Supreme Court E-Library

SECOND DIVISION

[G.R. No. 123140. September 23, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BERNARDO CORTEZANO and JOEL CORTEZANO,** *appellants.*

SYNOPSIS

The Court affirmed the conviction of appellants Joel, 13 years old, and Bernardo, 12 years old, to four counts of rape committed against their 8-year old niece. Though minors, the Court ruled that appellants were not exempted from criminal liability. Under Paragraph 3, Article 12 of the Revised Penal Code, a minor who is over 9 and under 15 years of age at the time of the commission of the crime is exempted from criminal liability *only* when the said minor acted without discernment. Here, records showed beyond cavil that appellants were aware of what they were doing. Nonetheless, they were entitled to the benefits of the privileged mitigating circumstance of minority. The aggravating circumstances of relationship and ignominy, on the other hand, cannot aggravate the crimes and penalties therefor as the same were not alleged in the Information.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — This Court in *People v. Guanson*, ruled: Well-entrenched in our jurisprudence is the doctrine that assessment of the credibility of witnesses lies within the province and competence of trial courts. The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, could weigh such testimony in light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate the truth against falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the latter court had overlooked

Supreme Court E-Library

or disregarded arbitrarily the facts and circumstance of significance

2. ID.; ID.; ID.; TESTIMONY OF YOUNG RAPE VICTIM, UPHELD. — This Court ruled in *People v. Dy* that the victim's act of crying during her testimony bolsters the credibility of the rape charge with the verity born out of human nature and experience. Indeed, as can be gleaned from Leah's testimony, she recounted, with tears cascading from her eyes, the sordid details on how the appellants ravished her and satiated their bestial proclivities. Well-settled is the rule that the testimonies of young victims deserve full credence and should not be so easily dismissed as a mere fabrication.

3. ID.; ID.; ALIBI; REQUIRES PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF CRIME AT THE TIME OF CRIME. — [A]libi is the weakest of all defenses. It is a settled rule that for an alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely the accused was somewhere else. For alibi to prosper, the following must be established with clear and convincing evidence: (a) the presence of the appellant in another place at the time of the commission of the offense; and, (b) physical impossibility for him to be at the scene of the crime. Alibi cannot prevail over the positive, straightforward and spontaneous testimony of the victim identifying the appellants as the malefactors and how they consummated the crimes charged.

4. ID.; ID.; CREDIBILITY OF WITNESSES; REVENGE AS REASON FOR RAPE CHARGES, NOT APPRECIATED. — The appellants' claim that the charges against them were instigated by Lourney to hit back at her husband and his family deserves scant consideration. No mother in her right mind would subject her child, who is of tender age, to go through the rigors of undergoing a rape case just to exact revenge.

5. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; A PERSON OVER 9 AND UNDER 15 YEARS OLD, UNLESS HE ACTED WITH DISCERNMENT; ELUCIDATED. — Article 12, paragraph 3 of the Revised Penal Code provides: Article 12. *Circumstances, which exempt from liability.*—The following are exempt from

Supreme Court E-Library

criminal liability: . . . 3. A person over nine years of age and under fifteen, unless he acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code. A minor who is over nine years old and under fifteen years old at the time of the commission of the crimes is exempt from criminal liability only when the said minor acted without discernment. It is the burden of the prosecution to prove that a minor acted with discernment when he committed the crime charged. In determining if such a minor acted with discernment, the Court's pronouncement in *Valentin v. Duqueña* is instructive: The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine, who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong, and such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of said minor, not only before and during the commission of the act, but also after and even during the trial.

6. **ID.; RAPE; PENALTY; PRIVILEGED MITIGATING CIRCUMSTANCE OF MINORITY, APPLIED.**— The imposable penalty for rape committed by two or more persons under Article 335 of the Revised Penal Code was *reclusion perpetua* to death. Since the appellants were both minors at the time they committed the offenses, they are entitled to the benefits of the privileged mitigating circumstance of minority under Article 68(1) of the Revised Penal Code which reads: Art. 68. *Penalty to be imposed upon a person under eighteen years of age.*— When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed: 1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed. Two degrees lower than *reclusion perpetua* to death is *prision mayor,* which has a range of 6 years and 1 day to 12 years. The maximum of the indeterminate penalty shall be taken from

Supreme Court E-Library

the proper period of the said penalty, depending upon the presence or absence of modifying circumstances. The minimum of the indeterminate penalty shall be taken from the full range of the penalty, one degree lower than *prision mayor, prision correccional,* which has a range of 6 months and 1 day to 6 years.

