

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALBERTO GONZALES JR., APPELLANT.

G.R. Nos. 143143-44. January 15, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Appellant's claim that he cannot be convicted of two counts of rape on the basis of an information that charged only one count is negated by the plain fact that he pleaded guilty to two separate though identically worded Informations bearing different case numbers. Furthermore, his counsel cross-examined complainant on these two separate charges. In his own testimony, appellant also denied committing either of the two acts of rape.

Statement of the Case

Alberto Gonzales Jr. appeals the August 5, 1999 Decision[1] of the Regional Trial Court (RTC) of San Mateo, Rizal (Branch 76) in Criminal Case Nos. 3514 and 3515,[2] finding him guilty beyond reasonable doubt of two counts of rape. The RTC disposed of the cases as follows:

“WHEREFORE, premises considered, judgment is hereby rendered as follows:

- In Crim. Case No. 3514, finding accused Alberto Gonzales, Jr. [g]uilty beyond reasonable doubt of the crime of rape, as defined and penalized under Art. 266-A, par. 1 and Art. 266-B, par. (1) of the Revised Penal Code, as amended by R.A. 8353 in relation to Sec. 5 (b) R.A. 7610, and sentencing him to suffer the penalty of reclusion perpetua, and to indemnify the private complainant, Maria Anub y Mangadan in the amount of P50,000.00 as moral damages and to pay the costs.

- In Crim. Case No. 3515, finding accused Alberto Gonzales, Jr. [g]uilty beyond doubt of the crime of rape, as defined and penalized under Art. 266-A Par. 1 and Art. 266-B, Par. (1) of the Revised Penal Code, as amended by R.A. 8353 in relation to Sec. 5 (b) R.A. 7610, and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the private complainant, Maria Anub y Mangadan in the amount of P50,000.00 as moral damages and to pay the costs.”[3]

On March 4, 1998, two separate but identically worded Informations[4] charged appellant thus:

“That on or about the 26[th] day of January 1998 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant did then and there willfully, unlawfully and feloniously have sexual intercourse with MARIA ANUB y MAGADAN, a minor fifteen (15) years old without her consent and against her will.”[5]

On April 13, 1998, the prosecution amended the Informations for the two criminal cases by changing the victim's age from 15 to 16 years as follows:

“That on or about the 26[th] day of January 1998 in the Municipality of San Mateo, Province of Rizal,

Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant did then and there willfully, unlawfully and feloniously have sexual intercourse with MARIA ANUB y MAGADAN,[6] a minor sixteen years old, without her consent and against her will.”[7]

Upon his arraignment on March 19, 1998, appellant, duly assisted by his counsel, Atty. Regino M. Garillo, pleaded not guilty to the two offenses charged.[8] After trial on the merits, the trial court convicted him.

The Facts

Version of the Prosecution

In its Brief,[9] the Office of the Solicitor General presents the factual incidents of the case:

“Maria Anub was a housemaid of Mrs. Mariel Caboteja in San Mateo, Rizal when the incidents of rape occurred. She hails from Buyang Norte, Cambigce, Bohol. She did not finish Grade 4.

“About 10 o’clock in the evening of January 26, 1998, she went to the nearby store of Mama Ti to deliver the ice candy that she prepared. As she went out of the store, appellant, a next-door neighbor, waved to her, asking her to come near. She went near him and he asked her to massage him. She said that she would have to ask permission first from Mama Ti. Appellant told her not to ask permission anymore as Mama Ti might get angry. Appellant was known to Maria as she sometimes took care of his four-year old son, Paulo.

“Appellant brought Maria to his house which was just beside the house of Maria’s employer. Appellant turned off the lights in his room and when Maria asked him why it was dark inside his room, he told her that it was really like that. Appellant then removed his shirt and handed an Omega painkiller bottle to Maria and asked her to start the massage. Maria started to massage appellant’s back but after a few minutes, appellant pushed her down on the floor. He removed her clothing and covered her mouth with his right hand. He threatened her that he would cut off her head if she shouted. While appellant was removing Maria’s T-shirt, she was elbowing him away but he proved too strong for her. Also, she was afraid that he would box her. Appellant then went on top of Maria and inserted his penis into her vagina. Maria felt pain so that she moved her body. She felt something hot (like urine) come out from appellant.

