

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. NICODEMO MINON ALIAS “BOYET” AND “NICK,” APPELLANT.

G.R. Nos. 148397-400. July 07, 2004

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TINGA, J.:

Before us for automatic review is the Decision of Branch XLII of the Regional Trial Court, Pinamalayan, Oriental Mindoro[1], finding accused-appellant Nicodemo Minon[2] guilty of three (3) counts of QUALIFIED RAPE, and sentencing him to suffer three (3) DEATH penalties; together with the accessory penalties provided by law, and to indemnify the victims Elizabeth and Eloisa Miñon P50,000 each, without subsidiary imprisonment in case of insolvency; and to pay the cost.

The four (4) separate Informations originally filed against the accused-appellant, all dated 17 July 1998, alleged as follows:

Criminal Case No. P-5795:

“That on or about the 10[th] day of September, 1994, at Sitio Cogonan, barangay Conrazon, municipality of Bansud, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one Maribeth Minon, an 11 year old girl and a cousin of the accused, against her will and without her consent.

“CONTRARY to Article 335 of the RPC in relation to R.A.7659.”[3]

Criminal Case No. 5796:

“That on or about the 25th day of March, 1995, at Sitio Cogonan, barangay Conrazon, municipality of Bansud, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one Elizabeth Minon, a 15 year old girl and a cousin of the accused, against her will and without her consent.

“CONTRARY to Article 335 of the RPC in relation to R.A.7659.”[4]

Criminal Case No. P-5797:

“That on or about the 4[th] day of October 1997 at Sitio Cogonan, barangay Conrazon, municipality of Bansud, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one Eloisa Minon, an 11 year-old-girl and a cousin of the accused, against her will and without her consent.

“CONTRARY to Article 335 of the RPC in relation to R.A.7659.” [5]

Criminal Case No. P-5798:

“That on or about the 14[th] day of January 1998 at Sitio Cogonan, barangay Conrazon, municipality of Bansud, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with one Eloisa Minon, an 11 year old girl and a cousin of the accused, against her will and without her consent.

“CONTRARY to Article 335 of the RPC in relation to R.A.7659.” [6]

On 08 September 1998, accused was arraigned and pleaded not guilty.[7]

Trial ensued, and considering that the evidence to be presented is common, the parties agreed to have the cases tried jointly.

Private complainants Elizabeth and Eloisa Miñon stated that they are first cousins of the accused, their mothers being sisters.[8] Meanwhile, accused stated that private complainants are his nieces, his father being an uncle of Elizabeth and Eloisa Miñon.[9]

The facts established by the prosecution are summarized as follows:

Elizabeth Miñon testified that since the death of their mother, she and her sisters resided at the house of their uncle, Isagani Miñon at Sitio Cogonan, Brgy. Conrazon, Bansud, Oriental Mindoro.[10] In the early morning of 25 March 1995, while she was sleeping beside the two-year old daughter of Isagani Miñon, she woke up and found her cousin, accused Nicodemo Minon, on top of her. He removed her panty and forcibly inserted his penis into her vagina. He whispered to her not to make any noise.[11] After the sexual act, accused stayed in the room while Elizabeth cried and stood up, went to the other side of the room, and laid down beside Erwin Miñon, a brother of the accused. When Erwin woke up and went downstairs, Elizabeth followed and told him that the accused raped her. Her aunt, Marianita woke up around that time and Elizabeth likewise informed her of the incident. Marianita woke up her husband Isagani Miñon, who upon learning of the incident, ordered the accused to leave the house, which the latter did. A month later, the accused came back and attempted to rape Elizabeth again. Elizabeth decided to leave the place for good and worked in a bakery at the poblacion.[12]

Eloisa Miñon testified that in 1997, she resided in the house of her uncle, Isagani Miñon.[13] On the evening of 04 October 1997, while she was sleeping with two children of Isagani Miñon, she was awakened and found that accused-appellant had already removed her clothes. He placed himself on top of her and forcibly inserted his penis into her sex organ. She cried as she felt the pain.[14] On 03 December 1997, while Eloisa was in bed with three (3) children, accused-appellant once more forced himself upon her.[15] Eloisa stated that she did not report the two incidents to her uncle since the accused threatened to kill her. Thereafter, in the morning of 14 January 1998, the accused instructed Eloisa to clean the kitchen of Isagani’s house, to which she complied. While cleaning the kitchen, the accused removed her shorts and forcibly had sexual intercourse with her. After this incident, Eloisa revealed her fateful experience to the accused’s sister, Emma, who, upon knowledge of his brother’s acts, immediately castigated the latter.[16]