7. **ID.; AGGRAVATING CIRCUMSTANCES; RELATIONSHIP AND IGNOMINY; NOT APPRECIATED AS THE SAME NOT ALLEGED IN THE INFORMATION.** — The crimes were aggravated by relationship, pursuant to the second paragraph of Article 15 of the Revised Penal Code, as amended. The appellants are the uncles of the victim. The crime charged in Criminal Case No. L-1679 was aggravated by the appellants, adding ignominy to the natural effects of the crime. In *People v. Fuertes,* this Court ruled: Ignominy is a circumstance pertaining to the moral order which adds disgrace and obloquy to the material injury caused by the crime. The clause "Which add ignominy to the natural effects of the act" contemplates a situation where the means employed or the circumstances tend to make the effects of the crime *more humiliating or to put the offended party to shame. . .* However, the aforementioned modifying circumstances cannot aggravate the crimes and the penalties therefor because the same were not alleged in the Information as mandated by Section 9, Rule 110 of the Revised Rules of Criminal Procedure. Although the crimes were committed before the effectivity of the said Rule, it shall be applied retroactively because it is favorable to the appellants.

8. **ID.; RAPE; PROPER CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES IN CASE AT BAR.** — The trial court convicted the appellants of two counts of rape in each case. Leah is entitled to civil indemnity of ₱50,000 and moral damages of ₱50,000 for every crime committed by the appellants. The appellants are also liable to the said victim for exemplary damages for each count of rape in the amount of ₱25,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

Supreme Court E-Library

DECISION

CALLEJO, SR., *J.*:

This is an appeal from the Decision[1] of the Regional Trial Court of Camarines Sur, Libmanan, Branch 56, in Criminal Cases Nos. L-1679 and L-1680, convicting appellants Bernardo Cortezano and Joel Cortezano with four counts of rape and sentencing them to suffer the penalty of *reclusion perpetua* for each count; and ordering each of them to pay damages to the victim as follows: ₱200,000 as moral damages and ₱200,000 as exemplary damages in all the cases.

The Indictments

On November 22, 1994, two separate Informations for rape were filed against the appellants. The first Information docketed as Criminal Case No. L-1679 reads:

> That on or about the 6th day of May, 1990, in the afternoon at Bgy. (*sic*) Azucena, Municipality of Sipocot, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, conspiring, confederating together and mutually helping one another, taking advantage of their superior strength with force, intimidation and with grave abuse of confidence, did then and there wilfully (*sic*), feloniously and unlawfully have carnal knowledge one after the other with Leah C. Cortizano (*sic*), 7 years old, minor, against her will and the offended party suffered damages.
>
> ACTS CONTRARY TO LAW.[2]

The second Information docketed as Criminal Case No. L-1680 reads:

> That on or about the 10th day of June, 1990, in the afternoon at Bgy. (*sic*) Azucena, Municipality of Sipocot, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court,

---

[1] Penned by Judge Lore R. Valencia-Bagalacsa.

[2] Records, Criminal Case No. L-1679, p. 1.

Supreme Court E-Library

the above-named accused, with lewd design, conspiring, confederating together and mutually helping one another, taking advantage of their superior strength with force, intimidation and with grave abuse of confidence, did then and there wilfully (*sic*), unlawfully and feloniously have carnal knowledge one after the other with Leah C. Cortezano, 7 years old, minor, against her will and the offended party suffered damages.

ACTS CONTRARY TO LAW.[3]

On arraignment, the accused entered their plea of not guilty. A consolidated trial of the two criminal cases then ensued.

