PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO BATION, ACCUSED-APPELLANT.

G.R. Nos. 134769-71. October 12, 2001

Ponente: PUNO, J.

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PUNO, J.:

The defense in the cases at bar blames lack of religious instruction in public schools[1] for the moral depravity of the accused Roberto Bation who not just once, but thrice unleashed his bestiality on his own flesh and blood and reduced his daughter to a sex object. The excuse the defense offers is as preposterous as the lechery the accused committed for even animals who are not endowed with human rationality protect and care for their young; the accused in these cases did not only utterly fail to live up to his responsibility as a parent, he failed to live up to being a human being endowed with reason, temperance, and the capacity to respect others as fellow human beings.

On February 21, 1995, three informations were filed against the accused Roberto Bation in Criminal Case Nos. S-2529, S-2530, and S-2531. Except for the dates of commission of the crimes, the informations are similarly worded as that in Criminal Case No. S-2529, viz:

> "The undersigned, Provincial Prosecutor, upon a sworn complaint originally filed by the private offended party, accuses ROBERTO BATION of the crime of RAPE, committed as follows:
>
> That, at midnight, on or about the 16th day of July, 1994, in the municipality of Godod, Zamboanga del Norte, within the jurisdiction of the Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation succeeded in having sexual intercourse with one EDITHA BATION, his 15 year old (sic) daughter, against her will and without her consent, as a result of which she became pregnant.
>
> CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code)."[2]

The accused entered a plea of not guilty to all three counts of rape. The three cases were tried together.

The prosecution evidence shows that the Bation family permanently resided in Tambalang, Salug, Zamboanga del Norte. They also had a farm and residence in Mauswagon, Godod, Zamboanga del Norte. From July 16 to 18, 1994, the accused was in Mauswagon to farm. He brought with him his daughter Editha to cook food for him. Only the accused and his daughter were in their house in Mauswagon; Editha's mother, Candida Bation, was in Tambalang. On the night of July 16, 1994, Editha was sleeping in her room illuminated by the moonlight. Her room had no lock. Her father slept in another room. At about midnight, she woke up with her father already on top of her with only his shirt on, while she no longer had a panty on. He was doing the push and pull movement as he was inserting his penis into her vagina. The penetration caused pain in her private part. While the accused was abusing her, he warned her not to tell anybody about the incident, otherwise he would kill her and her mother. Editha was frightened. After the incident, she did not leave Mauswagon as she was afraid that the accused would cause harm upon her and her mother if she left. The following day, again at about midnight, the accused once

more had carnal knowledge of Editha in their house in Mauswagon. As in the previous night, the accused warned her not to tell the incident to anybody or else he would kill her and her mother. This time, though, the accused had a bolo with him. The day after, the 18th of July, again at about midnight, the accused for the third time had his way with Editha in their house in Mauswagon. Again, he had a bolo with him and threatened Editha that he would kill her and her mother if she revealed the incident to anybody.[3]

Months after the rape incidents, Editha's paternal aunt, Marianita Bation, brought her to Dorotea Am-is, a "manghihilot" because Marianita suspected she was pregnant. She was also examined by Dr. Guillermo Literatus who informed her that she was five months pregnant. On November 22, 1994, Editha executed a sworn statement regarding the rape incidents and filed a complaint against her father docketed as Crim. Case No. 1807-G in Godod, Zamboanga del Norte. On December 12, 1994, she filed two more complaints for rape against her father docketed as Crim. Cases No. 1816 and 1817-G. While the preliminary investigation for said cases was ongoing, however, Editha, assisted by her mother Candida Bation, executed an Affidavit of Desistance on January 25, 1995.[4] She stated therein that she had "forgiven the acccused for the acts he had committed against me after he had asked forgiveness from me" and that she was no longer interested in pursuing the cases. On February 12, 1995, seven months after those fateful days of July, Editha gave birth to a baby girl. On February 21, 1995, notwithstanding the affidavit of desistance, the above informations were filed against the accused.