“Maria wanted to stand up and escape but was unable to do so because appellant was still on top of her, holding her hands. Then, he again inserted his penis into her vagina. When appellant released her hands, she was able to stand up and r[u]n outside the room. She wore her shorts and T-shirt at the sala, then opened the door to the kitchen and ran outside. She jumped off the fence going to her employer’s house.

“Regino Bravo, a neighbor, saw Maria running down the stairs to where she lived about 12:30 after x x x midnight. He noticed she was crying and was pale and trembling. She did not respond to him when he greeted her.

“It was only the following day that Maria’s employer learned of the incident. Alma Legaspi, who was also Maria’s employer (Mariel’s sister), was informed by their mother about 10 o’clock in the evening to check on their housemaid who was not feeling well the whole day. She found Maria lying on the bed covered with a blanket. She did not respond to her inquiries as to what was wrong. She kept on crying and mumbling that her head would be cut off. After sometime, Maria, who had difficulty speaking in Tagalog, was able to reveal that appellant raped her, ‘nagalaw siya’ by their neighbor, Alberto Gonzales, Jr. Alma called her elder sister, Mariel Caboteja, and told her what happened. Maria told them that appellant raped her twice.

“They reported the matter to the Marikina police but they were told it was not within their jurisdiction. They called up the San Mateo police station and two (2) police officers came. Appellant was summoned and they were brought to the barangay hall where Maria pointed to appellant as the one who raped her. They then

proceeded to the police station of San Mateo, Rizal to file the complaint.

“The doctor who examined Maria, Dr. Tomas D. Suguitan, is a Medico-Legal Officer of the PNP Crime Laboratory in Camp Crame, Quezon City. He conducted the examination on January 28, 1998 upon the request of the San Mateo Police station. His finding, reduced in Medico-Legal Report No. M-228-98 (Exh. ‘C’ Rec. p. 8) has the following entries: ‘. . . On separating the same disclosed an abrade posterior fourchette and an elastic hymen with shallow healed lacerations at 3, 6 and 8 o’clock positions.’ Dr. Suguitan concluded that the findings are compatible with the recent loss of virginity. He also opined that the injuries were inflicted less than five (5) days from date of examination and consistent with the injuries caused by insertion of a blunt object, like a penis, into the vagina.

“Police Officer Ronaldo San Diego, who investigated Maria, prepared two statements. In the first statement, he was not able to state that Maria was raped twice so that Maria made handwritten insertions on the left margin. San Diego retyped the statement to reflect the corrections.”[10]

Version of the Defense

On the other hand, appellant presents the following version of the facts:[11]

“On November 24, 1998, the defense commenced presentation of its evidence with the accused- appellant, ALBERTO GONZALES, Jr., taking the witness stand. He DENIED having raped MARIA ANUB and recalled that at about 9:30 in the evening of January 26, 1998, his three (3) friends Josefino ‘Matt[‘] del Mundo, Yayo Dinero and Jaime Reyes, ha[d] a casual drinking meet just outside his house but he just talked to them without drinking. He saw MARIA ANUB passing by and he asked her if she knew how to massage, to which she answered in the affirmative and told him of the fact that she was the one massaging her father; that she promised to massage him later because she would still fix her dishes. At about 11:30 p.m., his drinking friends left, thus, he went inside the house and watched x x x television with his 3-year old son, PAOLO. It was then when the private complainant knocked at his back door and informed him of her intention to massage him to which he declined and told her that it was already late however she insisted so he allowed her to enter his house, which was lighted. She waited while he borrowed the Omega Pain Killer from his next-room mother, who was still awake, thus, he told her about the presence thereof of the private complainant. After massaging him for about 15 to 20 minutes, MARIA ANUB asked permission to leave, hence, he saw her to the door but after he closed it, he noticed that she left her sweatshirt so he called her [and] gave it to her near the door. Thereafter, he switched off the television set and slept with his son.