The Case for the Prosecution

Sometime in March 1990, Lourney Cortezano decided to take a leave of absence from her part-time job in Cubao, Quezon City, to spend her vacation with her three children: eight-year-old Leah, three-year-old Leah Lou, and Lionel, who was barely a year old. Lourney decided to stay in the house of her parents-in-law, Santiago and Nita Cortezano, located at Barangay Azucena, Sipocot, Camarines Sur. Lionel was also sick with asthma so Lourney could rely on her mother-in-law to take care of him while she was at work. Lourney's husband, Elmer, remained in their residence in Caloocan City.

The Cortezano residence was located at an isolated patch of land. Nita and Santiago slept in a room separated from the sala by a curtain. Their children, the accused Bernardo (Butchoy) Cortezano, who was then twelve years old; the accused Joel Cortezano, who was then only thirteen; Tinggang, who was six years old, and Boyet Orcine, their six-year-old nephew, also lived with the couple. At night, Lourney and her children, as well as Joel, Bernardo and Tinggang, slept beside each other in a room near the kitchen, beside the couple's room. By mid-April of 1990, Lourney returned to Caloocan City, leaving her children in the care of her parents-in-law.

Early in the afternoon of May 6, 1990, Joel and Bernardo ordered their niece Leah to sleep in their parents' room. Leah

[3] *Id.*, Criminal Case No. L-1680, p. 1.

Supreme Court E-Library

protested because it was hot in that room. Joel threatened to whip her if she refused. Leah had no choice; she went to the room and slept. Leah suddenly awoke when she sensed pressure on her arms and legs. When she opened her eyes, she saw her uncles Joel and Bernardo; they were holding her hands and feet as she was being undressed. Leah struggled but was easily overpowered by her uncles. She threatened to shout, but she was told that nobody would hear her. Joel and Bernardo wet her vagina with their saliva. Bernardo then held her hands as Joel mounted her. Joel inserted his penis into her vagina, while Bernardo stood by the window to serve as a lookout. Leah felt something slippery inside her vagina. After Joel dismounted, Bernardo went on top of Leah and inserted his penis into her vagina. It was Joel's turn to stand by the window as a lookout. Leah once more felt something slippery in her vagina. Bernardo then stood up.

Momentarily, Boyet Orcine arrived and inquired what Joel and Bernardo were doing to Leah. Joel and Bernardo ordered Boyet to rape Leah and threatened to box him if he refused. Joel and Bernardo laughed as Boyet was having his turn with Leah. Joel and Bernardo then called Leah Lou and Lionel into the room, letting them see their sister naked.

Joel and Bernardo threatened to kill her and the members of the family if she told anyone about what happened to her. Joel, Bernardo and Boyet left the room together. Leah went out of the room and washed her vagina.

Petrified, Leah did not reveal to her grandparents what happened to her. After that first harrowing incident, Joel and Bernardo subjected her to sexual abuse daily. After every sexual intercourse they had with Leah, Joel and Bernardo would threaten to kill her and her family if she told anyone what they had been doing to her.

On June 10, 1990, Joel and Bernardo again ordered Leah to go to her grandparents' room. She did as she was told. Joel and Bernardo undressed her. Leah was told to lie down, and Joel and Bernardo again wet her vagina with their saliva. Joel

Supreme Court E-Library

then laid on top of her, holding her hands and pinning her legs with his, as he inserted his penis into her vagina. Bernardo stood by the window as a lookout. Leah tried to fight Joel, but the latter was enraged. She was about to shout, but Joel told her that it would be futile to do so because their neighbors were far away. Joel dismounted and Bernardo had his turn, with Joel standing by the window to see if anyone was coming. Joel and Bernardo again threatened to kill Leah if she told anyone about the incident.

The next day, June 11, 1990, was Lionel's birthday. Lourney arrived at Brgy. Azucena and brought her children back to Caloocan City, in time for Leah's enrollment at the Kalayaan Elementary School in Brgy. Silang, Caloocan City. Because of the sexual abuse she suffered at the hands of her uncles, Leah felt pain in her lower abdomen (*puson*). Every now and then, she would feel numbness on the left side of her body.