In her initial testimony on January 12, 1996, Editha affirmed the contents of the affidavit of desistance she executed. She added that it was actually her aunt, Marianita, who was interested in filing the cases, and not her. When asked what was the wrong committed by the accused that she had already forgiven, Editha answered that the accused did not commit any wrong. She admitted that she got pregnant and gave birth, but she did not know who was the father of the baby.[5]

Editha also testified that at the time of the rape incidents, she was fifteen years old and that her birthday is on December 21, 1979. Prior to July 16, 1994, she had not experienced sexual intercourse.[6]

On April 19, 1996, Editha was recalled to the witness stand. When confronted with the affidavit of desistance she executed on January 25, 1995, she admitted having executed it, but only because her Aunt Marianita forced her to do so to have her brother (the accused) released from jail; her Aunt Marianita threatened her that she would box her like she had boxed her before if she would not sign the affidavit. She repudiated the contents of the affidavit and testified that her father asked forgiveness from her when the case was already filed, but she did not and has not forgiven him. She also retracted her previous testimony where she affirmed the contents of the affidavit and stated that she only did so because she was forced by her Aunt Marianita. This time around, however, she was no longer afraid of her Aunt Marianita because the Department of Social Welfare and Development (DSWD) was assisting her and she was advised by a social worker named Mrs. Castillo to tell the truth. Thus, in her second testimony, she revealed how the accused satisfied his lust upon her in July 1994.[7]

Dr. Guillermo Literatus, Municipal Health Officer of Salug, Zamboanga del Norte since 1986, also testified. He examined Editha on November 21, 1994 and found that she was five months pregnant at the time of examination based on her abdominal distention.[8]

Editha's mother, Candida Bation, also took the witness stand. In her initial testimony on January 12, 1996, she testified that she was with Editha when the latter executed her affidavit of desistance. She agreed to have the cases dismissed because she had forgiven her husband out of love. When asked what was the wrongful act for which she was forgiving her husband, she answered that she did not know what her husband had done to her daughter Editha. She also did not know who was the father of Editha's child. Similar to what Editha testified, Candida confirmed that it was Marianita Bation who was interested in filing the instant cases, and not her.[9]

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After Candida's first testimony on January 12, 1996, she told the DSWD that with her assistance, Editha executed an affidavit of desistance. When the DSWD learned of the affidavit and the real desire of Candida and Editha to pursue the cases against the accused, the DSWD helped them prevent the dismissal of the cases based on the affidavit. On July 26, 1996, when Candida was recalled to the witness stand, she retracted her testimony on January 12, 1996. She also repudiated the affidavit of desistance she assisted Editha to execute on January 25, 1995 and explained that she assisted Editha in executing it and initially affirmed its contents in court only because her sister-in-law, Marianita Bation, threatened that she would harm Editha if she did not do so. Marianita wanted to have her brother, the accused, released from jail. In fact, it was Marianita who accompanied her and Editha and paid for their expenses in going to Dipolog to execute the affidavit of desistance.

Candida also testified that sometime after the rape incidents, Editha told her that she was raped by her father in their house in Mauswagon. As a result, her daughter became pregnant and delivered a baby on February 12, 1995. Quite the opposite of her January 12, 1996 testimony, this time she said that she could not forgive her husband even if he is convicted to death.[10]

Rosalie Casinillo also testified. She is a Social Worker Officer II of the Sindangan Unit Office of the DSWD. She learned of the alleged rape incidents when they were reported to their office by the Salug DSWD on January 23, 1995. Sometime after Editha executed the affidavit of desistance on January 25, 1995, Casinillo met Editha and her mother in the Salug DSWD and they told her about Editha's ordeal with the accused on July 16, 17, and 18, 1994. Casinillo conducted an assessment of and investigation on the matter and wrote a summary report dated January 30, 1995, based on her interview with Candida and Editha.

Casinillo narrated that Editha was endorsed to the DSWD center in February 1995 so that her needs as a pregnant young mother could be addressed. It was also to protect her from further abuse by her father who would be released from jail because of the affidavit of desistance Editha executed the previous month. On February 12, 1995, Editha gave birth to Ma. Magnolia Adalla Bation who was surrendered to the DSWD with Editha and her mother's consent. Sometime in the last week of February, the child was adopted by parents from Belgium.[11]

On January 12, 1996, when Editha and Candida testified confirming the affidavit of desistance, Casinillo was not present. On January 25, 1996, Editha and Candida went to Casinillo's office to ask for assistance to testify again to tell the court what really happened between Editha and the accused on those fateful days of July. Casinillo then wrote to the trial court about their forced desistance and revealed the truth and sent supporting documents.[12] She submitted her summary report to the trial court wherein she stated that Candida was "innocent and ignorant, thus she was easily exploited and convinced to withdraw the complaint."[13] She likewise noted that Candida mortgaged their coconut farm to Marianita for P5,000.00, but the amount was in the hands of Marianita, thus Marianita controlled Candida's expenses and dictated the decisions of Editha and her mother.[14]

The defense presented Marianita Bation, sister of the accused. Marianita is the neighbor of the accused in Tambalang, Salug, Zamboanga del Norte. Their farms are adjacent to each other. Tambalang is about sixteen kilometers away from Mauswagon. One can take a passenger bus from Tambalang to Mauswagon, and from there walk two kilometers to the accused's farm. She observed that Roberto goes to his farm in Mauswagon every month, or sometimes weekly, with his daughter Editha and his wife, Candida.

