

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEN LIBO-ON, ACCUSED-APPELLANT.

G.R. No. 136737. May 23, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an automatic review of the decision[1] of the Regional Trial Court, Branch 17, Davao City convicting accused-appellant Ben Libo-on of the crime of rape committed against Analyn Caballes, his fourteen year old niece, and imposing on him the supreme penalty of death.

The Information dated 4 November 1997 charging accused-appellant of the crime of rape reads, as follows:

"The undersigned at the instance of complainant, Analyn Caballes, whose affidavit is hereto attached and made an integral part hereto, accuses the above-named accused of the crime of RAPE under Article 335 of the Revised Penal Code in relation to Republic Act No. 7659 and Republic Act 8353, committed as follows:

That on or about November 2, 1997, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above named accused, an Uncle of the complainant, by force, violence and intimidation, willfully, unlawfully and feloniously had sexual intercourse with the said Analyn Caballes, a 14 year old minor, with a mind of child, against her will.

CONTRARY TO LAW."[2]

After the information had been filed in court but before arraignment, the prosecution submitted an affidavit of desistance[3] purportedly signed by complainant and with the conformity of her mother, Erlinda Caballes. The prosecution did not file a motion to dismiss the case but instead, it manifested that it would abide with the disposition of the court on the matter.

The incident was then set for clarificatory hearing on 27 January 1998 where the complainant and her parents were summoned to shed light on the voluntariness of the execution of the affidavit of desistance.

During the clarificatory hearing, the mother of the complainant, Erlinda Caballes, affirmed the voluntariness of the execution of the affidavit of desistance by her and her daughter[4]. She claimed that the reason she agreed to the same was because she pitied the children of the accused-appellant. She denied being paid any amount in consideration for their desistance. When asked by the court, she admitted that her husband didn't know about the execution of said affidavit and that her husband still has not forgiven accused-appellant for what has been done to their daughter.[5]

The father of the complainant, Ananias Caballes, was also questioned by the Court with respect to the affidavit of desistance executed by his daughter. He stated that if he had his way, he would not agree to the desistance and would continue the prosecution of the accused[6]. He admitted that there was a settlement of the case between his wife and the accused but he did not agree to the same.[7] He likewise stated that he had no hand in the preparation of the affidavit of desistance signed by his wife and daughter. When asked by the court what his final decision on

the matter was, he stated that he would continue with the case and that he will support and encourage his daughter to tell the truth about the incident[8]

In view of the manifestation of the father of the complainant that he wanted to pursue the case, the Court declared, in an Order dated January 27, 1998[9], that the affidavit of desistance executed by the complainant and her mother was not binding on the court. Pending the resolution of the case, custody of the complainant was given to the "Bahay Dangupan" of the Ministry of Social Welfare and Development Davao City.

The case was set for arraignment on February 5, 1998; accused-appellant pleaded not guilty to the charge.

The prosecution presented evidence tending to prove the following facts:

At the time of the alleged rape incident, complainant Analyn Caballes, then a fourteen-year-old minor, lived with her parents, Ananias and Erlinda Caballes, at their home in Sasa, Davao City[10]

On November 2, 1997, complainant was at the residence of her grandmother, a certain Victoria Lopez, to help in the birthday celebration of her aunt, a certain Susan Lopez. Accused-appellant, together with his wife, was also at that small party. She knew accused-appellant as he was the husband of her Aunt Mary.[11]

At around 9:00 in the evening, the grandmother of complainant asked her to buy beer from a nearby sari-sari store. Complainant dutifully obeyed and proceeded to the sari-sari store which was about a kilometer away from her grandmother's house.[12]

While passing through an unlighted street, accused-appellant suddenly appeared and took hold of complainant's back and hands. She struggled to release herself but she failed to do so. Accused-appellant then took her to an abandoned house near Km. 11 and brought her inside. According to complainant, the place was dark and deserted. At the house, she again struggled to break free of accused-appellant's grasp but again she failed[13]

She was then made to lie down on a wooden bed inside the abandoned house. Accused-appellant then unzipped his pants and removed complainant's skirt. Accused-appellant then spread the legs of complainant and proceeded to lie down on top of her. He then succeeded in inserting his penis into her vagina and proceeded to make a push-and-pull movement. During this whole incident, complainant kept on crying. She could not estimate how long accused-appellant had carnal knowledge with her as all she can remember was that she experienced excruciating pain during the act[14]

After her uncle succeeded in raping her, accused-appellant left her alone to cry in one corner of the house. After a while, complainant went home and she immediately told her father about the incident. Her father accompanied her to the police station where she executed an affidavit. She also went to the Davao Medical Center where she was examined by Dr. Marivic Mosqueda, who issued a corresponding medical certificate on the result of her examination of complainant[15]

