainant, MARIFE TICUAN y MANUIT, against her will and consent.
>
> CONTRARY TO LAW."

Upon his arraignment on November 25, 1992, accused duly assisted by his counsel, pleaded not guilty to the offense charged.[3]

The facts as summarized by the Office of the Solicitor General (OSG) in the appellee's brief,[4] and which we find to be supported by the testimonies of the prosecution witnesses are as follows:

> "On August 12, 1992, Federica Ticuan left her three (3) minor children in the house of her sister, Jane Pilis, (sic, should be Catalina dela Pena) under the care of her blind mother, Agnes Manuit, to tend her store. Federica's store was about 250 meters from the house of her sister (Pages 3-7, TSN Feb. 18, 1993). Federica's children are Marife, Myra and Myleen, who were respectively aged five (5), three (3) and one (1) at the time of the incident in question (Pages 3-7, TSN, Jan. 18, 1993).
>
> About 1:00 P.M. on the day in question, appellant, who was then a boarder at the first floor of the house of Catalina, went upstairs and asked permission from Agnes if he could come in and play with her granddaughters. Agnes inquired who he was and appellant responded that he was "Gerry" (Page 8, TSN, July 23, 1993). Thereafter, Marife and Jimmy dela Peña (cousin of Marife) asked permission from Agnes to play outside. After a while, appellant told Agnes that he would also go down.

> Subsequently, Marife and Jimmy proceeded to the "bodega" adjacent to the house of Catalina where they played "sipa" together with their younger sisters (Pages 4-5, TSN, June 2, 1993).
>
> While the children were playing, Jimmy suddenly went upstairs to repair his "sipa" toy (Page 2, TSN, June 9, 1993). At this point, appellant went inside the bodega (Pages 4-5,TSN, June 30, 1993).
>
> Meanwhile, Agnes did not allow Jimmy to open the stove to repair his "sipa" toy. Thus, Jimmy just went downstairs to resume playing (Page 2, TSN, June 9, 1993). He saw Marife crying inside the structure where they prepare food for the pigs. He saw appellant "raping" Marife while the latter was standing near the pile of woods. He also saw appellant's penis discharging white fluid (Pages 6-8, TSN, June 2, 1993).
>
> Thereafter, Marife went to her grandmother to complain. Marife was crying and telling that her private part was painful because appellant placed his penis inside her vagina (Page 4, TSN, June 30, 1993). Agnes asked why Marife did not shout, Marife replied that appellant was covering her mouth with his hand. Agnes was about to call Federica to tell what happened when Federica arrived (Pages 16-17, TSN, July 23, 1993).
>
> Upon seeing Marife crying, Federica immediately inquired what happened, Marife told Federica that appellant abused her. Forthwith, Federica went down and asked Rudy Nagsagaray, uncle of appellant, regarding the latter's whereabouts. Rudy replied that he did not know where appellant was. He suggested that they look for him at Hillside, Baguio. Federica's father-in-law accompanied Rudy while Federica, together with Mrs. Quiño and Catalina dela Peña, brought Marife to the Baguio Hospital for examination (Pages 8-11, TSN, Feb. 18, 1993).
>
> Dr. Frances Jane P. Kiat-Ong examined Marife and found out that there was reddening of her labia majora (Pages 4-9, TSN, Feb. 5, 1993).
>
> After the examination, Federica, together with Marife and their companions, proceeded to the police station near the hospital because they were informed that appellant was already at the police station at Campo Sioco for investigation (Pages 11-15, TSN, Feb. 18, 1993)."