Meanwhile, Maribeth Miñon, complainant in Criminal Case No. 5795, decided not to pursue her complaint as she was already married and her husband did not want her to testify.[17]

The prosecution likewise presented Dr. Preciosa Soller, Municipal Health Officer of Bansud, Oriental Mindoro, who personally examined the three complainants and issued the corresponding medico-legal reports. Dr. Soller’s findings are summarized as follows:

Criminal Case No. P-5795 (Maribeth Miñon):

Findings: Breasts not fully developed; areolae dark colored; scanty pubic hair; hymen-old healed lacerations at

12 o'clock, 3 o'clock, 7 o'clock; uterus not enlarged; vagina admits tightly examiner's gloved index finger, rugae still present; uterus not enlarged physical virginity lost.[18]

Criminal Case No. P-5796 (Elizabeth Miñon)

Findings: Breasts developed, conical with pigmented areolae; moderate amount of pubic hair; Perineum moderate amount of white mucus; hymen old healed laceration at 12 o'clock, 3 o'clock and 6 o'clock; vagina admits easily examiner's gloved index finger, rugae still present; uterus not enlarged; physical virginity lost.[19]

Criminal Case No. 5798 (Eloisa Miñon)

Findings: Breasts not developed; no pubic hair, labia majora not developed; hymen-old healed lacerations, full at 12 o'clock and 7 o'clock; scanty mucus; vagina admits tightly examiner's index finger; physical virginity lost.

The last witness for the prosecution was POI Mario Matining, who testified that Maribeth Miñon asked for his help because she was raped by the accused. He admitted to having helped prepare the complainants' affidavits and sought their medical examination. He was likewise present when the accused was arrested and identified by the complainants.[20]

In a sudden turnaround, complainants Elizabeth and Eloisa Miñon testified for the defense, and manifested that they were no longer interested in further prosecuting the accused as they pity his children.[21] They claimed that after having gone under investigation by the Bansud Police, they decided to withdraw the case against the accused-appellant. However, POI Matining and the DSWD officer, Miramelinda Leuterio opposed the withdrawal and pressured them to testify.[22] On cross-examination, Eloisa could not explain why she did not inform the trial court, or the prosecuting officer of the alleged pressure from the DSWD officer.[23] When questioned by the trial court whether her statements during the 16 March 1999 hearing were all true and correct, Eloisa replied in the negative, and insisted that they were merely forced by the DSWD officer to testify.[24]

The defense also presented Rodolfo Rogero, brother-in-law of the accused. He claimed that from 02 October to 28 October 1997, the accused lived with him in his farm in Tiguisan, Bansud, Oriental Mindoro. According to Rogero, the accused never left his farm during the said period as the latter was helping him plow and clean the land in preparation for planting corn.[25]

When the accused was placed on the witness stand, he stated that complainants were his nieces,[26] but denied the accusations against him. He claimed that from 1994 to 1998, he resided in Odiong, Roxas, Oriental Mindoro, and that on March 25, 1995, the alleged date of the rape of Elizabeth; he was working in a talyer in Odiong.[27] Thereafter, he stated that on October 4, 1997, the alleged date of the crime against Eloisa, he was selling ice cream and residing in Bauan, Batangas with his wife[28].

The accused maintained that complainants fabricated the rape charges against him because he saw complainants' father, Diosdado Miñon, having sexual intercourse with a certain Lenlen, one of the complainants' sisters in Roma Roxas, Oriental Mindoro.[29]

After trial on the merits, the trial court found complainants' initial testimonies to be credible and noteworthy. It held that the recantation of the complainants was a mere afterthought, made out of pity for the accused and out of gratitude to the family which took them in after their mother died.[30] In addition, the trial court found vital contradictions in the testimonies of witnesses for the defense.[31] While Rogelio Rogero stated that the accused was with him from October 2 to October 28, 1997 at Tiguisin, Bansud, Oriental Mindoro, the accused himself claimed that on October 4, 1997, he was in Bauan, Batangas selling ice cream. Likewise, accused contradicted

himself when he stated that he and his wife stayed in Batangas for less than a year in 1997 even as he earlier stated that he resided in Odiong, Roxas, Oriental Mindoro from 1994 to 1998.[32] The trial court rejected private complainants' recantation, gave credence to their previous testimonies, found the qualifying circumstances of minority and relationship and convicted the accused for rape, [33] as follows:

"ACCORDINGLY, the Court finds the accused NICODEMO MINON guilty beyond reasonable doubt, as principal of the crime of RAPE three (3) counts with the attending circumstance in all the three (3) cases, that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree and hereby [sic] sentence him to suffer three (3) DEATH penalties, together with the accessory penalties provided by law, and to indemnify the victims Elizabeth and Eloisa Minon the sum of P50,000 each without subsidiary imprisonment in case of insolvency, and to pay the cost."Criminal Case No. P-5795 is hereby ordered dismissed."(Emphasis ours)

The accused now maintains that the trial court gravely erred in convicting him of qualified rape despite the fact that the age of the victims and their relationship to the accused were not duly alleged in the Informations, and raised the following lone error:[34]

THE TRIAL COURT ERRED IN IMPOSING THE
SUPREME PENALTY OF DEATH UPON THE
ACCUSED-APPELLANT.

In the Appellee's Brief, the Office of the Solicitor General pointed out that private complainants' relationship with the accused and the fact of their minority were alleged in the information but no proof was presented in court to show their exact ages except for their casual testimony as to their ages.[35] Moreover, the Solicitor General stated that the accused, being a first cousin of the complainants, is a relative within the fourth civil degree.[36] Because of these circumstances, the Solicitor General recommended the reduction of the death penalty to reclusion perpetua.[37]

It must be noted that the Appellant's Brief adopted the findings of the trial court,[38] and did not contest the liability of the accused even for simple rape, proceeding directly as it did with the discussion of the propriety of the death penalty. This being a death penalty case, however, the records are open for review.[39]

In resolving rape cases, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.[40]

With these principles in mind and after a careful review of the records of this case, we find no reason to overturn the conclusion reached by the trial court concerning the guilt of the accused-appellant.

It is well-settled that when a woman says that she has been raped, she says in, effect, all that is necessary to show that she has indeed been raped.[41] A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.[42]

We are convinced that private complainants had nothing in mind except to seek redress for the injustice that was done to them when they admitted the ignominy they had undergone, allowed their private parts to be examined,

and exposed themselves to the ordeal of testifying on all the sordid details attached to the revelation of that which ought to be suffered in silence.[43]

The accused claimed that private complainants instituted the complaint because he saw private complainants' father having sexual intercourse with one of their sisters. However, there is absolutely no showing that Elizabeth and Eloisa Miñon were actuated by any sinister motive to falsely charge their own cousin with such a serious crime as rape. The accused's explanation that private complainants got mad at him because they were "afraid that is not the only time wherein Diosdado Minon raped Lenlen but also their [his] other children"[44] is hardly believable. It is unlikely that private complainants would want to antagonize the sole witness to the rape of their sister, even as they fear that their other siblings were, or will also be raped by their father.

The assessment on the credibility of witnesses is a function best discharged by the trial court which is in a better position to determine conflicting testimonies and after having heard the witnesses, and observed their deportment and manner of testifying.[45] We find nothing in the records which would indicate that the findings of fact of the trial court are not supported by the evidence or were arrived at in manifest or palpable error, such as to warrant a departure from the foregoing rule.

Private complainants were clear and unequivocal when they testified against the accused. With firmness and certainty, they were able to identify herein accused and the dastardly deeds the latter did to them. Thus, Eloisa Miñon testified:

Q On October 4, 1997, where were you residing then?

A In the house of my uncle, sir.

Q On October 4, 1997, what was you doing?

A I was sleeping, sir.

Q While you were sleeping in the house of your uncle, what happened if any?

A My clothes were removed and he placed himself on top of me.

Q You said your clothes were removed, who removed your clothes?

A He is the one, sir.

Q To whom are you referring?

A Nicodemo Miñon.

Q The person you pointed a while ago?

A Yes, sir.

Q How were you able to say that it was Nicodemo Miñon who undressed you when I presume it was darkened then?

A There was a light at the top, sir.

Q After undressing you, what else did the accused do if he did any?