The prosecution likewise presented anew the mother of complainant, Mrs. Erlinda Caballes. She testified that she now supports the decision of the complainant to proceed with the case against the accused. She declared that the accused is the husband of her sister and, as such, the accused is the uncle of the complainant.[16] She testified that on the date of the commission of the crime, complainant was 14 years, 7 months, and 21 days of age, as evidenced by her birth certificate.[17]

She claimed that at around 10:00 p.m. of November 2, 1997, complainant came home from the house of her mother where she reported to her father that she was raped by the accused. They then immediately brought her to the house of accused-appellant where they confronted him about the accusation of complainant. The accused allegedly stated that they better submit complainant to a medical examination to determine the truth of the

incident.[18]

Dr. Marivic Mosqueda, a resident physician at the Davao Medical Center was likewise presented by the prosecution. She declared that she examined the complainant on November 3, 1997. Complainant reported to her that she was raped by her uncle on November 2, 1997 at around 9:00 p.m.[19]. Physically, she found complainant to be untidy and incoherent. She found no injury on her private organ and neither was there any laceration or hematoma on the body of complainant. She examined complainant's hymen where she noted the presence of old and healed lacerations. Inside the vagina of complainant, she found the presence of discharged spermatozoa, which she indorsed to the laboratory for examination.[20]

A social worker assigned to the case of complainant was likewise presented where she testified on the results of the case study[21]conducted on the complainant.

The prosecution also presented SPO3 Conrado Sinsona, Jr. who testified that on November 2, 1997, he was the policeman on duty at the Sasa Police Station. He stated that at around 10:30 p.m. the parents of the victim went to the police station and reported the alleged incident of rape. After the incident was reported, he immediately went to the house of the accused and invited him to the police station for questioning. The incident was then properly blotted.[22]

For its part, the defense presented four (4) witnesses, namely, accused-appellant Ben Libo-on, Wilfredo Ongco, Carlito Ugat, and Cesar Aquino.

Accused-appellant Ben Libo-on denied that he committed the rape against complainant. He claimed that prior to the incident, the mother of the complainant Erlinda Caballes approached him to borrow money in the amount of P5,000.00, which he accommodated. Afterwards, she again went back to him to borrow an additional amount of P5,000.00 but this time he refused as he had no more money.[23]

On the day of the alleged incident of rape, he arrived in Davao City from Sto. Tomas, Davao and he met with Erlinda Caballes and her husband in the house of her mother-in-law. He demanded from Erlinda Caballes the payment of the P5,000.00. Instead of paying, Erlinda Caballes allegedly got mad at him. Accused then left the house of his mother-in-law and proceeded to the house of his friend, Tata Ongco.[24]

He then proceeded to have a drinking session with his friends and he stayed at the house of Ongco until 10:00 p.m. His wife then fetched him and they proceeded to the house of his mother-in-law where they would spend the night.[25]

At around 10:15 p.m., he was awakened from his sleep by some policemen who demanded to see him. He was told to come with them to the police station although the policemen did not tell him what the problem was. When he arrived at the police station, he was immediately put inside a jail cell.[26]

The following morning, Erlinda Caballes arrived and told the accused that he was in jail because he molested her daughter. She allegedly demanded P50,000.00 from him so that the case may be settled. He told her that he could not possibly agree to any settlement of the case as he had done nothing wrong. In fact, he reminded her that she still owes him P5,000.00[27]

They met again on November 5, 1997 where she again asked him about the possible settlement of the case. He insisted however that he had not done anything wrong and he could not possibly pay such a large amount. Erlinda Caballes then intimated that she was amenable to a reduced amount. He was not able to follow-up the matter however as he was then detained. It was his mother and his friend, a certain Cesar Aquino, who proceeded to meet with Erlinda Caballes regarding the possible settlement of the case.[28]

With respect to the rape incident, accused denied the accusation of complainant. He stated that the road from the house of his friend, Tata Ongco, to the house of his mother-in-law is well-lighted. Likewise, the street going to the Sasa Galera or cockpit, where the alleged rape was committed, was well-lighted. He estimated that the distance between the house of his friend and the cockpit was about one kilometer.[29]

On the date of the alleged incident, he claimed that he could not have committed the crime as he was drinking with his friends at the house of Tata Ongco from 6:00 p.m. to 10:00 p.m. According to him, he didn't leave the house of his friend until his wife fetched him at around 10:00 p.m. Moreover, at the time of the alleged incident, the place where the rape allegedly happened was already padlocked and nobody could enter the said cockpit.[30]