“It was already about 12:00 o’clock on January 28, 1998 when he learned from the policemen who went to his house that MARIA ANUB was complaining against him and since then he was placed in detention where his ‘ninang-neighbor,[‘] PRISCILLA ANDRADE visited to him and revealed to him that MARIA ANUB admitted that he did not [abuse] her but she was ordered by his ‘KUYA’ who was a stranger to him, to file the complaint against him.

“The accused testified that while being massaged he was lying down on bed, with his T-shirt raised up to his neck. He drew a sketch of the place showing the relative positions of the houses of the private complainant, REGINO BRAVO, his sister[,] the Regaspi’s store and his own, as well as the streets going down the houses and the interior of his house as EXHIBIT ‘4’ with submarkings. He identified his ‘GANTING SALAYSAY’ as EXHIBIT ‘5’ to 5-a’.

“On cross examination, the accused explained that this [sic] mother was already bedridden for almost two months prior to the incident; that he and ‘Helen’, his sister’s housemaid, jointly took care of her; that his wife was not at the house in [the] time of the rape; that he did not sexually molest the complainant. He recalled that he was about three weeks in detention cell and he submitted his COUNTER-AFFI[D]AVIT when PRISCILLA ANDRADE told him about the admission to her of MARIA ANUB that he did not rape her. He clarified that his GANTING SALAYSAY or EXHIBIT ‘5’ was based on his originally handwritten account of the incident

while he was already in jail, which he gave to his lawyer.

“On re-direct examination, accused clarified that at about 11:30 p.m., of January 26, 1998, when he entered his room and turned on the television, his son was awakened, hence, both of them watched it until the private complainant came, then the boy slept again; that all the time, he kept the door of the room of his bedridden mother [open] so he could always see her, even while the private complainant was massaging him.”[12]

Ruling of the Trial Court

The RTC ruled that plain denial by appellant could not relieve him of liability for the rapes charged. It gave more weight and credence to the positive assertions of the victim that she had been raped twice on that fateful night by appellant. It also noted that, other than her desire to see her ravisher punished, she had no motive whatsoever to testify falsely against him.

Hence, this appeal.[13]

Issues

In his Brief, appellant raises the following alleged errors for our consideration:

“I

The lower court erred in convicting the accused-appellant of two (2) counts of rape in an Information which alleged a single rape.

“II

The lower court erred in not acquitting the accused-appellant [of] the imputed two (2) counts of rape, despite the material inconsistencies in private complainant’s statements/testimony, with contradiction from her witnesses and the requisite resistance to the attributed rape.”[14]

The Court’s Ruling

The appeal is devoid of merit.

First Issue:

Defective Information

Appellant claims that he cannot be convicted of two counts of rape, considering that the Information filed against him alleged a single offense.

We disagree. First, the records show that four Informations were lodged against him: two original (both dated February 26, 1998) and two amended ones (both dated April 6, 1998). The original Informations were identically worded, but they bore two separate numbers: Criminal Case Nos. 3514 and 3515. The amended Informations, both bearing these docket numbers, were similarly worded and basically the same as the two original ones, except for the change of complainant’s age from 15 to 16 years.

Second, two Orders of the trial court, specifically those of March 19, 1998 and April 2, 1998, clearly indicated that more than one charge of rape had been filed against him. The said Orders are reproduced hereunder:

“ORDER

“When these cases were called for arraignment, accused Alberto Gonzales, Jr., after x x x the Informations [were read to him] in a language known to him which [was] Filipino, x x x entered a plea of Not Guilty to the offense charged.

“Accordingly, let a plea of Not Guilty be entered into the records of these cases for accused Alberto Gonzales, Jr. who has been assisted in today’s arraignment by Atty. Regino Garillo.

“In the meantime, schedule the pre-trial of these cases on April 2, 1998 at 8:30 o’clock in the morning.

“Notify the private complainant in this case.

“SO ORDERED.

“GIVEN IN OPEN COURT this 19[th] day of March, 1998 at San Mateo, Rizal.

(illegible)

JOSE C. REYES, JR.

Judge”[15]

“ORDER

“As prayed for by Public Prosecutor Florante R. Ramolete, he is hereby given a period of five (5) days from today within which to file his amended information in connection with these two cases, furnishing a copy thereof [to] Atty. Regino M. Garillo, counsel for the accused, who is likewise given the same period of time within which to file his comment and/or opposition thereto.