Sometime in March 1993, Lionel and Leah Lou once again stayed with their grandparents in Brgy. Azucena. On May 21, 1993, Elmer arrived in Sipocot and stayed with his parents. Lourney followed her family to Sipocot on June 20, 1993. Leah remained in Caloocan City to continue her schooling. Her studies were financed by the Department of Social Welfare and Development.

On August 23, 1993, Elmer had a quarrel with his parents and left Brgy. Azucena. Since then, Lourney did not hear from her husband and did not know where he was. On September 20, 1993, Lourney left Brgy. Azucena and brought her children to Pili, Camarines Sur.

On May 27, 1994, Lourney learned from Boyet Orcine that her daughter Leah had been sexually abused by Joel and Bernardo way back in 1990. Boyet told Lourney that Leah Lou had suffered the same fate as Leah.[4] Lourney immediately contacted

---

[4] In *People v. Bernardo Cortezano*, Criminal Case No. P-2370, Bernardo was charged with raping Leah Lou on April 21, 1994 in Pili, Camarines Sur. On arraignment, he pleaded guilty and was sentenced to an indeterminate penalty for the crime in a Decision dated November 14, 1994. The decision

Supreme Court E-Library

a certain Mrs. Monares, a social worker at the DSWD of Pili, Camarines Sur, and inquired whether the information relayed to her by Boyet Orcine could be true. Mrs. Monares advised Lourney to ask Leah herself. Lourney left Pili and arrived in Caloocan City on June 1, 1994. She asked Leah if she recalled anything that happened to her while on vacation in Sipocot in 1990. Leah told her mother that Joel and Bernardo had whipped her and she did not want to return to Sipocot. When Lourney asked her daughter, the latter replied that Joel and Bernardo had raped her.

Lourney brought Leah to the PNP Crime Laboratory in Camp Crame, Quezon City. Dr. Ma. Cristina B. Freyra examined Leah and submitted Medico-Legal Report No. M-0807-94, with the following findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts are conical with pale brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3, 7 and 9 o'clock. External vaginal orifice offers strong resistance to the introduction of the examining index finger .[5]

On June 16, 1994, Lourney and Leah arrived in the Criminal Investigation Field Office in Naga City where they gave their respective sworn statements to PO3 Elmer V. Caceres.[6]

---

of the court was marked in evidence as Exhibit "H" but the prosecution failed to leave with the court the copy of the decision marked and offered in evidence. However, a xerox copy of the decision is appended to the records.

[5] Exhibit "F".

[6] Exhibits "A" and "E".

Supreme Court E-Library

The Case for the Accused

Bernardo was born on January 22, 1978. He denied the charges. He admitted that he was charged with raping Leah Lou on April 21, 1994 in *People v. Bernardo Cortezano*,[7] filed with the Regional Trial Court of Pili, Camarines Sur, and that he pleaded guilty on his arraignment. He testified that on March 28, 1990, he arrived in Bagadiong, Libmanan, Camarines Sur, to help his cousin, Alvin Reoval, to plow and harrow his rice field and plant *palay*. He had lost his school bag, and his father, Santiago, had punished him for it. He had nowhere to go except to his cousin's house. Barangay Bagadiong was adjacent to Barangay Busak, and one would take four and half-hours by carabao to traverse Busak from Bagadiong. There were, however, many passenger jeepneys and buses plying the Busak-Sipocot route. When Bernardo thought that his parents were no longer mad at him, he returned to Sipocot on April 5, 1993. He received ₱3,150 for his services. He met his sister-in-law Lourney only in 1994, when she charged him with the rape of Leah Lou.

Joel Cortezano testified that he was born on November 1, 1976. He and his mother arrived in Manila on May 6, 1990 and stayed in the house of his aunt Concordia Hernandez in San Andres, Manila. On May 9, 1990, he went to the Philippine General Hospital (PGH) for treatment of leukemia and stayed there for three days. Thereafter, he was advised by the doctor not to leave the hospital, as he needed blood transfusion. Joel stayed in the hospital for one week. Joel was discharged from the hospital and stayed in the house of his aunt, Concordia Hernandez, in San Andres, Manila, for about a month and helped the latter manage her store. Every now and then, he returned to the hospital for check-ups.