For his defense, accused testified that at around 12:00 P.M. of August 12, 1992, he was cooking in his rented house owned by the complainant; At around 1:00 P.M. he bade goodbye to Agnes Manauit (the victim's grandmother) and told her that if ever his Uncle, Rogelio Nagsagaray, would look for him he will be at Hillside, Baguio; He said that he went to Hillside because he had work the next day and Hillside was quite far.[5] That in the evening of the same day, his Uncle and the victim's father came to Hillside and instructed him to go with them to substation 5 where he saw the complainants typing their complaint. Later, he was placed inside a van and they proceeded to the police station where he was detained.[6] On cross-examination, he testified among others that from Bakakeng Norte where he lives up to the Hillside, he had to take 2 rides, i.e. from Bakakeng Norte to City Proper would take 10 minutes and another 5 minutes from City Proper to Hillside. He was able to reach Hillside at about 1:20 o'clock in the afternoon and he stayed there the whole day. On re-direct, he further claimed that he had a misunderstanding with the mother of alleged victim Marife Ticuan as Mrs Ticuan accused him of stealing plywood and having often influenced her husband to join in a drinking spree.[7]

After weighing the testimonies of both the prosecution and defense witnesses, the trial court convicted the accused as follows:[8]

> "WHEREFORE, the Court finds the accused, GERRY PEREZ y Nagsagaray GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to pay the offended party the sum of P50,000.00 as moral damages and to pay the costs.
>
> And the word of the law, it is thundered:
> "Dura lex, sed lex, meaning,

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The law is harsh, but that is the law."

SO ORDERED"

Accused has appealed from the judgment of conviction, submitting the following assigned errors:[9]

I
THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II
THAT THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND UNBELIEVABLE TESTIMONIES OF THE PRIVATE COMPLAINANT AND HER WITNESSES.

Accused-appellant faults the trial court for finding him guilty of the crime of rape based on the testimonies of prosecution witnesses which he alleges to be replete with flaws and improbabilities. He alleges that there exists inconsistencies between the sworn statements of victim Marife Ticuan and also of Jimmy dela Pena and their declarations in court. In trying to cast doubt on the credibility of the prosecution witnesses, accused–appellant points out the following:

(1) Victim Marife Ticuan and his cousin Jimmy dela Peña testified that they were in the company of other children, namely: Myra, Mylen and Gladys playing sipa and that the place where the alleged rape took place was a one- room place. Accused claims that if it was true that he molested the victim, it could have been seen by the other children who in the ordinary way of things would have come to Marife's succor or go out to report the unusual incident; that raping Marife when the playmates were around would be highly improbable and runs contrary to human nature and experience because the mere presence of other people deters a person from committing a crime more so the rape of a child;

(2) Jimmy testified that from the bodega where they were playing, he ran upstairs to light his sipa; when her grandmother forbade him from doing so, he immediately rushed down again to the bodega. Accused-appellant claims that considering Jimmy's youthfulness and energy it took Jimmy only a minute to do this, leaving the accused a very short time to enter the bodega, look for Marife, remove her panty, put out his penis and have intercourse with her. Accused-appellant claims that in Marife's testimony, she said that after he inserted his penis inside her vagina, it took a long time thereafter before he removed his sexual organ, but from Jimmy dela Peña's testimony, it took Jimmy a very short interval to run from the bodega and return back;

(3) The actuation of Federica Ticuan , the victim's mother, elicits suspicion. After learning of her daughter's ordeal, she chose to look first for the accused and not finding him, looked for the uncle of the accused instead of immediately bringing her daughter to the hospital;

(4) In Marife's sworn statement, she stated that she was made to lie on a table and was violated, and in her direct examination, she even said that accused went on top of her. However, on cross-examination, Marife declared that she was standing when accused removed her panty and inserted his penis inside her vagina. Accused-appellant claims that it would take a great deal of resourcefulness and creativity to imagine how this could happen considering that he is a full grown man of 20 years, standing 5 feet 6 ½ inches in height whereas the victim is but a child of a little more than 5 years old. Accused-appellant further contends that the medico legal findings negate the commission of rape since not a tiniest injury appear, and there was no hematoma and no lacerations;

(5) The "de-virginization" of a woman causes pain on her genitals, and yet the victim's actions after the alleged rape, i.e. she was able to run upstairs to where her grandmother was, walk to the jeepney which brought them to the hospital and also walk her way inside the hospital where she was examined, are contrary to human nature which only indicate the absence of any injury on her person;

> (6) If accused-appellant had committed the alleged rape, he would not have informed the victim's grandmother of his whereabouts i.e., that he was going to the Hillside, on that fateful day;
>
> (7) The Ticuan family has an axe to grind against him; before the alleged incident the victim's mother, Federica, accused him of stealing plywood and of being a bad influence upon her husband.

