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an amount of ₱5,000. He is *STERNLY WARNED* that any repetition of the same act in the future will be dealt with more severely. Let a copy of this decision be entered in the respondent's personal record.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 121997. December 10, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANDRES MASAPOL,** *appellant.*

SYNOPSIS

Beatriz, a married woman, claimed that the appellant herein raped her one night while she was on her way home after buying kerosene from the store. The appellant, for his defense, admitted having consensual sexual congress with Beatriz for sometime, even before the alleged rape, and denied having carnal knowledge of her on the alleged date of the rape. After the parties adduced their testimonial and documentary evidence, the trial court rendered its decision finding the appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua.* In his appeal, the appellant contended that the testimony of Beatriz was inconsistent with her statement to the *barangay* captain and the prosecution failed to adduce any medical certificate to corroborate her testimony.

The appealed decision was affirmed by the Supreme Court. The appellant was found guilty of simple rape and was sentenced

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to *reclusion perpetua*. According to the Court, the general rule is that contradictions and discrepancies between the testimonies of a witness in contrast with what was stated in an affidavit do not necessarily discredit her. Such affidavit is often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officers. The discrepancies in Beatriz' affidavit and her testimony did not impair her testimony and her credibility. Also, the Court ruled that a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. It was absurd for the appellant to claim a medical certificate because Beatriz is married and has children.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESS; DISCREPANCY OR INCONSISTENCY THEREOF; MUST REFER TO SIGNIFICANT FACTS VITAL TO THE GUILT OR INNOCENCE OF THE ACCUSED IN ORDER TO SERVE AS BASIS FOR ACQUITTAL.**— For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused. Even if the offended party may have erred in some aspects of her testimony, the same does not necessarily impair her testimony nor corrode her credibility. The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. The doctrine of *FALSUS IN UNO FALSUS IN OMNIBUS* deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; GENERALLY NOT AFFECTED BY CONTRADICTIONS AND DISCREPANCIES STATED IN THE AFFIDAVITS; RATIONALE.**— The general rule is that contradictions and discrepancies between the testimony of a witness in contrast with what was stated in an affidavit do not necessarily discredit her. Affidavits given to police and *barangay* officers are *ex parte*. Such affidavits are

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often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer. x x x Also, victims of rape are not expected to have an accurate or errorless recollection of the traumatic experience that was so humiliating and painful, that she might, in fact, be trying to obliterate it from her memory.

3. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; SHOULD BE ALLEGED IN THE INFORMATION IN ORDER TO BE APPRECIATED; APPLICATION THEREOF.— The prosecutor proved that the appellant used a knife, a deadly weapon, in forcing Beatriz to submit to his lustful desires. Under Article 335 of the Revised Penal Code, the use of a deadly weapon such as a knife to commit a crime is a special aggravating circumstance which requires the imposition of *reclusion perpetua* to death. However, such circumstance was not alleged in the Information as required by Section 8, Rule 110 of the Revised Rules of Criminal Procedure. Although the said rules took effect only on December 1, 2000, long after the commission of the crime on July 17, 1992, the same should be applied retroactively because it is favorable to the appellant.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Adan Marcelo B. Botor for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

Before this Court on appeal is the Decision[1] of by the Regional Trial Court of Naga City, Branch 28, convicting the appellant Andres Masapol of the crime of Rape, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim Beatriz O. Pascuin the sum of ₱50,000.00 as damages.

The appellant was charged of rape in an Information, the accusatory portion of which reads:

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[1] Penned by Judge Antonio N. Gerona.

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The undersigned 2nd Assistant Provincial Prosecutor, upon a sworn complaint originally filed by the offended party, accuses ANDRES MASAPOL *y* DOE of the crime of RAPE, defined and punished under Article 335 of the Revised Penal Code, committed as follows:

> That on or about 7:00 o'clock in the evening of July 17, 1992, at Barangay Marangi, Municipality of San Fernando, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge with one Beatriz O. Pascuin, against her will.
>
> ACTS CONTRARY TO LAW.[2]

On his arraignment on November 5, 1993 the appellant, assisted by counsel, entered a plea of not guilty.[3]

The Case for the Prosecution

Manuel and his wife Beatriz Pascuin resided in a remote area in Barangay Marangi, San Fernando, Camarines Sur. It was an area where the community did not as yet have the luxury of electric light in their houses.

At around 7:00 p.m. of July 17, 1992, Beatriz dropped by the store of Marcial Olitoquit to buy kerosene. The store was about 300 meters away from their house. She lighted the wick and used the kerosene lamp to light her way back home. The road to their house was the path usually taken by carabaos going to farm. The road sides were grassy and strewn with coconut trees.