A He placed himself on top of me and forcibly enter his penis. (Pinasok ang kanyang ari sa aking ari).

Q What did you feel when his sexual organ was inserted to your vagina?

A I felt pain, sir.

Q What if any did you do when he placed himself on top of you?

A I just cried and cried.

....

Q On that night of December 3, 1997, where was your uncle?

A He was at the farm, sir.

Q While you were then sleeping with your two cousins and the daughter of the accused Nicodemo Miñon, do you remember what happened?

ATTY. JOYA:

I am registering my continuing objection related to the incident which happened on December 3, 1997.

WITNESS:

A He again undressed me and placed himself on top of me.

Q When you said he placed himself on top of me, who is that?

A Nicodemo Miñon, sir.

Q After undressing and placed himself on top of you, what happened?

A He again forcibly insert his sexual organ to my organ.

Q What did you feel when he inserted his sexual organ to your organ?

A I felt pain, sir.

Q How about on January 14, 1998 in the morning thereof, where were you?

A I was also at the house of my uncle.

Q What were you doing in the morning thereof on January 14, 1998?

A I was in the kitchen because he told me to clean the kitchen.

Q Who told you to clean the kitchen?

A Nicodemo Miñon, sir.

Q What did you do in order to clean the kitchen?

A I followed his order, sir.

Q When you were cleaning the kitchen, what if any did the accused do to you?

A He removed my short which I wear at that time.

Q After removing your short, what else did the accused do?

A He again forcibly inserted his sexual organ to my sexual organ.[46]

For her part, Elizabeth Miñon declared:

Q You stated that you were once rape, do you still remember the date?

A March 25, 1995, sir.

Q You said that you were raped in the house of his father Isagani Miñon, will you please tell us the time you were raped?

A In the early morning, sir.

Q Where were you at that time that you were raped?

A I was at the house of my uncle on the second floor of the house.

Q What were you doing at that time?

A I was then sleeping, sir.

Q When you were awakened, what happened then?

A Somebody was on top of me.

Q Were you able to recognize that somebody?

A Yes, sir.

Q Who was he?

A Nicodemo Miñon, sir.

Q Will you please tell the Court how were you able to recognize Nicodemo Miñon when I presume it was dark then?

A The moon was bright at that time.

Q You said that when you were awakened, somebody was on top of me. After placing himself on top of you, what did you do if any?

A He forcible entered his penis to my vagina.[47]

As against the categorical and positive testimonies of private complainants, the accused proffered alibis and testimonies replete with serious inconsistencies. It should be recalled that accused himself stated that on October 4, 1997, the date when the rape of Eloisa Miñon was committed, he was selling ice cream in Batangas City, where he and his wife resided for less than a year; this after he already claimed that he was residing in Roxas, Oriental Mindoro from 1994 to 1998. In addition, witness for the defense Rogelio Rogero claimed that from October 2 to October 28, 1997, the accused was with him in his farm in Tiguisin, Oriental Mindoro. It is beyond the realm of possibility that a person can be in two places at one time, much more three. Defense's dissonant, inconsistent and poorly fabricated testimonies cannot gain acceptance.

Private complainants' recantation of their testimony against the accused on the ground that they took pity on him and were merely forced to testify against the latter by the DSWD officer cannot be taken to work for his acquittal. This court has held that mere retraction by a prosecution witness does not necessarily vitiate his original testimony.[48] A retraction is generally unreliable and is looked upon with considerable disfavor by the courts.[49] Like any other testimony, it is subject to the test of credibility based on the relevant circumstances

and, especially, on the demeanor of the witness on the stand. [50] As properly held by the trial court, private complainants' recantation appears to be a mere afterthought, conveniently made out of pity for the accused, and as an act of gratitude to the relatives who took them in. The trial court held that:

"The court have carefully examined the not so lengthy testimonies of the complainants, during the presentation of evidence by the prosecution, and have come to the conclusion that the facts narrated therein by Elizabeth and Eloisa are but the product of their thirst for justice. Noteworthy, it is that when subjected to searching and unrelenting cross-examination by the same defense counsel, the recanting witnesses stood firm and steadfast in their assertions and answered the questions with straightforward clarity.

"On the other hand, their recantation, alleging that they were forced and coerced to implicate accused for the crime charged, the court is not hesitant to hold it to be a mere afterthought, designed to rescue the accused from the hands of the law." [51]

All told, the trial court did not err in finding the accused guilty beyond reasonable doubt of the three separate counts of rape.

