

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELADIO VIERNES Y ILDEFONSO, APPELLANT.

G.R. Nos. 136733-35. December 13, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Under the Rules of Court, a judgment of conviction in a criminal prosecution may be modified only upon motion of the accused. As a rule, the prosecution is prohibited from seeking, and the trial court from granting, a more severe penalty than that imposed in the original decision. This is especially true in a case in which the new and amended penalty imposed is death.

The Case

Before us is an appeal[1] from the April 6, 1998 Decision and the May 21, 1998 Order[2] of the Regional Trial Court (RTC) of Lipa City (Branch 12) in Criminal Case Nos. 0532-97, 0533-97 and 0534-97. The assailed Decision convicted appellant of two counts of rape and one count of attempted rape. It disposed as follows:

"WHEREFORE, the Court finds the accused, ELADIO VIERNES y ILDEFONSO, guilty beyond reasonable doubt in Crim. Case No. 0532-97 of the crime of Rape, as defined and penalized under Article 335, par. 3 of the Revised Penal Code, as amended by Republic Act No. 2532 and Republic Act No. 4111; in Crim. Case No. 0533-97 of the crime of Attempted Rape, as defined and penalized under Article 335, par. 3 in relation to Article 51 of the Revised Penal Code, as amended by Republic Act No. 2532 and Republic Act No. 4111; and, in Crim. Case No. 0534-97 of the crime of Rape, as defined and penalized under Article 335, par. 1 of the Revised Penal Code, as amended by Republic Act No. 2532 and Republic Act No. 4111, and sentences him, as follows:

"1.

CRIM. CASE NO. 0532-97 - to suffer the penalty of RECLUSION PERPETUA, to indemnify Catherine Linatoc in the amount of P50,000.00, to pay P10,000 as moral damages pursuant to Article 2219 (3) of the Civil Code, as well as exemplary damages in the amount of P5,000.00 pursuant to Article 2229 of the same Code and the costs of this suit;

"2.

CRIM. CASE NO. 0533-97 - to suffer an indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of Prison Correccional, as Minimum, to EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor, as Maximum, to indemnify Catherine Linatoc in the amount of P25,000.00, and to pay the costs of this suit; and

"3.

CRIM. CASE NO. 0534-97 - to suffer the penalty of RECLUSION PERPETUA, to indemnify Catherine Linatoc in the amount of P50,000.00, to pay P10,000.00 as moral damages pursuant to Article 2219 (3) of the

Civil Code, as well as exemplary damages in the amount of P5,000.00 pursuant to Article 2229 of the same Code and the costs of this suit."[3]

On the other hand, the assailed Order increased the penalties as follows:

"WHEREFORE, the Court finds the accused, ELADIO VIERNES y ILDEFONSO, guilty beyond reasonable doubt in Crim. Case No. 0532-97 of the crime of Rape, as defined and penalized under Article 335, par. 3 of the Revised Penal Code, as amended by Republic Act No. 7659; in Crim. Case No. 0533 of the crime of Attempted Rape, as defined and penalized under Article 335, par. 3 in relation to Article 51 of the Revised Penal Code, as amended by Republic Act No. 7659, and in Crim. Case No. 0534-97 of the crime of Rape, as defined and penalized under Article 335, par. 1 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentences him, as follows:

"1.

CRIM. CASE NO. 0532-97 - to suffer the penalty of DEATH, to indemnify CATHERINE LINATOC in the amount of P50,000.00, to pay P10,000 as moral damages pursuant to Article 2219 (3) of the Civil Code, as well as exemplary damages in the amount of P5,000.00 pursuant to Article 2229 of the same Code and the costs of this suit;

"2.

CRIM. CASE NO. 0533-97 - to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of Prision Mayor, as Minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal, as Maximum, to indemnify Catherine Linatoc in the amount of P25,000.00 and to pay the costs of this suit; and

"3.

CRIM. CASE NO. 0534[-97] - to suffer the penalty of DEATH, to indemnify Catherine Linatoc in the amount of P50,000.00, to pay P10,000.00, as moral damages pursuant to Article 2219 (3) of the Civil Code, the amount of P5,000.00, as exemplary damages, pursuant to Article 2229 of the same Code and the costs of this suit."[4]

Three criminal Complaints, all dated August 21, 1997, were filed by Catherine Linatoc (assisted by her mother Lina Dela Cruz-Linatoc) before Second Assistant City Prosecutor Danilo S. Sandoval. The Complaint in Criminal Case No. 0532-97 charged appellant with rape committed as follows:

"That on or about the 29[th] day of September, 1996 at about 10:00 o'clock in the morning at Barangay Tibig, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the common law husband of the mother of the victim, did then and there willfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge of the undersigned complainant who is a minor below 12 years old, against her will and consent to her damage and prejudice in such amount as may be awarded to her under the provision of the Civil Code."[5]