Suddenly, the appellant Andres Masapol appeared out of nowhere and poked a knife at Beatriz. Before she could shout for help, the appellant covered her mouth with his hand. He warned her not to shout; otherwise, he would kill her. Beatriz boxed the appellant on the stomach, in an attempt to remove the latter's hand from her mouth. This enraged the appellant.

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[2] Records, p. 1.

[3] *Id.* at 35.

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He forthwith slapped Beatriz and boxed her on the abdomen and on her back. The appellant dragged her off from the trail to a grassy area and forced her to lie down on the ground. Beatriz let go of the kerosene. It was then when the wick's flame went off. The appellant removed her short pants and her panties even as she kicked and struggled to free herself. Undeterred, the appellant undressed himself and went on top of her. While his right hand held a knife pressed on the base of her neck, the appellant forced Beatriz to spread her legs. He then inserted his penis with his left hand into her vagina and had carnal knowledge of her. Satiated, the appellant dismounted. He threatened to kill her if she told anyone what he had done. The appellant then left. Beatriz put on her shorts and sped back towards her house.

At first, Beatriz balked at the thought of revealing her ordeal to her husband. She, however, relented and told her husband that she was raped by the appellant. Upon hearing this, Manuel was enraged; instead of consoling his wife, he even mauled Beatriz. He ordered her not to report the incident to the police authorities because he himself would confront the appellant and avenge the travesty that had been committed against her. Manuel saw that his wife's polo shirt was torn under the armpit and that the buttons of her shorts were missing.

Since then, Manuel was on the lookout for the appellant. On August 29, 1992, Manuel armed himself with a bolo and waited for the appellant in the latter's house. Upon seeing the appellant, Manuel chased him and tried to hack him on the head, but the appellant escaped. When apprised of the incident, Nelia Masapol, the appellant's wife, filed a criminal complaint the following day against Manuel with Barangay Captain Ramon Dimagante. A conference was held. Beatriz executed a statement where she declared that she was raped by the appellant on July 17, 1992 and that when she reported the incident to her husband, he was so infuriated.[4] Manuel informed the *barangay* captain that he chased the appellant and wanted to stab him with his

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[4] Exhibit "B".

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bolo because the appellant sexually abused his wife. When questioned by the *barangay* captain, the appellant admitted that he had sexual relations with Beatriz, but averred that the same was consensual.[5]

Unable to settle the case, the *barangay* captain forwarded the same to the San Fernando Police for investigation. On September 24, 1992, Beatriz gave a sworn statement to SPO4 Roger Atacador. She was examined by Dr. Alcantara of the Rural Health Unit of San Fernando on September 14, 1992, who issued a medical certificate thereon. During the preliminary investigation by the Presiding Judge of the MCTC, the appellant offered to settle the case. The judge commented that if the appellant truly wanted to settle, he should pay ₱33,000.00. The appellant made an offer of ₱2,000.00, which Beatriz did not accept. Although the court required him to submit a counter-affidavit, the appellant could not be located and failed to file any. The court, thus, terminated the preliminary examination and investigation of the case and proceeded with trial.

The Case for the Appellant

The appellant admitted having consensual sexual congress with Beatriz for sometime, even before July 17, 1992. He, however, denied having had carnal knowledge of her on July 17, 1992. He asserted that his daughter Amelia celebrated her birthday that day, and on the said date, he was in their house entertaining guests.

Macaria Mayores, the appellant's first cousin, testified that she was the biological mother of Amelia, and that she gave Amelia to the appellant when the girl was still ten months old. She further testified that she did not register Amelia's live birth since she was busy at that time and that Amelia would after all be adopted by the appellant.

Nelia Masapol, the appellant's wife, testified that they had been celebrating Amelia's birthday on July 17 because it was on that date when Amelia was given to them by Macaria Mayores.

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[5] Exhibit "B-1".

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Juana Chavez, a neighbor of the appellant, testified that on July 17, 1992, she was at the appellant's residence, and helped prepare the food and serve the guests at Amelia's birthday party. The appellant was in the house the whole day, while Juana testified that she stayed there from 4:00 p.m. until around 8:00 a.m. the following day.

Teresita Canaco, a barriomate of both Beatriz and the appellant, testified that she had a conversation with Beatriz in the courthouse during the trial. Beatriz admitted to her that she only concocted the story of rape because her husband Manuel had maltreated her while being asked to confess. To stop the beating, Beatriz just told her husband that she was raped by the appellant.