The testimony of accused-appellant was supported by his friend, Wilfredo Ongco. He affirmed that on November 2, 1997, accused-appellant was in his house as he was his close friend and "barkada." He claimed that on that date, accused-appellant was in his house at Km. 11 Davao City having a drinking session with him and some friends. He stated that from 6:00 p.m. to 10:00 p.m. accused stayed at his house and there was no time that he left the place.[31] He testified further that the road from the house of accused-appellant's mother-in-law and Sasa Galera, where the alleged rape was committed, was quite heavily populated and people would easily notice if there was any unusual incident.[32]

The defense likewise presented Carlito Ugat, another friend of accused-appellant. He testified that on November 2, 1997, at around 9:00 p.m., he went to the house of Wilfredo Ongco to borrow a screwdriver. He saw accused-appellant at the said house drinking Tanduay rum with Ongco. He then joined the drinking session until 10:00 p.m. after which they called it the night.[33]

Ugat also identified several pictures showing the cockpit or Gallera where the alleged raped happened. He likewise testified that he personally inspected the place after the incident and he saw that the cockpit was abandoned and padlocked. He also claimed to be familiar with the road to the cockpit and he stated that the said road was well-lit with electric posts along the side of the road.[34]

Finally, the prosecution presented Cesar Aquino, a close friend of accused-appellant. He testified that when accused was already detained by the authorities, he visited accused-appellant at the police station where the latter asked him to help out in the case by inspecting the cockpit where the rape allegedly happened.[35] He then went to the Gallera where he saw that nobody could have possibly gone out or in of the premises as the gate thereof was securely padlocked. He likewise saw that the Gallera was fenced in by a twelve-foot tall wooden fence. He confirmed further that the road from the house of accused's mother-in-law was well lit by electric lampposts. He estimated that the distance between the two places was more than one kilometer.[36]

He testified further that the mother of the accused requested him to contact Erlinda Caballes to follow-up her offer of settlement. He was able to speak with Erlinda Caballes who demanded the amount of P35,000.00 for the settlement of the case. He relayed the matter to the mother of the accused but she said that she couldn't afford the amount. He went back to Erlinda Caballes who said to him that she was willing to reduce the amount to P25,000.00. The amount was further reduced to P15,000.00 but the mother of the accused said that she could only afford P8,000.00.[37] Erlinda Caballes finally agreed to the said amount as she allegedly pitied the children of accused-appellant. After receiving the amount, Erlinda Caballes then executed an affidavit of desistance which was also signed by the complainant.[38] Later on, the father of complainant objected to the settlement as allegedly, he also wanted to demand for himself the additional amount of P10,000.00. When the mother of the accused was informed of the demand of the father of complainant, she lost consciousness.[39]

After the presentation of these four witnesses, the defense rested its case.

Upon the request of the counsel for the accused, and without objection from the Assistant City Prosecutor, an ocular inspection of the place where the rape allegedly happened was conducted. The results of the said ocular inspection were contained in a report[40] submitted to the court. The case was thus submitted for resolution.

In a Decision[41] dated October 6, 1998, the trial court convicted appellant of the crime of rape and imposed on him the supreme penalty of death. The dispositive portion of the decision is as follows:

"WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of the accused beyond reasonable doubt of the offense charged, accused BEN LIBOON pursuant to Article 335 of the Revised Penal Code as amended by Rep. Act 7659 in par. 8 thereof, is imposed the supreme penalty of death by lethal injection under Rep. Act 8493 together with all accessory penalty (sic) provided by law.

Moreover, relative to Article 100 in relation to Article 104 of the Revised Penal Code, governing the civil aspect of this case, accused Ben Liboon is furthermore ordered to pay complainant Analyn Caballes the amount of P50,000.00 by way of civil indemnity as decided by the Supreme Court in the case of PP vs. Caballes, G.R. No. 102723-24, promulgated on June 19, 1997.

For lack of sufficient evidence to prove moral damages against the accused in the commission of the offense charged, moral damages is denied with costs de oficio.

Pursuant to Art. 47, par. 2 of Rep. Act 7659, the Branch Clerk of Court of this court is ordered to immediately elevate the entire records of the case with the Clerk of Court, Supreme Court, Manila for automatic review of the said court of the decision in this case.

SO ORDERED."[42]

Hence, this automatic appeal where accused-appellant raises the following assignment of errors[43]:

I.

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND UNDUE CREDENCE TO THE INCREDIBLE ACCOUNT OF PRIVATE COMPLAINANT RELATIVE TO THE CRIME CHARGED.

II.

THE TRIAL COURT ERRED IN DISALLOWING ACCUSED-APPELLANT THROUGH HIS COUNSEL TO CROSS-EXAMINE PRIVATE COMPLAINANT ANENT THE AFFIDAVIT OF DESISTANCE VOLUNTARILY EXECUTED IN HIS FAVOR OF GROSS VIOLATION OF HIS CONSTITUTIONAL RIGHT TO CONFRONT HER.

III.