The Complaint in Crim. Case No. 0534-97 likewise charged him with consummated rape:

"That on or about the 18th day of August 1997 at about 12:00 o'clock noon, at Barangay Tibig, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the common law husband of the mother of the victim, did then and there wilfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge of the undersigned complainant who is a minor of 12 years old against her will and consent to her damage and prejudice in such amount as may be awarded to her under provisions of the Civil Code."[6]

Finally, in Criminal Case No. 0533-97, appellant was charged with attempted rape:

"That on or about the month of March 1997, around noon time, at Barangay Tibi, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the common law husband of the mother of the victim, by means of force and intimidation and with lewd design pursuant to his carnal desire, did then and there willfully, unlawfully and feloniously commence the commission of the felony of rape directly by overt acts against the undersigned complainant who is a minor below 12 years old, by then and there undressing her and going on top of her with his exposed private organ but did not perform all the acts of execution which should have produced the said felony because the undersigned offended party resisted." [7]

Criminal Case Nos. 0532-97 and 0534-97 were raffled to the Regional Trial Court of Lipa City, Branch 12; and Criminal Case No. 0533-97, to Branch 85 of the same court. Later, all the cases were consolidated in Branch 12. [8]

On arraignment, appellant pleaded not guilty. [9] After trial in due course, the lower court rendered the assailed Decision.

In a Motion for Reconsideration dated May 18, 1998, Prosecutor Sandoval asked that the imposed penalties be increased pursuant to Republic Act (RA) No. 7659. The RTC granted the Motion via the assailed Order.

The Facts

Version of the Prosecution

In its Brief, [10] the Office of the Solicitor General presents the following narration of facts:

"Catherine Linatoc stood quietly by the door of the toilet of appellant's - her mother's common-law husband - house. Her skirt's hemlines were slowly falling to her knees vainly covering the panty that were pulled down mid-way her lower legs. This was the third of a series of dismaying sex that she and appellant had been through. Like the others before this one, there was by appellant much pulling, shoving and forcible grasping of her hands, thus rendering her immobile for three minutes or so.

"The third rape happened in appellant's house in Tibig, Lipa City, around noontime of August 18, 1997. Appellant then bidded [sic] the two brothers and a step-brother of Catherine Linatoc to clean the his tricycle, which was parked on the side of the street across his house. They followed his order. Appellant also instructed Catherine Linatoc to fetch water for the house toilet. She obliged, returning with two pails of it. She deposited them by the door of the toilet. Turning about, Catherine Linatoc was surprised to find appellant behind her. In quick succession, appellant pushed her to the wall, pulled her skirts up, drag her panty mid-way her lower leg, and rushed his own pants down. Grasping her hands tightly with one hand, appellant began inserting his penis into her vagina. She resisted to no avail. His penis established a comfortable slide into and out of her [organ], as the pace quickened for about three minutes. The gyration was furious. After appellant spurted out, he backed off and left saying nothing.

"Frightened and crying, Catherine Linatoc went to her great-grandmother's abode in San Guillermo, Lipa City. She reported the incident to this elder, and recounted some more. Catherine Linatoc told her great-grandmother of two other acts of sexual abuse by appellant. The first one, she narrated, happened on September 29, 1996, about ten in the morning[;] and the second, on March 1997 around noon-time.

"The first rape happened on September 29, 1996 in appellant's house. Catherine Linatoc was on the ground floor of the house when so suddenly appellant sprung from wherever he was, grabbed and carried her to the second floor. The second floor was just three steps from the ground floor. He then undressed her, taking off her sando, skirt and panty. He undressed himself too, and then floored both their bodies, [his] on top of her. He caressed her breasts and started inserting his penis into her vagina. Appellant held her hands tightly and fought off her struggle. There was push and pull for about three minutes, then appellant came through. Appellant dressed up, and before walking away, apologized to her. It would be the first and last rape, he said.

"There was soon the second sexual abuse. In March 1997, about noontime, using the same strategy as he did in the [first] rape, appellant unburdened himself on Catherine Linatoc. From nowhere, appellant appeared. He dragged her to the second floor where he undressed her and himself. He mightily threw her to the floor, his sweaty body covering her's. Appellant engaged in the now familiar gyration once again. This time, however his penis landed on the thighs of the victim as insertion, because of her struggle and vagina's virginal qualities, became frustratingly difficult. Between her thighs appellant thrust his penis. He satisfied himself just the same.