On rebuttal, the prosecution adduced in evidence the baptismal certificate of Amelia Masapol, showing that she was born on September 19, and not July 17.[6]

After the parties adduced their testimonial and documentary evidence, the trial court rendered its Decision on November 21, 1994, finding the appellant guilty beyond reasonable doubt of the crime charged, sentencing him to suffer the penalty of *reclusion perpetua*. The decretal portion of the decision reads:

> WHEREFORE, in view of all the foregoing findings that the prosecution was able to prove the guilt of accused ANDRES MASAPOL of the crime of rape of which he is presently charged beyond reasonable doubt, judgment is hereby rendered whereby the accused is sentenced to suffer the penalty of *reclusion perpetua* and to pay the complainant damages in the amount of FIFTY THOUSAND (₱50,000.00) PESOS. With costs *de oficio*.
>
> SO ORDERED.[7]

In his appeal brief, the appellant assails the decision of the trial court, alleging that:

> THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED OF THE CRIME AS CHARGED DESPITE

[6] Exhibit "C".

[7] *Rollo*, p. 32.

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INSUFFICIENCY OF EVIDENCE TO WARRANT SUCH CONVICTION.[8]

The appellant asserts that the prosecution failed to prove that he forced and intimidated Beatriz into having intercourse with him. He contends that the testimony of Beatriz is inconsistent with her statement to the *barangay* captain. The prosecution even failed to adduce any medical certificate to corroborate her testimony. He contends that the fragility of the evidence for the prosecution is highlighted by the following:

First. Beatriz testified that the kerosene lamp she was holding fell on the side while she was being dragged by the appellant, and its light went out. However, in her statement to the *barangay* captain, she declared that it was the appellant who blew the light off.

Second. Beatriz testified that she was dragged for about 100 meters away from the trail to a grassy place, and that the appellant had boxed and slapped her. However, the prosecution never presented any medical certificate showing that she sustained bruises or other injuries. The prosecution likewise failed to adduce in evidence the panty and shorts Beatriz was wearing to show that her clothings had been torn.

Third. Beatriz declared that she could not shout because the appellant's hand was covering her mouth, and even if she shouted, no one would hear her as there were no houses nearby. However, she contradicted herself when she declared in her statement to the *barangay* captain that she was raped near the house of one Manuel Calinog.

Fourth. Beatriz testified that after she was raped by the appellant, she put on her panty and shorts and walked home crying and upon arriving home immediately told her husband, Manuel, about the incident. However, in her statement to the *barangay* captain, she declared that it was only three days after she was raped by the appellant that she told her husband Manuel about it.

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[8] *Id.* at 96.

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The appeal has no merit.

For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.[9] Even if the offended party may have erred in some aspects of her testimony, the same does not necessarily impair her testimony nor corrode her credibility. The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. The doctrine of *FALSUS IN UNO FALSUS IN OMNIBUS* deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application.[10] What is vital is that the act of copulation be proven under any of the conditions enumerated in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.[11]

The general rule is that contradictions and discrepancies between the testimony of a witness in contrast with what was stated in an affidavit do not necessarily discredit her.[12] Affidavits given to police and *barangay* officers are *ex parte*. Such affidavits are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.[13] The discrepancies in Beatriz' affidavit (Exhibit "B") and her testimony do not impair her testimony and her credibility. Also, victims of rape are not expected to have an accurate or errorless recollection of the traumatic experience that was so humiliating and painful, that she might, in fact, be trying to obliterate it from her memory.[14]

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[9] *People vs. Balmoja*, 364 SCRA 125 (2001).

[10] *People v. Julian*, 270 SCRA 733 (1997).

[11] *People v. Balmoja, supra.*

[12] *People vs. Español*, 256 SCRA 137 (1996).

[13] *People v. Villadares*, 354 SCRA 86 (2001).

[14] *People v. Caniezo*, 354 SCRA 202 (2001).

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Whether the appellant himself put off the light from the kerosene lamp with his left hand or the light was extinguished by itself when Beatriz dropped it as the appellant dragged her to the grassy area and raped her, is inconsequential.

The failure of the prosecution to adduce in evidence a medical certificate to prove that the appellant had carnal knowledge of her and that she sustained injuries when she resisted the appellant did not enfeeble the case for the prosecution. A medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.[15] It is absurd for the appellant to claim a medical certificate because Beatriz is married and has children.[16] Beatriz could not be faulted for the decision of the prosecution not to adduce in evidence the medical certificate issued to her which she turned over to the prosecutor. The fact that the house of Manuel Calinog was near where she was raped by the appellant is likewise of minimal importance because even if she wanted to, she could not have shouted for help as the appellant had covered her mouth with his hand.

The fact of the matter is that Beatriz reported to her husband immediately upon arriving home that the appellant had just raped her. Manuel corroborated his wife's testimony, thus:

Q Do you remember where you were on the evening of July 17, 1992 at around 8:00 o'clock in the evening?
A I was in my house in Marangi, San Fernando, Camarines Sur, sir.

Q What were you doing there at that time?
A I was cooking rice, sir.