According to Marianita, Editha liked to roam around and spent nights wherever she found herself when night descended. She scolded Editha's parents about this, but the latter did not discipline Editha on it. She always reprimanded Editha about her ways and told her that she is a hardheaded woman. Upon learning on the first week of December that Editha was pregnant, Marianita scolded her and pressed her to reveal the father of the child. Editha broke her silence and told her that it was a certain Eyok who was no longer living in their place.[15]

Marianita learned for the first time that her brother Roberto was a suspect in the rape of Editha when he was apprehended. She got angry at Roberto for raping his daughter, but Roberto denied the accusation. She later realized and testified that Roberto could not have done the dastardly acts upon Editha because from July 15-20, 1994, Roberto was in their mother's residence in Kayok, Liloy, Zamboanga del Norte. Roberto was with Marianita and their five other siblings planning how to commemorate the ninth death anniversary of their father on July 18. Roberto's children, Nestor and Rosa, were with him in Kayok but his wife, Candida, and Editha were left in their home in Mauswagon. Kayok is about fifteen kilometers away from Mauswagon. The distance could be negotiated by motor vehicle from one to two hours.[16] When Marianita's other siblings learned that Roberto was implicated in the rape of Editha, they believed that Roberto did it. However, when Marianita reminded them that he was with them during the alleged dates of the rape, they believed Roberto's innocence.[17]

Marianita testified that she knew Rosalie Casinillo, the DSWD worker, because she entrusted Editha to her. She brought Editha and her mother to Casinillo in DSWD Salug upon learning from a friend that Casinillo was looking for the two. Marianita agreed to entrust Editha to her upon the latter's assurance that she would defray the expenses for the delivery of Editha's child and would be responsible for the latter, that she would send Editha to school, and that she would pay P2,500.00 each to Editha and Candida every month.

Marianita claims that she did not know that Editha and Candida executed an affidavit of desistance and learned about it for the first time on the first hearing on January 12, 1996. She denied having anything to do with the execution of the affidavit nor having instigated the withdrawal of the complaints. She denied threatening Editha and Candida that they would be jailed for putting Roberto behind bars and insisted that Candida and Editha themselves wanted to withdraw the cases against the accused. On cross-examination, however, she admitted that she helped Editha and Candida, upon their request, to talk to Atty. Mejorada to have the cases dismissed. She surmised that Editha had ill feelings towards Roberto which prompted her to file cases against him. After Editha and her mother's desistance, Marianita claims that Casinillo and the prosecutor told Editha and Candida that if they withdrew the case, they would be jailed, thus prompting the mother and daughter to pursue the cases against the accused. Marianita admitted that Roberto's coconut land was sold to her and the money therefrom used to defray Roberto's expenses.[18]

Rosita Guitones also testified for the defense. She is a neighbor of the accused in Tambalang, Salug. She learned of the instant cases in January 1995. While Guitones was in the post office adjacent to the DSWD, Marianita passed by. Guitones then went with Marianita to the DSWD office. Marianita was with Editha and Candida. When they arrived in the DSWD office, Guitones listened as the three talked to Rosalie Casinillo, a DSWD employee. The latter offered that the DSWD would take care of Editha's child, adopt it and spend P2,500.00 per month for the child's subsistence and education; and that another P2,500.00 would be given to Editha. Sometime after their visit to the DSWD, Guitones and Marianita met Editha and Candida along the road and the latter told them that they would pursue the cases against the accused because Casinillo and Prosecutor Guantero told them that they would be jailed if they withdrew the cases.[19]

The accused Roberto Bation took the witness stand. He testified that Editha was born on November 18, 1979. He denied the rape charges as according to him, he was already too old to experience erection. Moreover, on July 15-17, 1994, he was not in Mauswagon where the alleged rapes were committed, but in Kayok to commemorate the ninth death anniversary of his father. He was in Kayok with his brothers and sisters and his children, Rosa and Nestor. Editha and his wife, Candida, were left in Mauswagon to tend their carabao and pigs. On July 20, 1994, the accused left Kayok and went home to Tambalang. He then proceeded to Mauswagon and upon arriving there, Editha and Candida went back to Tambalang. The accused stayed in Mauswagon until November when he went home to Tambalang. It was then that his wife told him that Editha was pregnant because of her habit of roaming

around and spending nights away from their home without her parents' permission. The accused scolded Editha and pressed her to reveal the father of the child. He learned from her that a certain Eyong was responsible for what happened to her. Even prior to her pregnancy, Roberto always scolded and sometimes even whipped Editha for roaming around but she would not listen to him. He alleges that it was because of his scolding Editha that the latter filed the instant cases against him.[20]