"The great-grandmother was helpless to remedy the abuse done to Catherine Linatoc. They waited for the father of Catherine Linatoc, Orlando Linatoc, who arrived four days later. The mother of Catherine Linatoc, Lina Viernes, also arrived. Catherine Linatoc had her medico-legal examination with these results:

`x x x lacerated hymen on the 3:00 and 9:00 o'clock positions with small amounts of whitish discharge.'

"The medico-legal examination was performed by Dr. Helen S. Dy. The present criminal complaints against appellant were thereafter filed."[11]

Version of the Defense

Appellant denies the charges against him. Claiming to have been elsewhere at the time of the commission of the alleged crimes, he submits the following counterstatement of the facts:

"1) ELADIO, at the lower court, stated that he is the common law husband of Lina de la Cruz-Linatoc (mother of the alleged victim ... Catherine Linatoc). He is a security guard and at the same time, a tricycle driver. On September 29, 1996 he was living with Lina, together with Catherine, his two sons and other relatives. On September 28, 1996 he scolded Catherine. As a consequence thereof, Catherine went to the house of her great grandmother and stayed therein even beyond September 29, 1996. Therefore, it is impossible for him (ELADIO) to have attacked Catherine sexually on September 29, 1996. It is not true that he attempted to rape Catherine in March of 1997 because he was on duty at that time. Their company logbook will bear witness thereto. (Exhibit `2', Original Records) On August 18, 1997 it is not true that he raped Catherine since he was plying his tricycle then. (TSN, pp. 2-13, December 11, 1997; and pp. 2-22, January 8, 1998)

"2) Lina de la Cruz at the Court below, testified that she confirms claim/s [sic] of ELADIO that Catherine was no longer in their house on September 29, 1996 and that ELADIO could not have abused Catherine sexually. Catherine's charge for March 1997 and August 18, 1997 were not also true. (TSN, pp. 2-7, February 3, 1998).

x x x x x x x x

"D. Sur-Rebuttal Evidence

"ELADIO, as a sur-rebuttal witness, denied to have asked the settlement of the case."[12]

Ruling of the Trial Court

The court a quo held that the testimony of Catherine Linatoc -- both on direct and on cross-examination -- was clear, positive and steadfast. Corroborated by the medicolegal examination conducted on her, it was replete with details that jibed on material points. The prosecution successfully proved that she was the daughter of appellant's common-law wife and that, at the time of the crime, she was 12 years old.

The declarations of complainant were accorded full faith and credence on the theory that she would not publicly acknowledge the defilement of her virtue or subject herself to public humiliation, if her purpose was not to obtain justice for the wrong committed. There is no evidence that she was a woman of loose morals or that she had any ill motive to falsely accuse appellant.

On the other hand, appellant's denial and alibi were unsubstantiated and self-serving; hence, they deserve no

weight in law. They cannot stand against Catherine's positive testimony.

In the assailed Order, the trial court noted that the prosecution's Motion was unopposed. It ruled that the increase in the penalty did not place appellant in double jeopardy.

Hence, this appeal.[13]

The Issues

In his Brief,[14] appellant raises this sole alleged error:

"The lower court has committed an error in convicting the accused-appellant of the crimes charged and on meting out on him the supreme penalty of death, more particularly in Criminal Cases Nos. 0532-97 and 0534-97."

An appeal from a criminal conviction, especially one involving the death penalty, throws the whole case open for review. Thus, it becomes the duty of the reviewing court to correct any error in the appealed judgment, whether or not it is made the subject of an assignment of error.[15] In this light, the Court believes that a second issue needs to be taken up, namely:

"Whether the trial court erred in increasing the penalties via the assailed Order."

This Court's Ruling

The trial court was correct in convicting appellant in accordance with the challenged Decision, but was wrong in imposing the new penalties through the assailed Order.

First Issue:

Appellant's Culpability

After a thorough review of the pleadings, the transcripts of stenographic notes and other records of the case, we are convinced that the court a quo did not err in giving credence to the testimonies of the victim and the other prosecution witnesses. The testimony of private complainant, detailing how she was abused by appellant on two separate occasions and how he tried to rape her once more, was clear and convincing. We quote at length:

"Q

While you were in your house on that date, September 29, 1996, 10:00 o'clock in the morning, do you remember of any unusual incident that transpired if any?

A

Yes, sir.

Q

What was that unusual incident that transpired?

A

After my mother left, I was pulled sir.

Q

By whom, who pulled you?

A

My step father, sir.

Q

Where were you brought, towards what direction?

A

Towards the second floor of our house and to the place where we sleep, sir.

Q

By the way, that house where you were living in Brgy. Tibig, Lipa City on that date September 29, 1996, what kind of house is that?

A

It is made of Sawali, sir.

Q

How about the flooring, how many floors does it have?

A

Three (3) steps sir.