Q That evening, do you remember any unusual incident that happened?
A Yes, sir, my wife arrived home.

Q What happened when your wife arrived?
A She was crying, sir.

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[15] *People v. Blazo*, 352 SCRA 94 (2001).

[16] *People v. Vidal*, 353 SCRA 194 (2001).

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Q Did you inquire why she was crying?
A My wife informed me that she was raped by Andres Masapol, sir.

Q And what was your reaction?
A She informed me of what happened and that my wife and I will be killed, sir.

Q What did you do?

COURT:

Before that.

Q Who threatened your wife?
A It was Andres Masapol, sir.

COURT:

Proceed.

PROS. LEAÑO:

Q What did you tell your wife?
A I told my wife that I will not file a case because if he would kill us we better kill each other.

Q Did you have any occasion to see Andres Masapol thereafter?
A I was waiting for him in Balugo but he was evading me, sir.

Q Why do you know Andres Masapol in the first place?
A Because he is my barriomate, sir.[17]

. . . . . .

ATTY. TAYER:

Q Will you describe to the Honorable Court what is the appearance of your wife when she arrived for the first time?
A She was crying, sir.

Q Besides she was crying what did you observe from her?
A As if she was shock, sir.

Q Is it not that she was in that stage because you confronted her that night about her relation with the accused?

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[17] TSN, 9 March 1994, pp. 3-5 (Pascuin).

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PROS. LEAÑO:

No basis.

COURT:

Objection sustained, that is your defense and you present your defense but not with this witness.

ATTY. TAYER:

Q What was she wearing when she arrived for the first time in your house?
A She was wearing a polo and short pants which length is up to the knee.

Q And if I am not mistaken that was properly worn by your wife as she arrived?

PROS. LEAÑO:

Your Honor properly worn . . .

COURT:

What do you mean by that, you reform.

ATTY. TAYER:

Q Was the clothes with buttons, the upper clothes?
A Yes, sir.

Q And when she arrived that upper portion were buttoned?
A There was a tear below the right armpit, sir.

Q That was the only tear am I right?
A The button was detached, sir.

Q How many buttons were detached?
A Three (3) sir.

Q And about the short pants was it worn, tucked with her waist?

PROS. LEAÑO:

I think the question is vague.

COURT:

You reform.

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ATTY. TAYER:

Q When your wife arrived was she wearing the short pants?
A Yes, sir.

Q And you said your wife reported that she was threatened by his assailant, am I right?
A Yes, sir.

Q And what was the exact words that she uttered to you when she reported that she was being threatened?
A My wife told me that if she would report the incident that she was raped, to me, she and I will be killed by the accused.

Q And what was your reaction?
A I answered my wife that we will not file a case.

Q And when you said that what was your intention?
A I watched for him in Balugo, sir.[18]

The prosecutor proved that the appellant used a knife, a deadly weapon, in forcing Beatriz to submit to his lustful desires. Under Article 335 of the Revised Penal Code, the use of a deadly weapon such as a knife to commit a crime is a special aggravating circumstance which requires the imposition of *reclusion perpetua* to death.[19] However, such circumstance was not alleged in the Information as required by Section 8, Rule 110 of the Revised Rules of Criminal Procedure.[20] Although the said rules took effect only on December 1, 2000, long after the commission of the crime on July 17, 1992, the same should be applied retroactively because it is favorable to the appellant. Hence, such circumstance should not be appreciated against

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[18] *Id.* at 9-11.

[19] "Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death."

[20] "Sec. 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (8a).

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the appellant.[21] In the absence of any modifying circumstance, the appellant should be sentenced to *reclusion perpetua*, conformably to Article 63 of the Revised Penal Code.

The trial court failed to award moral and exemplary damages in favor of Beatriz. According to current jurisprudence, victims of rape are entitled to ₱50,000.00 as moral damages,[22] ₱25,000.00 as exemplary damages.[23]

IN THE LIGHT OF ALL THE FOREGOING, the appealed decision of the Regional Trial Court of Naga City, Branch 28, is *AFFIRMED WITH MODIFICATION*. The appellant Andres Masapol is found *GUILTY* of simple rape under Article 335 of the Revised Penal Code and is hereby sentenced to *reclusion perpetua*. He is also ordered to pay to the private complainant Beatriz O. Pascuin ₱50,000.00, as civil indemnity; ₱50,000.00 as moral damages; and ₱25,000.00, as exemplary damages. Costs against the appellant.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.*, concur.

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[21] *People vs. Baldogo*, G.R. Nos. 128106-07, January 24, 2003.

[22] *People vs. Pagsanjan*, G.R. No. 139694, December 27, 2002.

[23] *People vs. Lilo*, G.R. Nos. 140736-39, February 4, 2003.