THE TRIAL COURT ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE UNCONTESTED EVIDENCE ADDUCED BY ACCUSED-APPELLANT WHICH WAS AMPLY CORROBORATED ON MATERIAL POINTS.

IV.

THE TRIAL COURT MANIFESTLY ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

After a thorough review of the records of the case, we find nothing on record that would justify a reversal of accused-appellant's conviction.

We cannot simply disregard the clear and unequivocal testimony of complainant Analyn Caballes in pinpointing accused-appellant as the author of the assault on her womanhood. It is simply unbelievable that a girl of such

tender age would fabricate such a sordid story of her ravishment at the hands of her uncle. If she is not motivated by the truth, no woman, much less a 14-year old minor, would subject herself to the rigors of a public trial, describing before total strangers the shameful, humiliating and degrading experience of the sexual assault.[44]

The complainant's narration revealed each and every relevant detail of the incident. She was abducted by accused-appellant, her uncle, while she was on an errand and was taken to an abandoned cockpit. There, away from possible witnesses, accused-appellant proceeded to commit his evil design on complainant. Complainant was made to lie down and accused-appellant proceeded to unzip his pants and remove complainant's skirt and underwear. Accused-appellant then forcibly spread the legs of complainant to facilitate his intrusion. She felt the pain when he entered her and she proceeded to cry while her uncle was satisfying his lust. We believe that these declarations sufficiently establish beyond reasonable doubt the commission of accused-appellant of the crime of rape against complainant on February 2, 1997. Thus:

"Pros. Evangelio:

Q:

At about 9:00 o'clock in the evening of February 2, 1997, where were you?

A:

I was at that time in the house of my grandmother.

Q:

While in the house of your grandmother, what were you doing then at that time?

A:

At that time it was the birthday of my aunt.

Q:

Now, at that time which was the birthday of your aunt, do you recall of anything that your aunt told you to do?

A:

Yes. She told me that day, buy for me beer.

Q:

Now did you comply with the request of your aunt?

Atty. Sangco:

We object your Honor, leading.

Pros. Evangelio:

She testified that was ordered to buy beer, the question is, if she followed her aunt, it is a follow-up question, your Honor.

A:

Yes sir.

Q:

Now, where are you going to buy beer at that time?

A:

In the neighbor.

Q:

How far is that place where you are supposed to buy beer from the house of your lola?

A:

The distance is 1 and a half but actually, I do not know the distance sir.

Q:

In going to that place, where are you supposed to buy beer (sic), kindly tell the court what is the lighting condition in that place?

A:

There was no street light sir.

Q:

Now Analyn, do you know the accused in this case Ben Libo-on?

A:

Yes, sir.

Q:

Why do you know him?

A:

Because he is the husband of my aunt, sir.

Q:

Who is the aunt you are referring to?

A:

Aunt Mary, sir.

Q:

If that Uncle which you said according to you is in court and the husband of your aunt, will you point at him if he is in court?

A:

(witness pointing to a man who identified himself as Ben Libo-on).

Q:

Since he is your Uncle being the husband of your aunt, where is the accused and your uncle and your aunt

living?

A:

They are also living in the house of my grandmother sir.

Q:

At that time when you said there was a party in the house of your Lola, where was the accused Ben Libo-on?

A:

He was there, sir.

Q:

How about his wife, your aunt, where was she?

A:

Yes, sir.

Q:

Now by the way Analyn, will you describe the house of your lola? Is it a two-storey house or only one floor?

A:

Only one-storey house.

Q:

While on your way to buy beer, according to you, you were to buy beer, please tell the court what happened, if any?

A:

Yes sir, something happened.

Q:

What was that incident?

A:

He took hold of my back and one of my hands.

Q:

Who took hold of your back and held your hand?

A:

Ben Libo-on.

Q:

Now, how did you know that it was your uncle Ben Libo-on who took hold of your hand?

A:

Because I saw him during that time.

Q:

Alright, now in what part of the way when (sic) you were held by the accused?

A:

On the street while I was walking on the street.

Q:

Now, when your uncle held you, what happened next?

A:

I tried to release myself sir.

Q:

What happen (sic) when you struggled?

A:

I lost strength while I was trying to release myself.

Q:

What happened next?

A:

He brought me to a certain house.

Q:

Where was that house located?

A:

Near Km. 11.

Q:

Describe that house where you were brought.

A:

It was a vacant house.

Q:

Now, describe to this court the lighting condition of the house?

A:

It was dark.

Q:

While you were brought to that place, what did you do?

A:

I kept on trying to release myself.

Q:

Aside from trying what else did you do?

A:

I struggled sir to release myself.

Q:

Now, right at that very place, there was a house, what happened next?

A:

He had me lie down.

Q:

Where?

A:

On a bed.