On cross-examination, the accused contradicted himself and testified that Candida and Editha had never been to his farm in Mauswagon as they found it too far from Tambalang. He also testified that there is regular transportation by truck from Mauswagon to Kayok. The distance, about 26 kilometers, can be negotiated in 30 minutes to one hour. Vehicles like buses and motorcycles are also available from Kayok to Mauswagon.[21]

Finally, Manuel Estimo testified. He has been a resident of Kayok, Liloy, Zamboanga del Norte since 1994. The accused, a native of Kayok, is his childhood friend. In July 1994, he was the barangay captain of Kayok. On July 16, 1994, he was at the house of the accused's mother, Inocencia Bation, in Kayok. At about 10:00 in the evening of that day, he saw the accused in Inocencia's house to attend the prayer for the death anniversary of his father on July 18, 1994. In the morning of July 17, 1994, he saw the accused again by the beach in Kayok as there was a meeting of fishermen there. In the evening of that day, he saw the accused in his mother's house attending the prayer service for his father. The following day, July 18, 1994, Manuel again saw the accused in his mother's house butchering a pig. Later in the evening, at about 8:00, he saw the accused in his mother's house commemorating his father's death anniversary. On all three days, July 16, 17, and 18, Manuel left Inocencia's residence at 10:00 p.m. and no longer saw the accused. He did not know whether the accused went to Mauswagon after he (Manuel) left. He confirmed that the distance between Mauswagon and Kayok is about 15 kilometers. He also testified that the accused did not own a vehicle and there was no available transportation from Kayok to Godod at 10:00 p.m. He did not have any knowledge on the three counts of rape charged against the accused.[22]

The trial court gave credence to the prosecution's story and convicted the accused, viz:

> "WHEREFORE, premises considered, the Court hereby sentences accused Roberto Bation to suffer the supreme penalty of DEATH each in the three (3) criminal cases (Criminal Case Nos. S-2529, S-2530 and S-2531) and to indemnify the offended party the amount of P50,000.00 in each Criminal case or the total amount of P150,000.00; pay P10,000.00 as moral damages in each Criminal case or the total amount of P30,000.00 justified under Article 2219 (3) of the Civil Code; pay P30,000.00 in each case or the total amount of P90,000.00 as exemplary damages in order to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters (People vs. Antipona, G.R. No. 119071, June 1997) and to support the offspring, if there is any (People v. Bayani, 262 SCRA 660)."[23]

Hence, this automatic review with the lone assignment of error, viz:

> THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED RAPE ON THREE (3) COUNTS.

The rapes alleged in the cases at bar were committed in 1994. At that time, the law on rape, Art. 335 of the Revised Penal Code, as amended by R.A. 7659, read in relevant part, viz:

> "Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> a) By using force or intimidation;
>
> b) When the woman is deprived of reason or otherwise unconscious; and
>
> c) When the woman is under twelve years of age or is demented.

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The crime of rape shall be punished by reclusion perpetua.

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The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when 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.

xxx"

The testimony of the victim, Editha, shows that the accused succeeded in having carnal knowledge of her on three separate occasions under threatening and intimidating circumstances, viz:

"Q: Who were your companions in Mauswagon, Godod, Zamboanga del Norte on July 16, 1994?

A: With (sic) my father.

Q: Only the 2 of you?

A: Yes, Ma'am.

Q: What about in the midnight of July 16, 1994, where were you?

A: In our house.

Q: You are referring to Mauswagon?

A: Yes, Ma'am.

Q: What have (sic) you notice at that particular time or that particular day/date?

A: He raped me.

Q: Who raped you?

A: My father.

Q: Why, what did you find out when you woke up at that time?

A: When I woke up he was already on top of me.

Q: What did he do when he was on top of you?

A: He inserted his penis into my vagina.

Q: What did you feel when he inserted his penis into your vagina?

A: I was afraid.

Q: Did you not feel pain?

A: I feel (sic) pain.

Q: Why were you afraid aside from feeling pain?