Q

What do you mean by three (3) steps?

A

Our stairs is made of three (3) steps, sir.

Court:

From the ground floor?

A

Yes, sir.

Q

What is located after going this stairs composed of three (3) steps?

A

That is the place where we sleep sir.

Q

After you [were] pulled upstairs to where you usually sleep by Eladio Viernes, what did Eladio Viernes do to you after reaching that upper portion of your house, if he did anything?

Atty. Dimaandal

Leading your Honor.

Court

Answer.

A

He undressed me sir.

Q

What were you wearing that Eladio Viernes took of[f] from your body?

A

I was wearing a skirt which was my uniform sir.

Q

What else I[f] any were taken of[f] from your body by Eladio Viernes?

A

My blouse, sando and my skirt and my panty sir.

Q

After Eladio Viernes took of[f] your clothing, after removing your clothing what did Eladio Viernes do on your body?

A

He placed himself on top of me.

Q

When Eladio Viernes placed himself on top of you, what was he wearing if any?

A

None sir.

Q

By the way, when Eladio Viernes pulled you to where you usually sleep, what was his wearing at that time?

A

He was wearing pants, sir.

Q

You said that after Eladio Viernes took of[f] all your clothing he went on top of you you said he was already naked, what did he do with hi[s] pants before he went on top of you?

A

He mashed [m]y breast sir.

Q

What else did he do [to] you aside from mashing your breast?

A

He inserted his penis into my vagina.

Q

By the way, while he was mashing your breast, what were you doing if you did anything?

A

I was fighting him back sir.

Q

What did Eladio Viernes do when you fought him back while he was mashing your breast?

A

He was slapping me sir.

Q

When he inserted his penis into your vagina, what did you feel?

A

Painful, sir.

Q

Was Eladio Viernes able to actually insert his penis[?]

Atty. Dimaandal

Leading your honor.

Q

After Eladio Viernes inserted his private organ into your private organ, what else did he do if anything more?

A

He did pumping motion, sir.

Q

For how long did he do this pumping motion, while his penis was inside your vagina?

A

About three (3) minutes sir.

Q

After three (3) minutes when Eladio Viernes did this pumping motion while his penis was inside your vagina, what else did he do if he did anything more?

A

He removed his private organ sir."[16]

We also quote the testimony of the victim regarding appellant's attempt to rape her:

"Q

When was the second time, after September 26, 1996?

A

In May 1997 but I do not remember the exact date sir.

Q

Are you sure about the date?

Atty. Dimaandal

That is the answer of the witness.

Prosecutor

That's why I am asking, are you sure about the date?

A

May 19, 1997 sir.

Q

By the way, in [the] second incident [where] Eladio Viernes according to you raped you again, where did this happen?

A

At Barangay Tibig, Lipa City.

Q

In what particular place in Bgy. Tibig were you raped for the second time by Eladio Viernes?

A

In the upper portion of our house at the place where we are sleeping sir.

Q

The same place where the second rape was committed?

A

Yes, sir.

Q

Around what time did this happen, this second rape happened?

Atty. Dimaandal

We make it of record that the witness cannot answer.

Prosecutor

The witness is thinking . . .

A

Noontime sir.

Q

How did this happen?

A

He again pulled me sir.

Q

By the way on that second occasion, where was your mother?

A

She was working sir.

Q

You said that you were again pulled, where were you brought by Eladio Viernes at the same time around?

A

The upper portion of our house and at the place where we were sleeping sir.

Q

After you were pulled by Eladio Viernes, what did Eladio Viernes do to you?

A

He undressed me sir.

Q

What kind of wearing apparel that you were wearing that were taken off by Eladio Viernes on that same occasion?

A

I was wearing a skirt sir.

Q

After you were undressed by Eladio Viernes what did Eladio Viernes do to you if he did anything?

A

He again placed himself on top of me sir.

Q

What was he wearing he placed himself on top of you if he was wearing anything?

A

He was wearing pants sir.

Q

When he placed himself on top of you, where was his pants?

A

He removed pants sir.

Q

When Eladio Viernes went on top of you, what did you [sic] do if he anything more on the second time around?

A

He again mashed my breast sir.

Q

What did you do when Eladio Viernes again mashed your breast?

A

I was fighting him back sir.

Q

What else did he do aside from mashing your breast, what did Eladio Viernes do to you?

A

He was inserting his penis into my vagina sir.

Q

When Eladio Viernes was inserting his penis into your vagina, what did you do?

A

I was struggling sir.

Q

When you struggled, what happened to that effort of Eladio Viernes to insert his penis into your vagina?

A

It was not inserted sir.

Q

What did Eladio Viernes do when he failed to insert his penis into your vagina?

A

He just placed it between my thighs sir.