In August 1990, Joel's mother fetched him from San Andres and brought him to Novaliches for two days. Thereafter, he returned to Sipocot, Camarines Sur.

---

[7] Criminal Case No. P-2375, March 28, 1990.

Supreme Court E-Library

When asked about his medical certificate regarding his treatment at the PGH during the period stated, Joel testified that he lost the same during a typhoon. He claimed that efforts to secure copies of the said medical certificates proved futile, as the employees who released the certificates were busy. Joel denied raping his niece Leah.

Nita Cortezano testified that she left Sipocot on May 6, 1990 for Manila to accompany her son Joel to the PGH, as the latter was suffering from leukemia and needed blood transfusion. They stayed in the hospital for about two weeks. They did not immediately return to Sipocot as they were ordered by the attending physician to stay in Manila. On May 28, 1990, she and Joel went to Elmer's house in Caloocan City where they saw Leah. It would have thus been impossible for Leah to be in Sipocot on May 6, 1990 to June 10, 1990. Nita further testified that it was only in 1991 when Leah and her siblings were first brought to Sipocot by Lourney. The second instance was in 1992, but it was their father Elmer who was with the children at the time.

Santiago Cortezano corroborated in part his wife's testimony. He testified that between May 6 and June 10, 1990, Leah and her siblings indeed spent their vacation in Sipocot. However, during that time, Joel was brought to Manila for a check-up at the PGH. Bernardo, on the other hand, left the household in June 1990. Aside from this, his daughters Melanie and Teresita, who were 16 years old and 10 years old, respectively, and his grandson Boyet (Bulilit) stayed in his house. His son Elmer also arrived in Sipocot during this time.

Sancho Cortezano testified that he went to the house of his older brother Elmer in Caloocan City on May 10, 1990 to inform the latter of his marriage. Elmer was not in his house but Lourney and her children, including Leah, were there. Sancho left on May 11, 1990 for Cebu where he got married seven days later. On June 3, 1990, Sancho returned to Manila and when he went to visit Elmer at his house, only Lourney and the children were there.

Supreme Court E-Library

Boyet Orcine testified that on May 6, 1990, he was in the hills with his mother Emerlina Cortezano in Barangay Tulay, which was very far from the house of the Cortezanos in Barangay Azucena, Sipocot. He returned from the hills only in 1993. He testified that he "did nothing" while he was away.

On rebuttal, the prosecution presented two letters from Mrs. Fe B. Baes, Chief of the Medical Records Division of the PGH, that as an outpatient, Joel consulted the hospital on August 16, 1989, November 2, 1989 and April 6, 1990, and that he was never confined at the PGH in 1990. The said letters read as follows:

> In connection with the letter received by this office requesting for a record of a certain Joel Cortezano, whether or not he was hospitalized in this hospital way back 1989, please be informed that as per hospital records, a certain Joel Cortezano consulted on an outpatient basis sometime on August 16, 1989, November 2, 1989 and April 6, 1990.[8]
>
> . . . . . .
>
> In reply to your letter dated August 15, 1995 re: JOEL CORTEZANO, may I inform you that he was never confined in this hospital anytime in 1990. He only consulted on April 6, 1990 on an outpatient basis.[9]

After trial, the court rendered a decision convicting the appellants of four counts of rape, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the aforecited considerations, this Court finds the accused, JOEL CORTEZANO and BERNARDO CORTEZANO, GUILTY beyond reasonable doubt of the two crimes of Rape as defined and punished under Article 335, of the Revised Penal Code, as amended. They are sentenced to suffer the penalty of *FOUR RECLUSION PERPETUA* each, in both criminal cases, considering that they acted in conspiracy in the commission of the act, and to indemnify the offended party Fifty Thousand Pesos (₱50,000.00) each, as moral damages in each criminal case, and another

---

[8] Exhibit "I".

[9] Exhibit "J".

Supreme Court E-Library

Fifty Thousand Pesos (₱50,000.00) each in each case, as exemplary damages, and to pay the costs of this suit. The period of their respective preventive detention is considered in the service of their sentence.