A: He warned me not to tell anybody, if I will reveal it he will (sic) kill me and my mother.

Q: So, you did not tell anybody about that incident?

A: Yes, Ma'am.

Q: Was that act of your father repeated?

A: Yes, Ma'am. On the 17th of that month.

Q: Where?

A: At our house at Mauswagon.

Q: What did he do when he again raped you?

A: The same act.

Q: What do you mean by the same, was he also threatening you?

A: Yes, Ma'am. He threatened me and warned me.

Q: Do you remember if he had a weapon at that time?

A: Yes, Ma'am.

Q: What kind of weapon?

A: Bolo.

Q: Where did he place it when he raped you for the second time?

A: He always carried that bolo with him.

Q: And then aside from July 16 and 17, do you remember if he again committed the same act on you aside from that day?

A: Yes, Ma'am. On the 18th.

Q: Where?

A: At the same place at our house at Mauswagon.

Q: So what time on July 18, 1994 when he again abused you or raped you?

A: At night time.

Q: At that time, do you remember if he had weapon with him?

A: Yes, Ma'am. He has.

Q: What weapon was that?

A: A bolo.

Q: And that bolo was locally known if you know what?

A: Bolo.

Q: So, aside from July 16, 17 and 18 was there any occasion that he again abused you?

A: No more, Ma'am.

Q: On July 18, 1994 after raping you (sic) did your father tell (sic) if any?

A: He warned me not to reveal anything to anybody and if I will reveal it he will kill me and my mother.[24]

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Q: You said you discovered your father was on top of you, what was your observation at that time, was your father naked at that time?

A: He was naked.

Q: You mean to say that he already slipped off his apparel including the brief?

A: He has a shirt.

Q: Only a shirt?

A: Yes, sir.

Q: How about you, you said your father was on top of you, when your father was on top of you, do you remember that you have still your panty?

A: No more, Your Honor.

Q: You said your father was on top of you naked likewise you are also naked, did you feel something inside your vagina?

A: Yes, sir.

Q: What was that something you feel inside your vagina?

A: His penis.

Q: Was his penis at that time erect?

A: Yes, Your honor.

Q: While Roberto Bation your father was on top of you, what was your observation, did he make some movement while on top of you?

A: Yes, Your Honor.

Q: Why, did you feel something coming out from the penis of your father?

A: Because I was surprised my vagina was wet.

Q: Did you not feel hot inside your vagina?

A: No, Your Honor.

Q: But only you discovered that your vagina was wet at that time?

A: Yes, Your Honor.

Q: Did you discover any blood in your vagina after the sexual intercourse?

A: I am not aware.

Q: Did you not wipe your vagina?

A: I did not wipe.

Q: How many minutes was your father on top of you?

A: About one-half hour.

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Q: While he was performing up and down movement, what did your father tell you?

A: He warned me not to reveal anything to anyone if I will (sic) reveal it he will (sic) kill me and my mother.

Q: Aside from that incident that took place on July 16, 1994, you informed the Court that this act of your father was repeated on July 17, 1994, am I right?

A: Yes, Your Honor.

Q: Now, why did you not leave the place of Mauswagon and returned to Tambalang?

A: Because I was threatened.

Q: Do you mean to say that if you will leave your father alone in Mauswagon something will happen to you?

A: Yes, Your Honor, because he warned me not to tell to anyone if I do it he will (sic) kill me including my mother.

Q: So, it is clear now that on July 17, 1994 about midnight your father penetrated you again, am I right?

A: Yes, Your Honor.

Q: And this was repeated sometime on July 18, 1994 about midnight?

A: Yes, Your Honor.

Q: At the time your father penetrated you again without your consent?

A: Yes, Your Honor." (emphasis supplied)[25]

While the evidence on record is bereft of proof of physical resistance on Editha's part, physical resistance need not be established in rape when threats and intimidation are employed and the victim yields to the bestial desires of the rapist because of fear.[26] That the accused had carnal knowledge of Editha by intimidating her and making her afraid that she would suffer greater harm if she did not submit to the accused in each of the three rape incidents is clear from the above-quoted testimony. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[27] Editha even testified that on the second and third rape instances, the accused carried a bolo with him. We have ruled in several rape cases that threatening the victim with bodily injury while holding a bolo constitutes intimidation sufficient to have a woman submit to the lustful desires of the rapist.[28]

The defense points out that the accused could not have possibly raped Editha on July 16, 17, and 18, 1994 and fathered her child because when Dr. Literatus examined her in November 1994, she was already five months pregnant. Thus, the defense concludes that Editha became pregnant before the alleged dates of the rape incidents in July 1994. Added to this, the defense gives much attention to the fact that Editha gave birth on Febraury 12, 1995, thus the child was only seven months old and premature at birth if conceived in July 1994, but the "record or TSN's are bereft of the panic, the stress, the caring necessary to keep a premature baby alive."[29] The accused's arguments fail to give strength to his claim of innocence. In People v. Adora,[30] we held, viz:

"Computation of the whole period of gestation . . . becomes a purely academic endeavor. In this light, while most authorities would agree on an average duration, there are still cases of long and short gestations.