However, we do not agree with the imposition of death penalty on the accused.

Article 266-B of the Revised Penal Code provides:

"xxx.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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;" (emphasis supplied)

The attendant circumstances provided by Republic Act 7659 must be specifically alleged in the information for rape in order that they may properly qualify the crime to the penalty specially prescribed by law[52]. In qualified rape, the concurrence of the minority of the victim and her relationship to the offender must both be alleged and proved with certainty; otherwise the death penalty cannot be imposed.[53]

Thus, even if the victim's minority is alleged in the information, the prosecution must still prove clearly and adequately that the victim was under eighteen (18) years of age at the time of the rape. 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. Where there is no evidence at all of the minority age of the victim or where the evidence is weak, unreliable and insufficient, the Court is impelled not to impose the death penalty.[54] The failure of the prosecution to present the victim's birth certificate or similarly acceptable proof of her age as a minor bars the accused's conviction for rape in its qualified form.[55]

In the present case, while the age of the private complainants at the time of the rape was indicated in the Informations, the prosecution was not able to establish their age during trial. The record of the case is bereft of any independent evidence, such as the private complainants' duly certified Certificate of Live Birth, accurately showing their respective ages. A careful perusal of the TSN reveals that when private complainants were placed on the witness stand, the matter of their age at the time of the rape was not even discussed. At most, their ages were mentioned only at the beginning of their testimonies describing their personal circumstances. In *People v. Galas*,[56] we held that we cannot consider a rape victim's statement at the beginning of her testimony describing her personal circumstances as proof of age beyond reasonable doubt that the Court has considered indispensable in the criminal prosecution of cases involving the extreme penalty of death. So it must be in the instant case.

We have previously held that if the accused is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is "a relative by consanguinity of affinity (as the case may be) within the third civil degree." [57] The relationship by consanguinity or affinity between the accused and private complainants was not alleged in the Informations in this case. The allegation that the private complainants are cousins of the accused is not specific enough to satisfy the special qualifying circumstance of relationship. Besides, even if it were so alleged, it was still necessary to specifically allege that such relationship was within the third civil degree.

More importantly, in the case at bar, the accused is a first cousin of the private complainants. As properly pointed out by the accused, he is merely a relative within the fourth civil degree of the private complainants. [58] Consequently, he cannot be held liable for qualified rape under Art. 266-B of the Revised Penal Code. The death penalty cannot be imposed in this case.

It must be noted that the trial court ordered the accused to pay private complainants only the civil liability arising from the offense in the amount of P50,000.00 each. This is equivalent to actual or compensatory damages in civil law. However, in addition to the civil indemnity in such amount the offended parties are entitled to moral damages, which are automatically granted in rape cases without need of any proof. [59] Currently, moral damages for rape is fixed at P50,000.00. Hence, the additional sum of P50,000.00 each should be awarded to Eloisa and Elizabeth Miñon.

WHEREFORE, the decision dated April 13, 2000 of the Regional Trial Court, Branch XLII Pinamalayan, Oriental Mindoro is **AFFIRMED** with **MODIFICATION**. Accused Nicodemo Minon is sentenced to suffer the penalty of reclusion perpetua, and is ordered to pay each to Elizabeth and Eloisa Miñon P50,000.00 as civil indemnity and another P50,000.00 as moral damages.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] Presided by Judge Manuel C. Luna, Jr.

[2] Accused-appellant is also referred to as Nicodemo Miñon in the Appellee's Brief, Rollo, p.78.

[3] Rollo, p. 8

[4] Id. at 10.

[5] Id. at 12.

[6] Id. at 14

[7] Records, p.64.

[8] TSN dated 16 March 1999, pp. 7, 20.

[9] TSN dated 13 December 1999, p.6.

[10] TSN dated 16 March 1999, p. 25.

[11] Id. at 21-22.

[12] Id. at 24.

[13] Id. at 7.

[14] Id. at 8.

[15] Id. at 10.

[16] Id. at 11.

[17] Id. at 20.

[18] Records, p. 4.

[19] Id. at 25.

[20] TSN dated 16 March 1999, pp.7-19.

[21] TSN dated 07 September 1999, pp.3, 12.

[22] Id. at 4, 13.

[23] Id at 15.