SO ORDERED.[10]

Hence, this appeal.

Joel and Bernardo, now the appellants, note, citing *People v. Batis*,[11] that there are three (3) settled principles to warrant a conviction for rape, namely: (1) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (2) 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 great caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence of the defense.

The appellants assert that Leah's testimony is incredible; hence, barren of probative weight. In her sworn statement to the police authorities, she claimed that she was raped thirty-six times, but her testimony in the trial court tends to show that she claimed to have been raped only on May 6 and June 10, 1990. Boyet's denial that he had sexual intercourse with Leah belied the latter's testimony that she was likewise raped by him. If Leah's claim that her sister Leah Lou and her brother Lionel saw her naked had any ring of truth to it, the two would surely have immediately reported the matter to their parents. The fact that they did not do so raises serious doubts as to the veracity of Leah's testimony.

The appellants also claim that although their defense of alibi is inherently weak, it is incumbent upon the prosecution to establish their guilt beyond reasonable doubt before a judgment of

---

[10] *Rollo*, p. 36.

[11] 216 SCRA 673 (1992).

Supreme Court E-Library

conviction could be rendered against them. Considering the prosecution's evidence, tattered as it is, their defense assumes importance and is even decisive of the outcome of the case.

The Court finds the appeal without merit.

This Court in *People v. Guanson*,[12] ruled:

> Well-entrenched in our jurisprudence is the doctrine that assessment of the credibility of witnesses lies within the province and competence of trial courts. The matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, could weigh such testimony in light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate the truth against falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstance of significance.[13]

In this case, the trial court gave credence and full probative weight to the testimony of the victim, in tandem with those of the other witnesses of the prosecution:

> Whatever inconsistencies or lapses there were, the same relate to trivial matters and do not in any manner affect her credibility and the veracity of her statements. Furthermore, such "*minor lapses are to be expected when a person is recounting details of humiliating experience which are painful to recall.*" (*Pp. V. Olivar*, 215 SCRA 759) In fact, though how lengthy and rigid the cross-examination was, Leah's declarations remained consistent, firm and undisturbed. Leah's categorical, spontaneous, emphatic, and straightforward answers during the cross-examination strengthened and explained whatever missing facts there were on direct examination. The medico-legal findings, moreover, corroborated Leah's testimony that she was indeed raped. Although there are no fresh hymenal lacerations, the incident having happened three (3) years before the examination, yet there are healed lacerations evidencing the sexual attack. "*A freshly*

---

[12] 372 SCRA 222 (2001).

[13] *Id.* at 229.

Supreme Court E-Library

broken hymen is not an essential element of rape." (*Pp. V. Cura*, GR 112529, January 18, 1995)[14]

. . . . . .

The bestial defloration was mirrored in Leah's being, as she cringed and trembled whenever she sees the accused. During the trial, the Interpreter had to shield Leah's line of vision upon advice of the Presiding Judge, as she was uncontrollably shaking and crying, when the accused would come within her view. Her tears and statements were not contrived but borne out of a genuine feeling of bitterness. She sobbed bitterly as she narrated her nauseating experience in the hands of her uncles and even eloquently declared in a loud voice:

> *"hindi ko kailangan ang pera, ang kailangan ko ay katarungan!"*
> (p. 9, TSN dated January 27, 1995)[15]

This Court ruled in *People v. Dy*[16] that the victim's act of crying during her testimony bolsters the credibility of the rape charge with the verity born out of human nature and experience.

Indeed, as can be gleaned from Leah's testimony, she recounted, with tears cascading from her eyes, the sordid details on how the appellants ravished her and satiated their bestial proclivities, thus:

Q: On May 6, 1990 to June 10, 1990, do you know any unusual incident that took place involving that person?
A: Yes, Sir.

Q: Tell the Honorable Court, what is that all about?
A: That occur[r]ence was done to me by my two Titos.

Q: What specific occur[r]ence?
A: The raped (*sic*) that they did to me, Sir. ("*Pagsasamantala*")

Q: They, to whom are you referring to?
A: My two uncles, Sir, Joel and Bernardo.