Q:

Describe that bed which you said you were forced to lie down?

A:

It was a wooden bed.

Q:

What happened next?

A:

He unzipped his pants

Q:

And then what happened next after he unzipped his pants?

A:

He removed my skirt.

Q:

And after removing your skirt, what happened?

A:

He also removed my panty.

Q:

While your Uncle was removing your skirt and panty, what did you do?

A:

He also removed my panty.

ATTY. SANGO:

That is leading.

PROS. EVANGELIO:

That is not leading Your Honor, I am asking her to describe.

COURT:

Answer.

ATTY. SANGO:

We request that this witness speak louder.

A:

He spread my two legs.

PROS. EVANGELIO:

Q:

Analyn, show to this court how exactly did this happen actually?

A:

(witness demonstrating as if opening her two legs).

Q:

Then while after that execution, what happened?

ATTY. SANGO:

We request that this witness speak louder Your Honor.

A:

He inserted his penis in my vagina.

PROS. EVANGELIO:

Q:

What made you say that the penis of your Uncle was inserted in your vagina?

A:

Because I saw it sir, when he inserted his penis in my vagina.

Q:

While he inserted his penis in your vagina, what else did you Uncle do aside from inserting his penis in your vagina?

A:

He kept on pumping and pushing and pulling.

Q:

While your Uncle was pumping, sexually molesting you, what did you do?

A:

I kept on crying.

Q:

Aside from crying, what did you do?

ATTY. SANGO:

It is leading.

A:

I just kept on crying.

PROS. EVANGELIO:

Q:

Now how long more or less Analyn did your Uncle made that push and pull situation in your vagina?

A:

I cannot tell sir.

Q:

Anyway, what did you feel about your private part when you said that you were sexually molested by your Uncle?

A:

An excruciating pain.

Q:

After your Uncle sexually molested you, what did you do?

A:

He left me alone.

Q:

In your part, where did you go?

A:

I also went home because he left me.

Q:

To whom did you report the incident if you reported?

A:

To my father.

Q:

And what action was taken by your father?

A:

He went to the police station and reported the matter[45]

On cross-examination, the defense tried to demolish her testimony by making it seem that it was coached and rehearsed. However, despite the rigorous questioning of the defense, complainant remained steadfast in her assertion that she was testifying on her own accord and that it was accused-appellant who committed the rape on her person.

Apart from her unequivocal declarations on the witness stand, the testimony of complainant is strengthened by her actions immediately after the rape. It is settled that a woman's conduct immediately after the alleged assault is of critical value in gauging the truth of her accusations.[46] Thus, the complainant's declarations in court are bolstered by the fact that immediately after the alleged rape incident, she did not hesitate in telling her parents about the rape, reporting the same to the police authorities, and having herself examined by a medico-legal.

The report of the medico-legal likewise supports her claim that she was raped. It is well-settled in our jurisprudence that the absence of spermatozoa and hymenal lacerations do not necessarily negate rape.[47] In the case at bar, spermatozoa was found in the complainant's sex organ. The presence of sperm cells in the victim's sex organ affirmed her charge more than words or anger could prove.[48]

In his Appellant's Brief, accused-appellant argues that the testimony of private complainant is full of loopholes which render her account of the rape unreliable and unconvincing and that private complainant's identification of accused-appellant as her rapist has no legal and factual basis. Specifically, he points to the testimony of complainant that the way leading to the cockpit where she was raped and the cockpit itself were dark and unlighted. If so, appellant argues, there would have been no way for the victim to positively identify accused-appellant.

We are not persuaded by accused-appellant's arguments. Contrary to accused-appellant's claim, there can be no doubt as to the identification of the victim. Complainant's familiarity with accused-appellant, who was her own uncle, enabled her to readily recognize him even if the incident occurred at nighttime. Moreover, by accused-appellant's own evidence and the findings of the ocular inspection, the way leading to the deserted cockpit was illuminated by lampposts. Thus, it is not inconceivable that complainant would be able to recognize and identify her assailant. The apparent inconsistencies in complainant's testimony regarding the lighting conditions do not detract from her spontaneous recollection of her ordeal and her clear and categorical identification of accused-appellant as the culprit. Ample margin of error and understanding should be accorded to the young complainant who, naturally would be gripped with tension, when required to relive an experience she would most definitely rather forget.[49]

Accused-appellant next takes issue on the action of the trial court in disallowing his counsel from cross-examining private complainant regarding the affidavit of desistance which she executed. Appellant argues that this action of the trial court resulted in a violation of his right to confront his accuser guaranteed under the constitution. As such, the question of whether or not private complainant voluntarily signed the affidavit of desistance remains unanswered.