We find no merit in this appeal.

To begin with, discrepancies or inconsistencies between a witness' affidavit and his testimony in open court do not necessarily impair his credibility. Affidavits are taken ex-parte and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.[10] In the same vein, minor inconsistencies and contradictions in the declaration of the witnesses do not destroy such witnesses' credibility but even enhance the truthfulness of their declarations as they erase any suspicion of a rehearsed testimony.[11] Discrepancies as to who were the companions of victim Marife when they played sipa inside the bodega, the interval of time between Jimmy's leaving the bodega and his return, and the position of victim Marife when she was raped, refer only to minor details which do not refer to the commission of the crime itself nor the positive identification made of the accused-appellant as Marife's ravisher.

We shall discuss these issues seriatim.

Anent accused-appellant's argument of the improbability of rape having been committed considering that the place where the alleged rape took place was only a room without a bed and any partition, and the presence of the victim's playmates, does not persuade. It is established that lust is no respecter of time and place and rape can be and has been committed in even the unlikeliest of places. We have repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping.[12] There is no rule that rape can be committed only in seclusion.[13] Thus the presence of the victim's sisters would in no way deter the accused appellant from perpetuating his lustful designs as these children are even younger than Marife and could not be expected to realize what accused-appellant was doing to Marife. The trial court correctly observed:[14]

> "Second, grati argumenti that there were persons present at the time the accused performed his bestial act on the young girl, how would one expect a 3-year old Myra and 11/2 year old Myleen to know what the accused was doing upon their 5 year old sister Marife? They still do not know what is sex. If these two young children had observed what the accused was doing to their sister, still they are not aware whether or not such actuation of the accused is against the laws of man and of God. Rape can be committed in any place, says the Supreme Court in the case of People vs. Remota, supra."

Accused-appellant next claims that when Jimmy went upstairs to fix his sipa and immediately came down after her grandmother forbade him from lighting his sipa, only a short interval of time had elapsed and the rape could not have taken place in such a short time. The argument is not tenable. While it may be true that the act of Jimmy in going upstairs and talking to her grandmother who did not allow him to light the stove to repair his sipa would not take a long time to accomplish, it is not impossible for the accused to accomplish his dastardly act on Marife in such a short time. The victim is only an innocent girl of very tender age whereas the accused-appellant is a mature 20-year old man who stands about 5 feet six inches tall. It has been held that rape may be consummated in one minute.[15]

We also do not find any merit on the allegation of accused-appellant that it was unnatural for the victim's mother to look first for her daughter's ravisher instead of immediately bringing her to the hospital. Such a reaction from the victim's mother is not abnormal; it would be a natural reaction of the mother to look for and confront her

daughter's ravisher. Moreover, people react differently to different situations and the conduct of the victim's mother at the time would not disprove the charges against the accused. In fact, after looking for the accused and not being able to find him, she immediately brought her daughter to the Baguio General Hospital for a medical examination and went to the police station and executed a sworn statement before the police authorities.

Accused-appellant next claims that Marife's sworn statement differs from her testimony during the trial regarding the position in which she was raped. He alleges that Marife on cross-examination testified that she was raped while standing which is highly improbable and difficult to accept considering the difference in height between the accused-appellant and the victim.

We are not persuaded.

As earlier stated discrepancies or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility.

Moreover, this Court finds no cogent reason to overturn the trial court's findings on the credence of the testimony of Marife, who although only 5 years old when she was sexually assaulted testified in a clear and straightforward manner on what accused-appellant did to her, Thus:[16]

"PROS. CARANTES:

Q: Now, I will ask you Marife, do you know the accused in this case, Jerry Perez?