[24] Id. at 16.

[25] TSN dated 12 October 1999, pp. 3-9.

[26] TSN dated 13 December 1999, p. 3.

[27] Id. at 3.

[28] Id. at 3-4.

[29] Id. at 5.

[30] Rollo, p. 26.

[31] Id. at 27.

[32] Ibid.

[33] Id. at 28, Decision dated 13 April 2000.

[34] Id. at 46-63.

[35] Id. at 97.

[36] Ibid at 95.

[37] Id. at 100.

[38] Id. at 48-53.

[39] *People v. Viernes*, 423 Phil. 463, 475 (2001); *People v. Alipayo*, 381 Phil. 439, 456 (2000), citing *Obosa v. C.A.*, 266 SCRA 281(1997) and *People v. Calayca*, 301 SCRA 192 1999); *People v. Nuevo*, 420 SCRA 421,431 (2001).

[40] *People v. Marcelo*, 421 Phil. 566, 577 (2001), citing *People v. Quijada*, 321 SCRA 426 (1999) and *People v. Maglente*, 306 SCRA 546 (1999).

[41] *People v. Novio*, G.R. No. 139332, 20 June 2003, 404 SCRA 462, 475-476.

[42] *People v. Gonzales*, G.R. No.133859, 24 August 2000, 338 SCRA 678, 688 citing *People v. Davon*, 216 SCRA 656 (1992).

[43] *People v. Grefalida*, G.R. No.121637, 30 April 2003, 402 SCRA 153, 165 citing *People v. Santos*, 368 SCRA 535 (2001).

[44] TSN dated 13 December 1999, p.11.

[45] *People v. Mitra*, 385 Phil. 515, 526-527 (2000), citing *People v. Agbayani*, 284 SCRA 315 (1998) as follows: "The trial judge is in a better position to decide the question of credibility, since he personally heard the witnesses and observed their deportment and manner of testifying. He had before him the essential aids to determine whether a witness was telling the truth or lying. Truth does not always stalk boldly forth naked; she often hides in nooks and crannies visible only to the mind's eye of the judge who tried the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien."

[46] TSN dated 16 March 1999, pp. 8 and 10.

[47] TSN dated 16 March 1999, p. 21.

[48] *People v. Amban*, 383 Phil. 817, 827 (2000) citing *People v. Ubina*, 97 Phil. 515, 525-526 (1955): ". . . Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement [now Rule 132, section 11]; not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e., that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. (*U.S. v. Magtibay*, 17 Phil. 417; *U.S. v. Briones*, 28 Phil. 362; *U.S. v. Dasiip*, 26 Phil. 503; *U.S. v. Lazaro*, 34 Phil. 871). We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one (*U.S. v. Acasio*, 37 Phil. 70). Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind[s] for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. . . . The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized — in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth."

[49] *People v. Gonzales*, G.R. No.133859, August 24, 2000, 338 SCRA 678, 690 citing *People v. Burce*, 269 SCRA 292 (1997).

[50] *Ibid.*

[51] *Rollo*, p. 26.

[52] *People v. Delamar*, G.R. No.136102, January 31, 2001, 350 SCRA 707, 713.

[53] *People v. Velasco*, G.R. Nos. 135231-33, February 28, 2001, 353 SCRA 138,152.

[54] *People v. Alipar*, G.R. No. 137282, March 16, 2001, 354 SCRA 590, 604.

[55] *People v. San Agustin*, G.R. Nos. 135560-61, January 24, 2001, 350 SCRA 216, 230 citing *People v. Tundag*, 342 SCRA 704 (2000).

[56] G.R. No. 139413-15, March 20, 2001, 354 SCRA 722, 734.

[57] *People v. Libo-on*, G.R. No. 136737, May 23, 2001, 358 SCRA 152, 175-176 citing *People v. Banihit*, 339 SCRA 87 (2000); *People v. Ferolino*, 329 SCRA 719 (2000).

[58] Rollo, p.55.

[59] *People v. Dumlao*, G.R. Nos. 130409-10, November 27, 2001, 370 SCRA 571,590 citing *People v. Hofileña*, 334 SCRA 214 (2000); *People v. Bares*, 355 SCRA 435 (2001); *People v. Bernaldez*, 322 SCRA 462 (2000); *People v. Robles*, 305 SCRA 273 (1999).

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