“In the meantime, schedule anew the pre-trial of these cases on April 22, 1998 at 8:30 o’clock in the morning.

“SO ORDERED.

“GIVEN IN OPEN COURT this 2[nd]day of April, 1998 at San Mateo, Rizal.

(illegible)

JOSE C. REYES, JR.

Judge”[16]

Third, not only was he informed that two charges of rape had been lodged against him, he was also arraigned separately for each of them. Thus, he cannot claim to be unaware that he was being charged with two counts of rape.

The two original Informations were amended because of the late presentation by complainant of the certified true copy of her Birth Certificate issued by the National Census and Statistics Office. It was only on April 2, 1998, almost a month after the prosecution had filed the original Informations, when she furnished those copies showing that she was really 16, not 15, years old. Thus, to conform with the evidence, a Motion with Leave of Court to Amend and Admit Attached Amended Informations was filed by the assistant provincial prosecutor, pursuant to Section 14 of Rule 110 of Rules of Court.[17]

Fourth, appellant’s counsel did not interpose any objection to this Motion. Hence, the lower court granted the relief prayed for via its April 22, 1998 Order which we reproduce hereunder:

“ORDER

“As prayed for by Public Prosecutor Florante R. Ramolete and no objection having been interposed by the defense counsel, Atty. Regino Garillo, and considering that the accused will not be prejudiced, the Motion to Admit Amended Informations is hereby granted.

“Accordingly, the Amended Information in both cases changing the age of the victim Maria Anub from 15 to 16 years old is hereby admitted.

“As prayed for by the prosecution and the defense, let the initial trial of these cases be scheduled on May 14,

1998 at 8:30 o'clock in the morning.

"SO ORDERED.

"GIVEN IN OPEN COURT this 22[nd] day of April, 1998 at San Mateo, Rizal.

(illegible)

JOSE C. REYES, JR.

Judge"[18]

Fifth, the victim clearly testified on the two instances of rape. Appellant, through his counsel, cross-examined her on both counts. Clearly, he was apprised that two rape cases had been filed against him and was thus accorded the chance to defend himself against both charges.

FISCAL FLORANTE R. RAMOLETE

"The testimony of this witness is offered to show and to prove that [o]n the evening of January 25, 1998 this witness was sexually abused twice by the accused in this case in the latter's house through force and intimidation. She will narrate in detail how those sexual molestations were [done] to her. She will identify the accused in these cases, as well as her affidavit which she gave [to the police authorities on January 28, 1998] in connection with these 2 cases and explain the discrepancy x x x.

COURT:

The offer is noted, you may proceed."[19]

DIRECT EXAMINATION UPON PRIVATE COMPLAINANT
MARIA ANUB BY FISCAL RAMOLETE:

x x x x xx x x x

"FISCAL

Q

On January 26, 1998 at around 10:00 o'clock in the evening, where were you?

A

I was in the store, sir.

Q

Whose store was that?

A

Mama Ti, sir.

Q

Why were you there in the store owned by Mama Ti?

A

I prepare ice candy and deliver it to Mama Ti's store for sale, sir.

Q

And then, what happened next?

A

I went out of the store[;] then Kuya Jun went out of his house and then went out of the street and told me to go near him by waving his hand, sir.

Q

When you said you went out of the store and saw Kuya Jun in the store waving his hand as if asking you to go near him[,] how far was he from you?

A

From the alley up to the wall of the Courtroom, sir.

([T]he prosecution and the defense agreed that the distance [was] about 14 to 15 meters, more or less).

Q

You are pointing to a certain Kuya Jun[;] do you know the full name of this Kuya Jun?

A

Alberto Gonzales, sir.

Q

If this Alberto Gonzales, alias Kuya Jun, is inside the Courtroom, will you be able to point to him?

A

Yes, sir.

(At this juncture, witness is pointing to a certain person in the Courtroom [who] when asked answered [to] the name x x x Alberto Gonzales).

Q

Now, when Kuya Jun waved to you to go near him, what did you do?