A: Yes, I know.

Q: Why do you know him?

A: He stays in the house of my auntie.

Q: Why, where is the house of your auntie?

A: At Bakakeng.

Q: Where is this Bakakeng located, is it here in Baguio City?

A: Yes, Sir.

Q:

What about you, where do you live?

A: At Bakakeng.'

Q: How far is your house from the house of your auntie where Jerry Perez lives, is it just near or far away?

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A: Near.

Q: If that Jerry Perez is inside the Courtroom, will you please point him out to the Court?

CLERK OF COURT V:

Witness pointing to a person inside the Courtroom who when asked answered by the name Jerry Perez.

PROS. CARANTES:

Q: How long have you known this Jerry Perez?

A: Before yet.

Q:

When was the last time you saw this Jerry Perez?

A: I do not know, Sir.

Q: When was the last time you saw Jerry Perez in Bakakeng?

A: Before.

Q: Now, when you saw Jerry Perez in the last time in Bakakeng, what was he doing then?

A: Nothing.

Q: Is there a bodega near the house where you live?

A: There is.

Q: Did you have occasions to see Jerry Perez inside that bodega?

ATTY. SAGSAGO:

We object, Your Honor.

COURT

Witness may answer.

WITNESS:

A: I saw him.

PROS. CARANTES:

Q: When you saw him inside the bodega, did he do anything to you?

A: There is.

Q: What did this Jerry Perez do?

A: He inserted his penis to my vagina.

Q:

Would you be able to describe to this Court how this Jerry Perez inserted his penis to your vagina?

A: I know.

Q: How did he do it?

A: I do not know

Q: Did you see Jerry Perez take off his pants inside the bodega before when he had inserted his penis to your vagina?

A: I saw him.

Q: Now, after he took off his pants, what did he do to you if he did any?

A: He inserted his penis in my vagina.

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Q: Before that, did he make you lie down?

A: No.

Q:

Did he go on top of you?

A: Yes.

Q: What did you feel when this Jerry Perez went on top of you and inserted his penis inside your vagina?

A: Nothing.

Q: Why, did you not feel pain?

A: I felt pain.

Q: Did you cry when this Jerry Perez went on top of you?

A: No.

Q: What did you do when this Jerry Perez went on top of you?

A: Nothing.

Q:

Now, what happened after this Jerry Perez went on top of you?

A: He inserted his penis to my vagina.

Q: Did he eventually take out his penis from your vagina?

A: Yes.

Q: After he did that, what then did he do?

A: He went home.

Q: Did he put his pants back?

A: Yes.

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Q: What about you, what did you do after Jerry Perez put his pants on and back for work?

A: I cried.

Q:

After crying, what did you do?

A: I do not know.

Q: Did you not tell anyone what had happened to you?

A: There was.

Q: Who was this person to whom you related what happened to you?

A: My grandmother.

Q: Why, where does your grandmother stay?

A: Upstairs.

Q:

Is it near your house?

A: Yes.

Q: How far away is it from the bodega where this Jerry Perez inserted his penis inside your vagina?

A: Only downstairs.

Q: Do you remember the time of the day when you underwent that sad experience inside that bodega?

A: No.

Q: Do you remember also the day when this Jerry Perez did what he did to you inside the bodega?

A: No.

Q:

Before that happened, what are you doing?

A: Nothing.

Q: Were you not playing with your friends?

A: I was playing with them.

Q: Now, you said that you related to your grandmother what happened to you inside the bodega, how did you do that, did you run to her house?

A: Yes.

Q: And were you able to see your grandmother?

A: Yes, I saw.

Q:

What did you tell your grandmother when you saw her?

A: I told her “lola Jerry Perez inserted his penis in my vagina.”

Q: And what did your grandmother say when you told her that?

A: Nothing.

Q Did not your Lola get angry?

A: She got angry.

Q: And what did she do when she got angry?