The right of an accused to confront his accuser is found in Paragraph 2, Section 14, Article III of the 1987

Constitution. Said provision provides, as follows:

"(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

The right to confrontation is one of the fundamental rights guaranteed by the Constitution to the person facing criminal prosecution who should know, in fairness, who his accusers are and must be given a chance to cross-examine them on their charges.[50] The chief purpose of the right of confrontation is to secure the opportunity for cross-examination, so that if the opportunity for cross-examination has been secured, the function and test of confrontation has also been accomplished, the confrontation being merely the dramatic preliminary to cross-examination.[51]

In the instant case, we fail to see how accused-appellant's right to confrontation was violated. Precisely, this right was observed when complainant was presented on the witness stand and, after her testimony, the counsel for accused-appellant conducted his cross-examination. In this regard, the presiding judge of trial court committed no error in disallowing counsel for defendant from asking questions regarding the affidavit of desistance executed by complainant and her mother. The question as to whether the same was executed voluntarily had already been passed upon during the hearing on January 27, 1998 and had already been the subject of an Order[52] dated January 27, 1998 declaring the affidavit as non-binding on the court. If accused-appellant had felt aggrieved about the said Order, then he could have filed a petition for certiorari questioning the same. His failure to do so, however, has rendered the Order final.

At any rate, we fail to see how allowing counsel for the defense to continue with such line of questioning would have helped accused-appellant's case. Complainant, by testifying on the witness stand and narrating her ordeal at the hands of accused-appellant has effectively repudiated the contents of her affidavit and has shown her intention to continue the prosecution of the case. Moreover, it must be stressed that the said affidavit of desistance was executed and presented in court after the information had already been filed before the trial court. In such instances, the trial court is not duty-bound to simply dismiss the case as it is still within its discretion whether or not to proceed with the prosecution.[53] This doctrine gains even more significance with the reclassification, under the Anti-Rape Law of 1997 (R.A. 8493), of rape from a crime against chastity to a crime against persons.[54] Under the new law, the crime of rape may now be prosecuted even without the initiative or even consent of the offended party.[55]

Accused-appellant insists however that with the ruling of the trial court judge disallowing the questions made to complainant regarding her affidavit of desistance, the question as to whether or not the said affidavit was executed voluntarily remains unanswered. Assuming *arguendo* that the same was not executed voluntarily and/or disowned by complainant, accused-appellant argues further that such "flip-flopping conduct"[56] on her part weakens her credibility to tell the truth.

We do not agree.

As previously discussed, the question of voluntariness of the execution of the affidavit is of no moment as it is still the trial court which has the option of dismissing the case or proceeding with the trial once the information has been filed in court. As such, even if the affidavit was executed voluntarily, the court still has the discretion to disregard the same and proceeding with the trial of the accused. Moreover, by testifying on the witness stand and

recounting the details of her ordeal at the hands of accused-appellant, complainant has effectively renounced or disowned her previous statements in the said affidavit.

Lastly, contrary to the assertions of accused-appellant, while there may be "flip-flopping conduct" on the part of the complainant in deciding whether to pursue the prosecution of the case, there is no such equivocation in her testimony with respect to what had happened to her on November 2, 1997 at the hands of accused-appellant. Immediately after the rape incident, complainant told her parents about her ordeal and she voluntarily went to the police station where she executed an affidavit detailing the rape against her. She also had herself submitted to a physical examination that very same night. She gave the same account of her ordeal to the social workers who interviewed her when she was remanded to the custody of the DSWD. And in open court, the complainant gave a candid and straightforward account of her harrowing experience in a manner reflective of honest and unrehearsed testimony. Clearly, contrary to the assertions of accused-appellant, complainant has been consistent in her accusations. Such consistency enhances the credibility of her testimony.

For his last assignment of error, accused-appellant faults the trial court in not giving exculpatory weight to the uncontested evidence adduced by accused-appellant which he claims was amply corroborated on material points. Thus, he argues that the trial court manifestly erred in convicting accused-appellant of rape despite the fact that his guilt was not proven beyond reasonable doubt.

Accused-appellant's defense consists mainly of alibi and in the imputation of ulterior motives on the part of the parents of the complainant. With respect to alibi, accused-appellant testified that on the night of the alleged incident, he was at the house of a friend having a drinking session. His alibi was supported by the testimony of three of his friends who uniformly claimed that they saw him at the house of Wilfredo Ongco at the time of the incident. With respect to the motive behind the filing of the charges, accused-appellant claims that the parents of the victim owed him money and that they were also interested in extorting money from him in exchange for the dropping of the charges.

Again, we are not convinced.