'Thus, the stage of development of the fetus cannot be determined with any exactitude, and an error of at least two weeks, if not more, should be allowed for. This, together with the recognized variation in the duration of normal pregnancies, makes it very unsafe to dogmatize in a medico-legal case xxx. (Douglar Kerr, Forensic Medicine, Fifth edition, p. 173)'

More importantly, it should be pointed out that these consolidated cases are criminal cases for rape, not civil actions for paternity or filiation. The identity of the father of the victim's child is a non-issue. Even her pregnancy is beside the point. What matters is the occurrence of the sexual assault committed by appellant on the person of the victim on four separate occasions. At any rate, that the victim was already pregnant before the first rape does not disprove her testimony that the appellant raped her." (emphais supplied)[31]

As Dr. Literatus' finding of Editha's five-month pregnancy in November based on her abdominal distention is not full-proof and exact, it does not discount the possibility that the accused raped and impregnated Editha in July and that Editha was actually only four and not five months into her pregnancy in November. In one case, we upheld the ruling of the trial court that a month's difference in the stage of pregnancy as shown by the physical examination is not substantial.[32] As regards the prematurity of the baby, Editha herself admitted that the baby was only seven months old when delivered,[33] but there is no requirement of proof of stress or panic upon the birth of the child to lend credibility to Editha's testimony of rape and pregnancy.

The defense also relies on Editha's affidavit of desistance and testimony confirming it. We have consistently ruled, however, that this Court looks with disfavor on affidavits of desistance because they can easily be secured from poor and ignorant witnesses, usually for monetary considerations and because it is quite incredible that after going through the process of having the accused apprehended by the police, positively identifying him as the rapist, and enduring humiliation and examination of her private parts, the victim would suddenly declare that the wrongful act of the accused does not merit prosecution.[34] Editha adequately explained that she executed the affidavit of desistance and confirmed it in her initial testimony only because her Aunt Marianita threatened to harm her if she did not. Her mother assisted her in executing the affidavit and confirmed it in court also upon instructions of Marianita; the latter held the proceeds of the mortgage of Candida's land to her (Marianita) and thus dictated Candida's expenses and decisions. At any rate, Editha's affidavit of desistance did not state that the accused did not commit the crimes for which he is charged, but that she was no longer interested in pursuing the cases as she had forgiven the accused when he asked for forgiveness. In their initial testimony, Editha and Candida reiterated that they had forgiven the accused, thus implying that he had committed a wrongful act, but when pressed to divulge what wrong he had done, they inconsistently testified that the accused had done no wrong only because of Marianita's instructions to them. The following portions of Editha's testimony are relevant:

> "Q: Who were with you when you affixed your signature in this affidavit of desistance?
>
> A: My mother.
>
> Q: You are referring to Candida A. Bation?
>
> A: Yes, sir.
>
> Q: Aside from your mother, who else was with you when you affixed your signature?
>
> A: Marianita Bation.
>
> Q: Who else aside from your mother and your aunt Marianita?
>
> A: Only the 3 of us.
>
> Q: When you went to the office of Atty. Mejorada were you ever forced by somebody to go there?
>
> A: Yes, Sir by my aunt Marianita.
>
> Q: How about your mother, was your mother likewise forced by the same aunt?
>
> A: Yes, Sir.

Q: How were you forced by your aunt?

A: She warned us not to tell the truth but to tell a lie so that his brother will (sic) be released from jail.

Q: Is (sic) that all she said to you?

A: Yes, Sir.

Q: And you considered that statement of Marianita already forcing you?

A: She forced me to sign the affidavit because if I will not sign she will (sic) box me. I was before hand (sic), she was able to maltreat me.

Q: When was that when your aunt was able to hit you?

A: At that time that I went to a hilot named Dorotea Am-is."[35]

Candida's testimony is of the same import, viz:

"Q: How were you allegedly threatened by Marianita Bation?