A

I went near him and when I was near him, he asked me to massage him but I told him that I will ask first permission from Mama Ti, sir.

Q

When you told him that you will ask first the permission of Mama Ti, what was his response?

A

Alberto Gonzales said huwag na because Mama Ti will get angry, sir.

Q

So, what did you do?

A

I went with him because I was surprised and he brought me inside his house, sir.

Q

Where is his house located, Madam witness?

A

At the lower portion of Mama Ti's store, sir.

Q

How far is the house of Mr. Alberto Gonzales, alias Jun, from the house of your employer?

A

Our house is located at the lower portion of Jun's house, sir.

x x x x xx x x x

Q

You said you went with Kuya Jun because you were surprised then, what happened next when you went with him?

A

He brought me inside his room and I asked him why it was dark, sir.

Q

And what was his response when you asked him why was his room dark?

A

Ganoon lang daw po talaga iyon, sir.

Q

And then, what happened next, Madam witness?

A

I was brought inside the room, sir. At first, it was lighted but he [turned] off the lights and then I asked him why he [turned] off the lights?

Q

And what was his response?

A

It is really like that sir.

x x x x xx x x x

Q

And then, what happened next, Madam witness, after he [turned] off the lights inside his room?

A

He removed his clothes and then gave me a bottle of omega pain killer and asked me to massage him but not for long, sir.

x x x x xx x x x

Q

After massaging him for quite sometime, for a few minutes, what happened next, Madam witness?

A

He laid me [on] the floor (hiniga niya ako sa sahig), sir.

Q

When you said he laid you [on] the floor, in what manner did Kuya Jun [lay] you [on] the floor?

A

He pushed me down [to] the floor, sir.

Q

And then, what did he do next?

A

He covered my mouth with his hand, sir.

Q

What hand, right or left?

A

Right hand, sir.

Q

And then, what else happened?

A

He inserted his penis, sir.

Q

[Did] you have your [clothes on] when he inserted his penis?

A

No more, sir.

x x x x xx x x x

Q

And then, what else?

A

He was there lying on top of me, sir.

Q

And while he was there lying on top of you, what did you do, Madam witness?

A

I was moving, sir.

Q

Why?

A

I want[ed] to escape, sir.

Q

Were you able to escape from him?

A

No, sir, because he was on top of me and holding my hands?

Q

And what happened next when you were not able to escape from the accused because he was holding your hands?

A

While I was lying, I was moving, sir[;] that was done twice.

Q

What do you mean by that, Madam witness?

A

He was holding my hands twice, sir.

Q

And then, what happened next, Madam witness?

A

He again inserted his penis, sir.

Q

How many minutes had elapsed after he inserted his penis into your vagina for the first time?

A

Five (5) minutes, sir.

Q

And again, Madam witness, was he able to insert his penis into your vagina for the second time?

A

Yes, sir.

Q

And what did you do, Madam witness, when he was inserting his private part into your vagina?

A

I was moving, sir.

Q

Why?

A

Because he was inserting, sir.

Q

What was your reason [for] moving your body when he was inserting his penis into your vagina?

A

I want[ed] to stand up, sir.

Q

And what did you feel when the accused was able to insert his penis into your vagina for the second time?

A

It [was] painful, sir.

Q

What was painful?

A

My vagina, sir.

Q

And what did you do, Madam witness, aside from moving, if you did anything else?

A

I was just moving, sir.

Q

And after the accused was successful in inserting his private part into your private part, Madam witness, what did you do?

A

I was crying, sir, because I felt pain.

Q

Aside from feeling pain, why did you cry, Madam witness?

A

Because it was painful, sir.

Q

Is that the only reason why you cried, Madam witness?

A

Yes, sir.

Q

And then, what happened next, Madam witness?