Q

After placing his penis between your thighs, what else did Eladio Viernes do if he did anything?

Atty. Dimaandal

May we interrupt . . . That after translations the answer of this witness. He just place on my thigh, there was no vagina [sic].

Q

You said that Eladio Viernes placed his penis in your thighs, in what particular part of your thighs?

Atty. Dimaandal

Leading

Court

Answer.

Interpreter

Witness pointing to the inner portion of her two thighs

Q

What did Viernes do after he put his penis between the inner portion of your two thighs?

A

[H]e placed his penis between my thighs and he again did the pumping motion sir."[17]

Pertinent portions of the testimony of complainant regarding her second defilement in the hands of appellant read as follows:

"Q

Miss Witness, on August 18, 1997 around 12:00 noon where were you?

A

I was at home sir.

Q

What were you doing?

A

I just arrived from school sir.

Q

You said that you were in your house, where was this house located on that date, August 18, 1997?

A

At Barangay Tibig sir.

Q

You said that you had just arrived from school, when you arrived in your house in Brgy. Tibig, Lipa City on August 18, 1997 around 12 noon, whom did you meet in your house if you met anybody there?

A

My step father sir.

Q

Meaning Eladio Viernes?

A

Yes sir.

Q

Seeing Eladio Viernes in your house on that date August 18, 1997 around 12 noon, what did he do if he did anything upon seeing him or meeting you?

A

He instructed our companions in the house to clean the motor tricycle sir.

Q

After instructing your companions in your house to clean the motor tricycle, what else did Eladio Viernes do, if he did anything more?

A

He asked me to fetch two (2) containers of water sir.

Q

By the way, these your companions of your house, [sic] who where given the instruction by Eladio Viernes to clean the motor tricycle, who are these companions [sic] of your house?

A

My two brothers and one step brother, sir.

Q

How old were these two brothers of yours and your one step brother who were given the instruction by Eladio Viernes to clean the motor tricycle?

A

My step brother was 12 years old; my two brothers were six and 5 years old sir.

Q

How far was this tricycle from your house?

A

Near the street sir.

Q

Around how many meters if you can calculate was this tricycle from your house or can you point distance from the place where you are sitting now to any place inside the court room?

Interpreter

Witness pointing to the railings inside the Court room as their house and the witness pointed to the western

wall of the court room as the place where the tricycle was to be around 7 meters sir.

Q

What did your two (2) brothers and one (1) step brother do if they did anything more upon receiving the instruction from your step father Eladio Viernes to clean the motor tricycle?

A

They followed the instruction of my step father to clean the tricycle sir.

Q

How about you when you were instructed by your step father to fetch two (2) containers of water, what did you do?

A

I brought the water near the comfort room sir.

Q

After you brought the two (2) containers of water to the place were you said a while ago, what did Eladio Viernes do to you if he did anything?

A

He followed me sir.

Q

After Eladio Viernes followed you, what did he do [to] you if he did anything?

A

I was frightened sir.

Q

Why?

Atty. Dimaandal

Not responsive your honor. I move to strike out the answer of the witness.'

Court

Continue.

Q

Why did you get frightened?

A

Because I felt that he will repeat the same thing sir.

Q

What do you mean repeat the same thing?

A

He will again repeat raping me sir.

Q

When you got frightened, what did you do?

A

I tried to struggle sir.

Q

Why did you struggle, what was Eladio Viernes doing [to] you?

A

He pulled up my skirt and when I was trying to go out from the comfort room he was stopping me from going out sir.

Q

What happened to your struggle, to free from the hold of Eladio Viernes when you were inside the comfort room?

A

I could not go out [o]f the comfort room because I was held by my step father sir.

Q

After Eladio Viernes pulled up your skirt, what did he do with you if he did anything more?

A

He pulled down my panty sir.

Q

Up to what portion was that panty of yours pulled down?

Interpreter

Witness pointing to her ankle

Q

After Eladio Viernes pulled down your panty up to your ankle, what did he do to you?

A

He was inserting his penis into my vagina, sir.

Q

What was your position in relation to Eladio Viernes when he was inserting his penis into your vagina?

A

I was standing sir.

Q

How about Eladio Viernes, where was he in relation to you while he was inserting his penis into your vagina?

A

He was at my back sir.

Q

What happened to this effort of Eladio Viernes in trying to insert his private organ into your private organ?

A

It was inserted sir.

Q

You said that you were standing, what was the form or what was the position of your body aside from the fact that you were standing when Eladio Viernes was able to insert his penis into your vagina while he was at your back?

A

I was standing and I was struggling sir.

Q

When Eladio Viernes was actually able to insert his penis into your vagina, what was the position of your body aside from the fact that you were standing?