A: She said she is going to call my mother.

Q:

Was she able to call for your mother?

A: No because at that time my mother was arriving already.

Q: Did your mother arrive at that time?

A: Yes.

Q: When she arrived, did your grandmother talk to her?

A: Yes.

Q: What did they do after they talked with each other?

A: They brought me to the hospital.

PROS. CARANTES:

Q: When you were at the hospital, were you examined by a doctor?

A: Yes."

Testimonies of child-victims are given full weight and credit. It is simply inconceivable that Marife, at 5, with all her childhood naivete and innocence would make up the story of sexual molestation and tell her grandmother that she was raped by the accused if it was not true. Marife's straightforward testimony cannot be discredited by the mere denial of the accused. It is a well-settled rule that an affirmative testimony is far stronger than a negative testimony, especially so when it comes from the mouth of a credible witness.[17]

Accused-appellant contends that Marife's testimony that she was raped while standing is improbable. He claims that based on Marife's testimony, it would appear that he was standing face to face with the victim when the insertion take place. While it may be true that there may be imperfections in her testimony, we do not find this to be a reason to doubt her credibility. As elucidated by the OSG in its appellee's brief:[18]

> "While it is true that Marife testified in direct examination that she was standing when appellant raped her. However, she did not mention the relative position of appellant when he raped her. Thus, appellant could have bent or knelt or positioned himself in such a way as to effectively perpetrate his bestial objective. Surely, Marife, being an innocent 5-year old girl when ravished, could not be expected to notice the fine details of her forcible defloration by appellant (People v. Gabris, 258 SCR 663 [1196]).
> Thus, the trial court correctly ruled, viz:
>
> There might have been a discrepancy on the testimony of the offended party. This could be expected to a child who was only 5 years old at the time of the commission of the offense and testified ten (10) months after the act complained of happened. But granting that she declared that at the time the accused was standing, there is no statement of the child that the accused did not bend or kneel. But the fact remains that the sex organ of the accused was inserted or at least kissed the lips of the pudendum of the victim. The unexplored forest of happiness of the young girl has been the object of intrusion by sexual ferdelance.
>
> By the way, what could we expect from a young girl who does not even know what is good or bad, what one is doing in a church and does not even know the consequences of one who tells a lie? T.S.N., June 9, 1993, M. Ticuan) But such kind of a person, young as she is, has the gospel truth in her declaration."

The Court has consistently adhered to the rule that inconsistencies on minor details of the testimony of a witness serve to strengthen his credibility as they are badges of truth rather than an indicia of falsehood.[19] A rapist cannot expect the hapless object of his lechery to have the memory of an elephant and the cold precision of a mathematician because total recall of an incident is not expected of a witness, especially if it is the victim herself who is on the witness stand.[20] She is not expected to mechanically keep and then give an accurate account of

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the traumatic and horrifying experience she had undergone.[21] This is particularly true in this case where the rape victim is only five years of age, it being improbable for a young girl like her and one not exposed to the ways of the world to impute a crime as serious as rape to any man if it were not true.[22]

For rape to be consummated, full penetration of the complainant's private organ is not necessary.[23] Even the slightest penetration by the male organ of the lips of the female organ, or labia of the pudendum constitute carnal knowledge.[24]

The medico legal findings corroborate the testimony of the victim that accused appellant inserted his penis into her vagina. Dr. Jane Kiat-Ong testified that when she examined the victim she found the labia majora slightly erythematous (reddish).[25] She intimated that the reddening of Marife's labia majora could have been caused by a foreign object because if labia majora was left alone, there would no reddening.[26] She clarified that if there is no object or any foreign object that touches the body of a person there would be no indication of any direct reddening. We affirm the trial court's findings as follows:

> "Third, it is really crystal clear on the findings of the medical witness that no injuries, abrasions, hematoma, lacerations, fresh bleeding and the fourchette is smooth. However, there is "slightly erythematous" or reddening on the labia of the sex organ of the young girl. The doctor who examined the victim elucidated on her finding "slightly erythematous" that the door of the pudendum of the child had been touched caused by a rough or hard object as it resulted to its reddening, and this must have been caused by the penis being rubbed on the said labia majora of the vagina of the young victim. The accused might have been afraid in fully inserting his sex organ as it might cause rupture or injuries on the vagina of the child. As in masturbation, he just enjoyed satisfying his libidinous desire by putting his hardened instrument of life on the lips of the girl's sex organ, rubbed it and imagining the most beautiful and sexy woman on earth."[27]

Neither are we persuaded by accused-appellant's argument that defloration of a woman causes pain on her genitals and yet victim Marife did not show such suffering when she went upstairs to her grandmother, rode in a jeepney and walked her way to the examination room of the hospital.

People differ on the degree of pain that they could bear.[28] As pointed out by this Court, "suffice to stress that it is not proper to judge the actions of children who have undergone traumatic experience by the norms expected under the circumstances from mature persons. The range of emotions shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims."[29] Moreover, as correctly observed by the trial court, the accused-appellant was afraid to insert fully his sex organ as it may cause rupture on Marife's vagina, thus Marife did not suffer from any injury that would cause her to be immobile. The victim's reaction immediately after she was ravished, i.e. she cried and went upstairs to her grandmother to tell her that Gerry inserted his penis to her vagina is consistent with the truthfulness of her accusation of rape.

Accused-appellant's assertion that if had he committed the alleged rape, he would not have informed the victim's grandmother of his whereabouts is a flimsy excuse. We are inclined to believe that such actuation was a ploy to make the grandmother believe that he was already leaving for Hillside, Baguio although the truth is that he followed the children downstairs to accomplish his bestial act upon victim Marife. Moreover, it was not impossible for him to commit the crime and leave for Hillside. As he admitted during the trial, the distance from Bakakeng Norte (where the crime was committed) and Hillside where he said he was going was only a fifteen (15) minute drive by public utility jeepney. Thus it was not physically impossible for accused-appellant to be at the scene of the crime or within its immediate vicinity at the time of its commission.

Accused-appellant's allegation of ulterior motive cannot be sustained. No mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for the child's defilement.[30] In fact, Federica, when

she knew about the rape, immediately brought Marife to Baguio General Hospital to undergo a medical examination and thereafter went to the police authorities to lodge their complaint against accused-appellant.

In cases of rape of a child of very tender age, the Court will additionally consider the fact that no mother in her right mind would possibly stoop so low as to subject her daughter to the hardships and shame concomitant to a rape prosecution just to assuage her own hurt feelings.[31] It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma.[32] It is hard to believe that a mother would sacrifice her own daughter and present her to be the subject of a public trial if she, in fact, has not been motivated by an honest desire to have the culprit punished.[33]

Finally, we find unmeritorious the allegation of accused-appellant that the judge who rendered the decision was not the one who heard the case hence, he was not able to observe the demeanor of the prosecution witnesses and was not in a position to ascertain their credibility. The circumstances alone that the judge who wrote the decision had not heard the testimony of the prosecution witnesses would not taint his decision.[34] In the instant case, the full record was available to Judge Joven F. Costales and a perusal of his decision readily shows that it was based on the evidence presented during the trial which includes the stenographic notes. It is evident that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses with the perceptiveness of a trial judge.[35] The decision of a judge who did not try the case is not by that reason alone erroneous.[36] At any rate, we have carefully scrutinized the transcripts of the testimonies given in open court, as well as the records in this case and this Court is convinced that the trial court did not commit any reversible error in evaluating the evidence.

Accused-appellant attempts to attribute numerous alleged flaws to the testimonies of the prosecution witnesses which are not of decisive importance. He proffered nothing but denial and alibi in his defense. Settled is the rule that alibi is a weak defense for it is easy to concoct and fabricate. It cannot prevail and it is worthless in the face of the positive identification by a credible witness. Here, Marife, whose credibility is not questioned, positively identified accused-appellant as her ravisher.