A: Marianita informed (sic) us to tell a lie and not to tell the truth and we are (sic) afraid because previously my daughter was harmed."[36]

DSWD worker Rosalie Casinillo's findings in her Case Summary Report also explain why Editha, assisted by her mother, executed the affidavit of desistance and confirmed it in open court, viz:

" . . . A desistance was already filed thru the strong manipulation of the paternal aunt, Marenita (sic) Bation. Likewise, Editha's mother is found innocent and ignorant, thus she was easily exploited and convinced to withdraw the complaint. She further mortgaged their coconut farm to the sister of the perpetrator (the same aunt) amounting to P5,000.00, but the sad thing is, the amount is in the hands of the said aunt who controls the expenses and even dictates the movement and decision of Editha and her mother."[37]

Accused's attempt to discredit the credibility of the prosecution's story with Editha's delay in divulging the alleged crimes proves futile in light of the many rulings of this Court that delay in reporting a crime is not uncommon for young girls because of the rapist's threat on their lives.[38] In People v. Lusa,[39] the Court held that it was understandable that a fourteen-year old rape victim, about the same age as Editha, would be cowed into silence by the accused's warning that she would be killed if she divulged the incident to anybody.[40]

With Editha's positive identification of the accused as the author of the dastardly acts committed upon her, the acccused's defense of denial and alibi must fall. It is well-settled in jurisprudence that alibi is the weakest defense not only because of its inherent weakness and unreliability, but also because it is easy to fabricate. To uphold this defense, it does not suffice to prove that the accused was at another place when the crime was committed, but it must also be shown that there was physical impossibility for the accused to have been at the scene of the crime.[41] As a general rule, this defense does not prosper especially when the complaining witness positively established the identity of the accused.[42] In the instant case, the accused himself testified that the distance between Mauswagon where the rapes were committed, and Kayok where he claims to have been at the time of the rapes, is about 26 kilometers; the distance can be negotiated in 30 minutes to one hour.[43] It was thus not physically impossible for the accused to have been in Kayok for the death anniversary of his father on the dates of the rape incidents and in the scene of the crimes in Mauswagon at the precise time the rapes were committed.

Accused is correct, however, in arguing that there was no sufficient proof of Editha's age. For the special qualifying circumstance of minority to be appreciated, it must be alleged in the information or complaint and duly proved beyond reasonable doubt.[44] Although the accused himself testified that Editha was born on November

18, 1979, such testimony cannot be regarded as sufficient proof of her age. In fact, it is even different from Editha's testimony that her birthday is on December 21, 1979. In People v. Tabanggay, [45]we ruled, viz:

> " . . . (J)urisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused (People v. Cula, G.R. No. 133146, March 28, 2000; People v. Tipay, G.R. No. 131472, March 28, 2000; People v. Brigildo, G.R. No. 124129, January 28, 2000; People v. Licanda, G.R. No. 134084, May 4, 2000). A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence (People v. Llamo, G.R. No. 132138, January 28, 2000; People v. Amban, G.R. No. 134286, March 1, 2000; People v. Balgos, G.R. No. 126115, January 26, 2000; People v. Magat, G.R. No. 130026, May 31, 2000).
>
> In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. . . (W)e cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed upon appellant."[46] (emphasis supplied)

In the instant case, the prosecution failed to present the documentary proof required by the Tabanggay case and neither did Editha's mother testify on the age of her daughter. In light of this absence of proof, we reduce the supreme penalty of death imposed by the trial court to reclusion perpetua in all three cases.

Anent the damages, we affirm the trial court's award of P50,000.00 for each case or a total of P150,000.00 as moral damages. We lower the award of P30,000.00 in each criminal case or a total of P90,000.00 as exemplary damages to P25,000.00 in each case or a total of P75,000.00 as exemplary damages. We increase the award of P10,000.00 for each case or a total of P30,000.00 as moral damages to P50,000.00 for each case or a total of P150,000.00, in line with prevailing jurisprudence.[47] We also affirm the order of the trial court for the accused to support the offspring of Editha in accordance with Article 345 of the Revised Penal Code[48] and prevailing jurisprudence.[49]

IN VIEW OF THE FOREGOING, we AFFIRM the Decision of the trial court finding accused-appellant Roberto Bation guilty of three (3) counts of rape, with the MODIFICATION that for each count of rape, he is sentenced to reclusion perpetua. The accused-appellant is ordered to pay the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages for each count of rape or a total of P150,000.00 as civil indemnity, P150,000.00 as moral damages, and P75,000.00 as exemplary damages. The accused-appellant is also ordered to support the offspring of Editha Bation.