A

I was standing with my knees bent sir.

Q

After Eladio Viernes was able to insert his penis into your vagina while you are in a standing position, how long was his penis inside your vagina?

A

About three (3) minutes sir."[18]

Catherine impressed the trial court as "a decent woman [who has] not been shown to be of loose morals or one who goes out with different men any time of the day or night." [19] A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner -- and remains consistent -- is a credible witness. [20] It is well-entrenched that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe them firsthand and to note their demeanor, conduct and attitude on the stand. [21] In the absence of any showing that its assessment is flawed, an appellate tribunal is bound by it.

Despite the tender age of complainant, her accounts on direct and cross-examination were replete with details that jibed on material points. [22] Considering her young age, it would have been highly improbable for her to fabricate a charge so humiliating to her and her family, had she not been truly subjected to the painful experience

of sexual abuse.[23]

The moral ascendancy of appellant as the common-law husband of complainant's mother takes the place of force and intimidation as an element of rape,[24] although the presence of such element is apparent from Catherine's testimony.

Alibi and Corroboration

Appellant denies having raped Catherine on September 29, 1996, claiming she was at her grandmother's house in San Guillermo, while he was outside his house digging a toilet pit. Allegedly, in March 1997, he was on duty as a security guard at the Smart Tower; and on August 18, 1997, he was busy the whole day plying his tricycle route.

The trial court correctly disbelieved his alibi. Alibi and denial, if unsubstantiated by clear and convincing evidence, are negative and self-serving evidence that deserve no weight in law. They cannot be given greater evidentiary value over a credible witness' testimony on affirmative matters.[25] Except for Lina Linatoc's corroboration, the only evidence supporting the alibi and denial of appellant is his own say-so. And Lina happens to be his common-law wife; thus, her testimony is necessarily suspect and cannot prevail over the testimonies of more credible witnesses.[26] Negative testimony cannot prevail over the offended party's positive identification of the accused as her rapist.[27]

Finally, for alibi to prosper, it must be shown that the accused was in another place at the time the crime was committed, and that it would have been physically impossible for him to be at the scene of the crime at the time it was committed.[28] Such physical impossibility was not proven in the present case. The Smart Tower where appellant worked as a security guard was located also in Barangay Tibig, Lipa City, and was only a thirty-minute walk from his house. The tricycle station, on the other hand, was only 1000 meters away. Note that he had a motorized tricycle at his disposal. His alibi, therefore, is unworthy of credence.

Attempt to Settle the Case

Appellant strongly denies the prosecution's assertion that he attempted to settle the case with complainant's family.

We remain unconvinced. Instead, we concur with the finding of the RTC that the letter dated November 25, 1997 -- addressed to Orlando and Catherine Linatoc, signed by appellant and delivered by Lina Linatoc -- was admissible evidence against appellant. Perusal of the letter reveals that he attempted to bribe Orlando with P150,000 or a house and lot and a promise of an additional P100,000 in exchange for dropping the charges against him.[29] Under Section 27, Rule 130 of the Rules of Court, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

Voluntary Surrender

Appellant pleads for leniency on account of his alleged voluntary surrender.

We disagree. The act of surrender must be spontaneous, accompanied by an acknowledgment of guilt, or an intention to save the authorities the trouble and the expense that search and capture would require.[30] Going to the police station "to clear his name" does not show any intent of appellant to surrender unconditionally to the authorities.[31]

Medicolegal Officer's Testimony

Appellant avers that the medicolegal officer who examined complainant admitted being unsure of her findings.

We disagree with the assessment by appellant of the testimony of the medicolegal officer. However, even if we

discount the testimony of the latter, complainant's testimony by itself can sustain the former's conviction. Medical examination is not an indispensable requirement, and its absence does not affect the verdict of conviction, if sufficient evidence is presented to prove the crime charged.[32] When a rape complainant, especially one of tender age like Catherine, says that she has been raped, she in effect says all that is necessary to show that she has indeed been raped.

Civil Indemnity and Moral Damages

The Solicitor General takes issue with the damages awarded by the RTC. In the assailed Order, it ordered appellant to pay P50,000 in civil indemnity, P10,000 in moral damages and P5,000 in exemplary damages for every count of consummated rape; and P25,000 in civil indemnity for the attempted rape.

Recent jurisprudence has increased the indemnification for the victim in a case of consummated rape to P75,000 if the crime was committed with, or effectively qualified by, any of the circumstances under which the death penalty is authorized by the applicable amendatory laws.[33] Moral damages are pegged at P50,000 without further need of pleading or proof.