A

When he released my hands, I was able to stand up and r[u]n immediately to the door, sir.”[20]

Sixth, having already entered his plea during his arraignment, it is now too late to object to the sufficiency of the Informations filed against him. Thus, the Court held in *People v. Gopio*: [21]

“In any event, it is now too late in the day to question the form or substance of the information because when he entered his plea at his arraignment, accused-appellant did not object to the sufficiency of the information against him. The rule is that, at any time before entering his plea, the accused may move to quash the information on the ground that it does not conform substantially to the prescribed form. The failure of accused-appellant to assert any ground for a motion to quash before he pleads to the information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds for a motion to quash, except when the grounds are that no offense was charged, the court trying the case has no jurisdiction over the offense charged, the offense or penalty has been extinguished, and the accused would be twice put in jeopardy.”[22]

Second Issue:

Credibility of the Witness

Appellant likewise assails the trial court’s reliance on the credibility of the victim. He argues that from her original statement given to the police up to her testimony delivered in open court, her statements were muddled and filled with inconsistencies. He then calls our attention to the fact that she could have easily cried out for help if he had truly forced her to have sex with him.

We are not persuaded. First, appellant does not deny that both he and complainant were together that night. In fact, he admits having asked her to massage him inside his house. This was amply corroborated by Regino Bravo. Second, the testimonies of Defense Witnesses Josefino del Mundo and Pelagio Dineros that they saw appellant sleeping in his house that same evening did not preclude his committing the crimes on the date mentioned.

As to the assessment of the credibility of witnesses, the Court has said time and time again that “the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.”[23]

In the present case, the trial court found the testimony of the victim to be straightforward and credible. It further noted that she had not been motivated by any ill will to fabricate such grave charges. Appellant himself testified during his direct examination that the victim had no ill feeling or reason to file any false charge against him. He

testified thus:

“Q

So, you want to picture [to] this Hon. Court that you did not touch this Maria Anub that evening of January 26, 1998?

A

Yes, sir.

Q

You were present when Dr. Suguitan testified specifically on May 14, 1998?

A

Yes, sir.

Q

You heard him testify[y] that the private parts of the victim sustained an abrasion among others?

A

Yes, sir.

Q

You also heard him testify that the victim’s private part sustained healing lacerations at 3 and 6 o’clock positions?

A

Yes, sir.

Q

And in the same manner that during the direct examination, you testified that this victim ha[d] no ill- feeling against you or to file any case against you for that matter?

A

Yes, sir.

Q

In the same manner that you do not know of any person who instigated Maria Anub to file these cases against you?

A

None, sir.

Q

Except this Priscilla Andrade whom you were able to talk with while you were already in jail?

A

Yes, sir.

Q

This Priscilla Andrade is your ninang, is [she] not?

A

Yes, sir, neighbor and ninang.

Q

And you were able to talk to this Priscilla Andrade while these cases were [being] investigated by Prosecutor Gonzales in the preliminary investigation, [were you] not?

A

No, sir.

Q

When was that?

A

When I was already detained in the municipal jail, sir.

Q

That's it, Mr. Witness. [Is it] not a fact that you were picked up by the police authorities on January 28, 1998 and incarcerated continuously up to the present?

A

Yes, sir.

Q

So you were able to talk to Priscilla Andrade during the earlier period when you were incarcerated?

A

Three weeks after I was detained, sir.

Q

To be specific, Mr. Witness, was it the time when you ha[d] already submitted your counter-affidavit when you were able to talk to her or prior to the submission of your counter-affidavit?

A

After I ha[d] submitted my Ganting Salaysay, sir.

x x x x x x x x[24]

The victim's testimony was corroborated by the other prosecution witnesses as well as by the medico legal officer,[25] whose findings were summarized by the trial court as follows:

"x x x. The elastic hymen has shallow healed lacerations at 3, 6, and 8 o'clock positions. The lacerations being shallow means that the depth of the same is less than one-half of the total width of the hymen. These lacerations had been inflicted less than five days from the time that he examined the victim on January 28, 1998, because they are still in the healing process. The lacerations could have been caused by the insertion of a blunt object with rubbing such as an [erect] male penis during sexual intercourse or a finger."[26]

The attempt of appellant to discredit the victim because of alleged inconsistencies on whether her clothes had been removed before she was held down or before she was deflowered are minor. He cannot "capitalize on the minor inconsistencies in the testimony of the complainant, even if they do exist. Such minor inconsistencies tend to bolster, rather than weaken, her credibility for they show that her testimony was not contrived [or] rehearsed. Besides, [an] errorless testimony [cannot] be expected when complainant is recounting details of a harrowing experience."[27] What is important is the vivid recollection of the victim that appellant sexually attacked her twice against her will.