SO ORDERED.

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

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[1] Reply Brief, p. 8; Rollo, p. 152.

[2] Rollo, p. 9. In Criminal Case No. S-2530, the date of commission of the rape is July 17, 1994, Rollo p. 10. In Criminal Case No. S-2531, the date of commision of the rape is July 18, 2001, Rollo, p. 11.

[3] TSN, Editha Bation, April 19, 1996, pp. 5-8, 22-24.

[4] Exhibit 1.

[5] TSN, Editha Bation, January 12, 1996, pp. 4-7.

[6] Id., April 16, 1995, p. 21.

[7] Id., April 16, 1995, pp. 11-19.

[8] TSN, Dr. Guillermo Literatus, July 26, 1996, pp. 7-8.

[9] TSN, Candida Bation, January 12, 1996, pp. 7-10.

[10] TSN, Candida Bation, July 26, 1996, pp. 10-23.

[11] Id., p. 5.

[12] Id., pp. 5-6; Exhibit E, Original Records, p. 30.

[13] TSN, Rosalie Casinillo, February 21, 1997, p. 4.

[14] Ibid.

[15] TSN, Marianita Bation, June 20, 1997, pp. 4-6.

[16] Id., p. 31.

[17] Id., pp. 4-8.

[18] Id., pp. 8-12, 14-18, 21, 23-24, 29-31.

[19] TSN, Rosita Guitones, October 10, 1997, pp. 3-6.

[20] TSN, Roberto Bation, December 5, 1997, pp. 2-6.

[21] Id., pp. 7-13.

[22] TSN, Manuel Estimo, May 29, 1998, pp. 2-10.

[23] Rollo, pp. 44-45; Decision, pp. 28-29.

[24] TSN, Editha Bation, April 19, 1996, pp. 6-8.

[25] TSN, Editha Bation, April 19, 1996, pp. 22-24.

[26] People v. Cuadro, G.R. No. 124704, February 22, 2001, citing People v. Baltar, G.R. No. 130341, February 10, 2000, pp. 7-8.

[27] Id., citing People v. Garcia, 281 SCRA 463, 478 (1997).

[28] People v. Reynaldo, 291 SCRA 701 (1998), citing People v. Roll, 200 Phil. 665 (1982); People v. Espinoza, 317 Phil. 79 (1995), citing People v. Adlawan, Jr., 217 SCRA 489 (1993).

[29] Rollo, p. 78; Appellant's Brief, p. 9.

[30] 275 SCRA 441 (1997).

[31] People v. Adora, supra.

[32] People v. Alib, 222 SCRA 517 (1993).

[33] TSN, Editha Bation, April 19, 1996, p. 11.

[34] People v. Alicante, 332 SCRA 440 (2000), citing People v. Junio, 237 SCRA 826 (1994).

[35] TSN, Editha Bation, April 19, 1996, pp. 13-14.

[36] TSN, Candida Bation, July 26, 1996, pp. 14-15.

[37] TSN, Rosalie Casinillo, February 21, 1997, p. 4; Exhibit F, Original Records, p. 31.

[38] People v. Optana, G.R. No. 133922, February 12, 2001, citing People v. Errojo, 229 SCRA 49 (1994).

[39] 288 SCRA 296 (1998).

[40] People v. Lusa, 288 SCRA 296 (1998), citing People v. Fuensalida, G.R. No. 119963, November 6, 1997.

[41] People v. Silvestre, 244 SCRA 479 (1995), citing People v. Penillos, 205 SCRA 546 (1992); People v. Martinado, 214 SCRA 712 (1992).

[42] People v. Apostol, G.R. Nos. 123267-68, December 9, 1999, citing People v. Roger Vaynaco, G.R. No. 126286, March 22, 1999.

[43] Id., pp. 7-13.

[44] People v. Padilla, G.R. No. 137648, March 30, 2001.

[45] 334 SCRA 575 (2000).

[46] People v. Tabanggay, supra.

[47] Ibid.

[48] Article 345 of the Revised Penal Code provides:

> Art. 345. Civil liability of persons guilty of crimes against chastity. - Persons guilty of rape, seduction, or abduction, shall also be sentenced:
>
> 1. To indemnify the offended woman.
>
> 2. To acknowledge the offspring, unless the law should prevent him from doing so.
>
> 3. In every case to support the offspring. xxx"

[49] People v. Manahan, 315 SCRA 476 (1999).

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