Exemplary damages, on the other hand, are granted when an aggravating circumstance, which is not offset by a mitigating circumstance, attended the commission of the crime. In several cases, the relationship between the appellant and the rape victim justifies the award of exemplary damages, as in this case.[34]

Second Issue:

Modification of Penalties

One day after the promulgation of the April 6, 1998 Decision, the prosecution filed a Motion for Reconsideration seeking the imposition of the death penalty on appellant for the two cases of consummated rape and reclusion temporal for the attempted rape, in accordance with Section 11 of RA 7659. The prosecution argued that the Motion would not place appellant in double jeopardy, because "what is sought is just the imposition of the proper penalty as provided by law." [35] The trial court concurred with the prosecution and granted the Motion in the assailed Order, saying that the Motion was unopposed and that there was no violation of appellant's right against double jeopardy.[36]

We disagree. Conflicting decisions rendered over the years - both allowing the prosecution to seek the reconsideration of a conviction and prohibiting it therefrom - necessitate a review of the rule on the modification of judgments of conviction. Early on, in *People v. Ang Cho Kio*, [37] the Court, citing Article 2 of Rule 118 of the pre-1964 Rules of Court, held that the prosecution cannot move to increase the penalty imposed in a promulgated judgment. Reopening the case for the purpose of increasing the penalty as sought by the government would place the accused in double jeopardy. This ruling was followed in *People v. Pomeroy* [38] and *People v. Ruiz*. [39]

The 1964 amendment of the Rules, however, allowed the fiscal to move for the modification or the setting aside of the judgment before it became final or an appeal was perfected.[40] Under this amendment, a judgment acquired finality and the trial court lost jurisdiction only in the following cases: (1) after the 15-day period to appeal lapsed,[41] (2) when the defendant voluntarily submitted to the execution of judgment, (3) when the defendant perfected the appeal,[42] (4) when the accused withdrew the appeal, (5) when the accused expressly waived in writing the right to appeal,[43] and (6) when the accused filed a petition for probation.[44] Under this amendment, the trial court had plenary power to alter or revise its judgment in accordance with the requirements of law and justice.

In 1985, Section 7 of Rule 120 was amended to include the phrase "upon motion of the accused" - effectively resurrecting the *Ang Cho Kio* ruling prohibiting the prosecution from seeking a modification of a judgment of

conviction.[45] As amended, the provision was worded as follows:

"SEC. 7. Modification of judgment. - A judgment of conviction may, upon motion of the accused, be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the accused has expressly waived in writing his right to appeal, or the accused has applied for probation."

Under this Rule, a judgment of conviction, before it became final, could be modified or set aside upon motion of the accused.[46] It obviously aims to protect the accused from being put anew to defend himself from more serious offenses or penalties which the prosecution or the court may have overlooked in the original trial. It does not however bar him from seeking or receiving more favorable modifications.

Significantly, the present Rules, as amended last year, retained the phrase "upon motion of the accused," as follows:

"SEC. 7. Modification of judgment. - A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation."

Therefore, the assailed Order is erroneous and reversible. The trial court cannot increase the penalties without the consent of the accused.

We close this Decision with an exhortation to the defense counsel to be more circumspect in defending appellant and others similarly situated. Counsel should have immediately objected to the Motion for Reconsideration in the trial court. Because of this failure to take exception, the RTC judge meekly granted the relief prayed for and condemned the accused, inter alia, to two death sentences.

Before this Court, counsel was again caught flat-footed by not raising the erroneous basis of the assailed Order. We cannot disregard such serious lapse. We urge counsel, as well as all the members of the bench and the bar, to be more vigilant in protecting the rights of the accused -- especially those in jeopardy of the death penalty -- and to keep abreast of legal developments. Indeed, the learning process in law never ceases.[47] Utmost dedication to duty and excellence is expected of every lawyer.

WHEREFORE, the appeal is hereby PARTIALLY GRANTED. The assailed Order is ANNULLED and SET ASIDE, while the assailed Decision is AFFIRMED and REINSTATED with the MODIFICATION that the awards of moral damages are increased to P50,000 and those for exemplary damages to P25,000 for each consummated rape, pursuant to current jurisprudence.[48]

SO ORDERED.

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

[1] Notice of Appeal; Rollo, p. 34.

[2] Both penned by Judge Vicente F. Landicho.