With regard to accused-appellant’s civil liability, the trial court awarded victim Marife P50,000.00 as moral damages. It has been the policy of this Court to outrightly award an amount of P50,000.00 as civil indemnity ex delicto, separate from moral damages of P50,000.00 to victims of rape upon indubitable showing of its commission.[37]

We affirm the conclusion that statutory rape had been committed. The gravamen of the offense of statutory rape as provided in Article 335, paragraph 3 of the Revised Penal Code is the carnal knowledge of a woman below 12 years of age.[38] The victim’s mother testified as to the age of her daughter and accused-appellant even cited victim’s age in his brief as 5 years old. Marife, who was only 5 years old at the time, was raped.

WHEREFORE, the decision of the trial court finding the appellant guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED, with MODIFICATION that he is ordered to pay complainant the amount of P50,000.00 as civil indemnity in addition to P50,000 moral damages.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Penned by acting Presiding Judge Joven F. Costales.

[2] Rollo, p. 9.

[3] Records, p. 34.

[4] Rollo, pp. 149-152.

[5] TSN, February 17, 1995, p. 3.

[6] Ibid, p. 4.

[7] Ibid, p. 9.

[8] Rollo, pp. 57-58.

[9] Rollo, p. 70-71.

[10] Sumalpong vs. CA, 268 SCRA 764 .

[11] People vs. Israel, 231 SCRA 155; Naval vs. Pandoy, 275 SCRA 654.

[12] People vs. Gabayron, 278 SCRA 78.

[13] People vs. Talabac, 256 SCRA 441.

[14] Rollo, p. 46.

[15] People vs. Guibao, 217 SCRA 64; People vs. Mangalino, 182 SCRA 329; People vs. Detuya, 154 SCRA 410.

[16] TSN, June 30, 1993, pp. 3-8.

[17] People vs. Digno, 250 SCRA 237.

[18] Rollo, pp. 167-168.

[19] People vs. Travero 276 SCRA 301; citing People vs. Ponayo, 235 SCRA 226; People vs. Silong, 232 SCRA 987; People vs. Vivar, 235 SCRA 257.

[20] People vs. Travero, supra citing People vs. Mandap, 244 SCRA 457.

[21] People vs. Travero, supra citing People vs. Cura, 240 SCRA 234; People vs. Ching, 240 SCRA 267.

[22] People vs. dela Cruz, 251 SCRA 77; People vs. Vitor, 245 SCRA 392.

[23] People vs. Evangelista, 282 SCRA 37; People vs. Budol, 143 SCRA 241; People vs. Dabon, 216 SCRA 656.

[24] People vs. Castromero, 280 SCRA 421; People vs. dela Pena, 233 SCRA 573; People vs. Galimba, 253 SCRA 722.

[25] TSN February 5, 1993, p. 5.

[26] TSN, February 5, 1993 , p. 9.

[27] Rollo, p. 47.

[28] People vs. Pasayan, 261 SCRA 558.

[29] People vs. Remoto, 244 SCRA 506.

[30] People vs. Ariel Oliva, 282 SCRA 470.

[31] People vs. Jose, G.R. No. 128789, May 24, 1999, citing People vs. Gecomo, 254 SCRA 82; People vs. Cervantes, 265 SCRA 832.

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[32] Ibid, citing People vs. Dones, 254 SCRA 696, People vs. Alimon, 257 SCRA 658; People vs. Balisnomo, 265 SCRA 98.

[33] Ibid, citing People vs. Henson, 270 SCRA 634.

[34] People vs. Fulinara, 247 SCRA 28.

[35] People vs. Badon, et al , G R No. 126143, June 10, 1999.

[36] People vs. Gazmen, 247 SCRA 414.

[37] People vs. Carlos Bonghanoy, G.R.No.124097, June 17, 1999.

[38] People vs. Mangalino, supra; People vs. San Buenaventura, 164 SCRA 150; People vs. Villegas 127 SCRA 195.

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