Likewise, the insinuations of appellant that no force was applied on the victim and that she could have cried out for help hardly deserves consideration. It was sufficiently established that he had forcibly held her and threatened her.

We hold that appellant's defense, which is primarily denial, cannot overcome the positive testimony of the victim, which was substantially corroborated by the other prosecution witnesses. "The rule is that the positive and categorical assertions of witnesses generally prevail over bare denials."[28] Such "accordance of greater probative value to evidence that is positive in nature than that which is negative in character is a time-honored principle. Hence, the negative assertions of accused-appellant cannot prevail over the positive testimony of the complainants."[29]

The court a quo correctly awarded moral damages to the victim pursuant to the Court's current policy that "moral damages are automatically awarded to rape victims without need of proof for it is assumed that they have suffered moral injuries entitling them to such award."[30] We hold, however, that the RTC erred in not granting indemnity ex delicto. Pursuant to existing jurisprudence,[31] we therefore award her the additional amount of P50,000 as indemnity ex delicto for each count of rape.

WHEREFORE, the assailed Decision is AFFIRMED with the MODIFICATION that an additional award of

P50,000 as indemnity ex delicto for each count of rape (or a total of P100,000) shall be given the victim aside from the moral damages already awarded to her by the trial court. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Sandoval-Gutierrez and Carpio, JJ., concur.

[1] Written by Judge Jose C. Reyes Jr.

[2] Rollo, pp. 31-41.

[3] Assailed Decision, pp. 10-11.

[4] Signed by Assistant Provincial Prosecutor Leonardo T. Gonzales.

[5] Information, p. 1; Rollo, pp. 9-14.

[6] Also spelled “Mangadan.”

[7] Amended Information, p. 1; Rollo, pp. 15-17.

[8] Certificate of Arraignment; records, p. 11.

[9] Appellee’s Brief was signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Magdangal M. de Leon and Solicitor Irahlyn P. Sacupayo-Lariba.

[10] Appellee’s Brief, pp. 3-7; Rollo, pp. 108-112. Citations omitted.

[11] Rollo, pp. 58-88. Appellant’s Brief was signed by Atty. Dominador L. Maglalang Sr.

[12] Appellant’s Brief, pp. 8-10; Rollo, pp. 65-67. Citations omitted.

[13] This case was deemed submitted for resolution on April 10, 2001, upon receipt by this Court of appellee’s Brief. Appellant’s Brief was received by this Court on December 11, 2000. The filing of a Reply Brief was deemed waived as none had been submitted with the reglementary period.

[14] Appellant’s Brief, p. 14; Rollo, p. 71. Upper case used in the original.

[15] Italics supplied; records, p. 10.

[16] Italics supplied; records, p. 16.

[17] Records, pp. 20-30.

[18] Italics supplied; records, p. 31.

[19] TSN, July 27, 1998, pp. 4-5.

[20] Ibid., pp. 6-12.

[21] GR No. 133925, November 29, 2000.

[22] Ibid., per Mendoza, J.

[23] People v. Tabones, 304 SCRA 781, 791, March 17, 1999, per Panganiban, J.

[24] TSN, November 24, 1998, pp. 26-27.

[25] Dr. Tomas Suguitan.

[26] Assailed Decision, pp. 1-2; Rollo, pp. 31-32.

[27] *People v. Sagun*, 303 SCRA 382, 397, February 19, 1999, per Quisumbing, J.

[28] *People v. Chua*, 297 SCRA 229, 237, October 7, 1998, per Kapunan, J.

[29] *People v. Meris*, 329 SCRA 33, 46, March 28, 2000, per Kapunan, J.

[30] *People v. Del Mundo Sr.*, GR No. 132065, April 3, 2001, per Ynares-Santiago, J.

[31] *People v. Narido*, 316 SCRA 131, October 1, 1999; *People v. De La Cuesta*, 304 SCRA 83, March 2, 1999; *People v. Prades*, 293 SCRA 411, July 30, 1998.

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