- [3] Rollo, pp. 32-33.
- [4] Crim. Case No. 0532-97; records, p. 92.
- [5] Rollo, p. 5.
- [6] Crim. Case No. 0534-97; records, p. 1.
- [7] Crim. Case No. 0533-97; records, p. 1.
- [8] Order of September 24, 1997, Crim. Case No. 0532-97, in records, p. 17; and Order of September 15, 1997, Crim. Case No. 0533-97, in records, p. 7.
- [9] Appellant was assisted by Atty. N. Cesar E. Matira. Crim. Case No. 0532-97 in Records, p. 10; Crim. Case No. 0533-97 in Records, p. 11.
- [10] Appellee's Brief was signed by Assistant Solicitor General Mariano M. Martinez and Associate Solicitor Cleto R. Villacorta.
- [11] Rollo, pp. 105-109.
- [12] Rollo, pp. 63-65. Appellant's Brief was signed by Public Attorney II Froilan L. Valdez of the Public Attorney's Office.
- [13] This case was deemed submitted for decision on April 28, 2000, upon receipt by this Court of the Reply Brief signed by Public Attorney II Froilan L. Valdez of the Public Attorney's Office, counsel for appellant.
- [14] Rollo, p. 57.
- [15] *People v. Juachon*, 319 SCRA 761, 775, December 6, 1999; *Obosa v. Court of Appeals*, 266 SCRA 281, 296, January 16, 1997; *People v. Sol*, 272 SCRA 392, 400, May 7, 1997; and *People v. CA & Maquiling*, 308 SCRA 687, 703, June 21, 1999.
- [16] TSN, October 27, 1997, pp. 9-11.
- [17] TSN, October 27, 1997, pp. 12-15.
- [18] TSN, October 27, 1997, pp. 16-19.
- [19] Assailed Decision, p. 15; Rollo, p. 29.
- [20] *People v. Mosqueda*, 313 SCRA 694, 706, September 3, 1999.
- [21] *People v. Mosqueda*, *ibid.* *People v. Lim*, 312 SCRA 550, 566, August 17, 1999; *People v. Maglente*, 306 SCRA 546, 558, April 30, 1999; and *People v. Quiñanola*, 306 SCRA 710, 725, May 5, 1999.
- [22] *People v. Quiñanola*, *supra*, p. 730.
- [23] *People v. Tejada*, GR No. 126166, July 10, 2001, p. 15.
- [24] *People v. Lim*, *supra*, p. 567 312 SCRA 550, 567, August 17, 1999; *People v. Maglente*, *supra*, p. 573; *People v. Sandico*, 307 SCRA 204, 215, May 18, 1999.
- [25] *People v. Amaguin*, 229 SCRA 166, 175, January 10, 1994; and *People v. Quiñanola*, *supra*, p. 731.
- [26] *People v. Diaz*, 271 SCRA 504, 514, April 18, 1997.
- [27] *People v. Ablog*, 309 SCRA 222, 228, June 28, 1999; *People v. Acala*, 307 SCRA 330, 347, May 19, 1999.

- [28] *People v. Acala*, supra, p. 346.
- [29] Exhibit "F" and series, Folder of Exhibits.
- [30] *People v. Santillana*, 308 SCRA 104, 120-121, June 9, 1999.
- [31] *People v. Pinca*, 318 SCRA 270, 279, November 17, 1999.
- [32] *People v. De la Cuesta*, 304 SCRA 83, 94, March 2, 1999; *People v. Limon*, 306 SCRA 367, 375, April 29, 1999.
- [33] *People v. Flores*, 311 SCRA 170, 185, July 26, 1999; *People v. Prades*, 293 SCRA 411, 430, July 30, 1998; *People v. Mostrales*, 294 SCRA 701, 713, August 28, 1998; and *People v. Perez*, 296 SCRA 17, 36, September 24, 1998.
- [34] *People v. Bataller*, GR Nos. 134540-41, July 18, 2001, p. 29; and *People v. Catubig*, GR No. 137842, pp. 14 & 18.
- [35] Records, Crim. Case 0532-97, p. 110.
- [36] Assailed Order, p. 1.
- [37] 95 Phil. 475, 479-481, July 30, 1954.
- [38] 97 Phil. 927, November 28, 1955.
- [39] 81 SCRA 453, January 31, 1978.
- [40] *People v. Tamayo*, 86 Phil. 209, April 25, 1950; *People v. Español*, 114 SCRA 911, June 29, 1982; and *People v. Quibate*, 131 SCRA 81, July 31, 1984.
- [41] *US v. Hart*, 24 Phil. 578, March 28, 1913; *US v. De Iro*, 33 Phil. 475, February 9, 1916.
- [42] *Ramos v. Gonong*, 72 SCRA 559, August 31, 1976.
- [43] *People v. Rodillas*, 89 Phil. 99, May 28, 1951.
- [44] Section 7, Rule 120 of the Rules of Court.
- [45] *Herrera*, Remedial Law, Vol. IV, 2001 ed., p. 767.
- [46] *Ibid.*
- [47] *Mijares Villaluz*, 288 SCRA 594, 613, April 3, 1998.
- [48] *People v. Marcelo*, GR Nos. 126538-39, November 20, 2001, p. 17.

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