It is well settled that the defense of alibi is the weakest of all defenses as it is easy to contrive and difficult to disprove.[57] For this reason, the court looks with caution upon the defense of alibi especially when, as in this case, it is corroborated mainly by relatives and friends of the accused.[58] For the defense of alibi to prosper, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime.[59] In the case at bar, accused-appellant's alibi merely placed him at about one to two kilometers away from the crime scene. For this reason, the requirements of time and place have not been met and the alibi must fail. More importantly, alibi cannot prevail and is worthless in the face of positive identification by a credible witness.[60] In the instant case, accused-appellant was directly identified by the complainant as the perpetrator of the crime in the police station on the night of the crime and in court when she gave her direct testimony.

With respect to the imputation of ill motives on the part of the parents of the complainant, we have previously held that it is unlikely for a young girl like the complainant and her family to impute the crime of rape to their own blood relative and face social humiliation if the purpose was not to vindicate the honor of the complainant.[61] It is unimaginable for them to undergo the expense, trouble and inconvenience of a public trial, not to mention the scandal, embarrassment, and humiliation such action inevitably invites, as well as to subject complainant to an examination of her private parts, and to sell her honor and being for mercenary considerations.[62] Moreover, whatever ill motives the defense was able to establish may only be imputed to the parents of the complainant and cannot be taken against private complainant herself whose testimony in court

shows that she was motivated by no other consideration than to obtain justice and retribution. It would be farfetched to conclude that she was forced by her parents to testify falsely against accused-appellant considering that at the time of the time of her testimony, she was already remanded to the custody of the Department of Social Welfare and Development. Verily, if her parents coerced her to implicate accused-appellant in the rape, such coercion already ceased when she took the witness stand.

Although we affirm the conviction of accused-appellant, the trial court committed error in imposing the supreme penalty of death. The trial court imposed the death penalty because it considered the special qualifying circumstances of relationship of accused-appellant to the private complainant and the latter's minority. The information dated November 4, 1997 charging accused-appellant of the crime of rape alleged that the accused, "an Uncle of complainant, by force, violence and intimidation, willfully, unlawfully and feloniously had sexual intercourse with the said ANALYN CABELLES, a 14 year old minor, with a mind of a child against her will." [63] The prosecution was able to prove that at the time she was raped Analyn Caballes was only 14 years, 7 months, and 21 days of age, having been born on March 11, 1983 as evidenced by her birth certificate. [64] The prosecution likewise proved accused-appellant's wife Mary is the private complainant's aunt, being the sister of her mother, Erlinda. Accused-appellant was therefore private complainant's relative by affinity within the third civil degree.

Under Article 266-B of the Revised Penal Code, which now under R.A. 8493 provides the basis for the crime of rape, the death penalty shall be imposed when, among others, "the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."

It is well-settled that this attendant circumstance, as well as the other circumstances introduced by Republic Act Nos. 7659 and 8493 are in the nature of qualifying circumstances. These attendant circumstances are not ordinary aggravating circumstances which merely increase the period of the penalty. Rather, these are special qualifying circumstances which must be specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed. [65]

In this regard, we have previously held that if the offender is merely a relation - not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim - it must be alleged in the information that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree." [66] Thus, in the instant case, the allegation that accused-appellant is the uncle of private complainant is not specific enough to satisfy the special qualifying circumstance of relationship. The relationship by consanguinity or affinity between appellant and complainant was not alleged in the information in this case. Even if it were so alleged, it was still necessary to specifically allege that such relationship was within the third civil degree.

Consequently, due to the defect in the information charging accused-appellant of rape, he can only be held liable for simple rape even if it was proven during trial that he was the uncle of the victim and thus, a relative by affinity of the victim within the third civil degree.

Neither may accused-appellant be sentenced to death by reason of the victim's alleged mental disability, or, as the information puts it, having the "mind of a child." [67] It is true that under Article 266-B of the Revised Penal Code, the penalty of death is imposed "when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime." However, aside from the testimony that the complainant stopped schooling at the first-grade level and the report of the social worker that complainant was mentally slow [68], there is no showing that complainant suffered from any mental infirmity or weakness which rendered her incapable of giving consent to the carnal act. [69] In fact, complainant's testimony

that she struggled and cried while accused-appellant was raping her[70] shows that she was aware of what was being done to her and that she was not giving her consent thereto. Finally, even assuming that complainant was suffering from a mental disability, the prosecution failed to prove, as required by law, that accused-appellant was aware of such mental condition when he raped complainant.

In view of the foregoing, accused-appellant may only be convicted of simple rape. Under Article 266-B of the Revised Penal Code, the penalty for simple rape is reclusion perpetua and accused-appellant must thus be sentenced accordingly.

In addition to the trial court's award of civil indemnity of P50,000.00, we award to the victim, Analyn Caballes, moral damages in the amount of P50,000.00, without need for pleading or proof of the basis thereof. The fact that the complainant in rape has suffered the trauma of mental, physical, and psychological suffering which constitute the basis for moral damages are too obvious to still require recital thereof at the trial by the victim since we assume and acknowledge such agony on her part as a gauge of her credibility.[71]

WHEREFORE, accused-appellant Ben Libo-on, is found guilty beyond reasonable doubt of the crime of rape and is sentenced to suffer the penalty of reclusion perpetua. Accused-appellant is also ordered to pay the victim, Analyn Caballes, civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Bellosillo, Melo, and Kapunan JJ., on leave.

[1] Penned by Judge Renato A. Fuentes.

[2] Rollo, p. 6.

[3] Records, p. 19.

[4] T.S.N. January 27, 1998, pp. 4-6.

[5] Ibid, p. 9.

[6] Ibid, p. 11.

[7] Ibid. pp. 12-13.

[8] Ibid, p. 14.

[9] Records, p. 20.

[10] T.S.N., April 14, 1998, p. 6.

[11] Ibid, pp. 8-9.

[12] Ibid, pp. 7-8.

[13] Ibid, pp. 9-10.

[14] Ibid, pp. 10-12.

[15] Ibid, pp. 12-13.

- [16] T.S.N., March 17, 1998, p. 9.
- [17] Exhibit "B".
- [18] T.S.N., March 17, 1998, pp. 10-11.
- [19] Ibid, p. 21.
- [20][20] Ibid., p. 22.
- [21] Exhibit "D".
- [22] T.S.N., March 17, 1998, pp. 3-5.
- [23] T.S.N., August 31, 1998, pp. 4-5.
- [24] Ibid, pp. 6-7.
- [25] Ibid, p. 8.
- [26] Ibid, pp. 9-10.
- [27] Ibid, pp. 10-11.
- [28] Ibid, pp. 11-12.
- [29] Ibid, pp. 12-13.
- [30] Ibid, p. 13.
- [31] T.S.N., May 26, 1998, pp. 2-3.
- [32] Ibid, pp. 3-4.
- [33] T.S.N., June 26, 1998, pp. 4-6.
- [34] Ibid, pp. 7-10.
- [35] T.S.N., August 5, 1998, pp. 3-4.
- [36] Ibid, pp. 5-7.
- [37] Ibid, pp. 8-10.
- [38] Ibid, pp. 12-13.
- [39] Ibid, p. 14.
- [40] Records, pp. 82-84.
- [41] Rollo, pp. 14-31.
- [42] Rollo, pp. 30-31.
- [43] Rollo, pp. 49-50.
- [44] People vs. Quinanola, 306 SCRA 710; People vs. Ayo, 305 SCRA 543.
- [45] T.S.N., April 14, 1998, pp. 7-12.
- [46] People vs. Ablaneda, 314 SCRA 334.

- [47] *People vs. Gabrio*, 258 SCRA 663.
- [48] *People vs. Gomez*, 279 SCRA 668; *People vs. Patong*, 224 SCRA 571.
- [49] *People vs. Marcelo*, 305 SCRA 105.
- [50] *Talino vs. Sandiganbayan*, 148 SCRA 598.
- [51] *Anciro vs. People*, 228 SCRA 629 citing *U.S. vs. Anastacio*, 6 Phil. 413; *Talino vs. Sandiganbayan*, *supra*.
- [52] *Records*, p. 20.
- [53] *People vs. Igat*, 291 SCRA 100.
- [54] "R.A. 8353. Sec. 2. Rape as a Crime Against Persons.- The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. xxx"
- [55] *People vs. Mahinay*, 302 SCRA 455.
- [56] *Rollo*, p. 60.
- [57] *People vs. Marfil*, 306 SCRA 509.
- [58] *People vs. Cantere*, 304 SCRA 127.
- [59] *People vs. Tejero*, 308 SCRA 660.
- [60] *People vs. Perez*, 319 SCRA 622.
- [61] *People vs. Perez*, 307 SCRA 276.
- [62] *People vs. Dolores*, 188 SCRA 660.
- [63] *Rollo*, p. 6.
- [64] *Records*, p. 42.
- [65] *People vs. Maglente*, 306 SCRA 546; *People vs. Olao*, 296 SCRA 658; *People vs. Ramos*, 296 SCRA 559.
- [66] *People vs. Banihit*, G.R. No. 132045, August 25, 2000; *People vs. Ferolino*, G.R. 131730-31, April 5, 2000.
- [67] *Rollo*, p. 6.
- [68] *Records*, p. 45.
- [69] *People vs. Andaya*, 306 SCRA 202; *People vs. Padilla*, 301 SCRA 265.
- [70] T.S.N., April 14, 1998, pp. 23-25.
- [71] *People vs. Banihit*, *supra*; *People vs. Magdato*, 324 SCRA 785, 2000; *People vs. Prades*, 293 SCRA 411.

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