---

[14] *Rollo*, p. 74.

[15] *Id.* at 72.

[16] 375 SCRA 15 (2002).

Supreme Court E-Library

Q: What is the surname?
A: Cortezano, Sir.

Q: Can you possibly tell the Honorable Court, how this raping incident was done to you?
A: Yes, Sir.

Q: Feel free to tell the Court.
A: (Witness crying) That vacation mama left us at Sipocot, because she was to go back to work in Manila. She told me, that she is to leave on May 5, 1990. The next day, after lunch, Joel and Bernardo did something bad to me. After lunch, he told me to go inside the room, when I refused, he held the broom attempting to whip me. Because of fear, I went inside the room, while complaining to them "why ask me to sleep in that room, when it is too hot in that room." He told me to obey otherwise, he will whip me. I slept, and when I woke up I noticed that they were doing something bad to me. The first thing I saw was Tito Joel was (*sic*) doing to me. I was crying the (*sic*), I was strangling (*sic*), my two hands were being held and my legs pinned down. I could not move because they (*sic*) were two of them, one was watching outside. They told me that if I shout it will be useless because no one will hear me because the house was really far from neighbors. Our house is situated in a secluded place. Then, after that my grandmother arrive (*sic*), and she asked if there was something bad happened. I told her there was none. I was about to relay to her the incident, but I just could not because the two of them were watching me. They stopped doing this to me when my mother arrive[d] on June 10, 1990.

When we were about to leave, they were planning to do something bad to me. They said, "let's do it in the grass land." They kicked me from where I was standing, and I was thrown with my bottoms (*sic*) hitting the mud first, I told them I don't like it anymore, and I run (*sic*) and when they overtook me, they stripped off my panties. They placed saliva in my vagina and inserted their penis in my vagina. When my mama asked me, what was the abrasions in my arms all about, I told her that my arms was (*sic*) strucked (*sic*) by wire. (The witness showed the scratches that were already healed) When we reached Manila my father asked

Supreme Court E-Library

me about what happened and we told him, that they were whipping us.

(The witness cried.)[17]

. . . . . .

Q: Ms. Witness, as far as you can recall when was (*sic*) this incident happened?
A: On May 6, 1990 until June 10, 1990.

Q: How many times were you forced to lie with the accused in this case from that period?
A: Thirty six times.

Q: What time did this incident on May 6, 1990 took place?
A: After lunchtime.

Q: Tell the Honorable Court what was the participation of the accused Joel and Bernardo Cortezano in this incident of May 6, 1990?
A: I was ordered to get inside the room together with my brother and sister, and I was ordered to get inside the room of my "*lola*."

Q: On the basis of that instruction, what did you do, if any?
A: I obeyed even if the room was hot.

Q: What was the answer of Joel in relation to your complain[t] that the room was hot?
A: I better obey, otherwise he will whip me with the broom (*walis-tingting*).

Q: And so what happened next?
A: I slept and when I woke up they were doing something bad on (*sic*) me already.

Q: When you said they, to whom are you referring to?
A: Joel Cortezano and Bernardo Cortezano.

Q: What is that bad you are referring to when you say that the accused's (*sic*) in this case were doing bad things to you when you woke up?
A: I was being raped, they undress me.

---

[17] TSN, 11 January 1995, pp. 7-9.

Supreme Court E-Library

Q: There are two accused in this case, who was the first one to rape you?
A: Joel Cortezano.

Q: When you say rape, just what do you mean, can you possibly explain further to the Honorable Court how was it done?
A: When I woke up they were already undressing me, they held my hand and my legs and I could not move and Tito Joey[18] inserted his penis to my vagina and Tito Butchoy[19] was standing by the window and watching.

(Witness is crying).

Q: And so, what did you feel, if any?
A: I felt something slippery was left inside my vagina.

Q: And so, after the accused Joel Cortezano did this to you, what happened next?
A: They left the house and were at the *sampaloc* tree.

Q: How old are (*sic*) you then during that incident as related on May 6, 1990?
A: I was seven years old.

Q: What else happened, if any, with regards to Bernardo Cortezano besides his watching in the window as you say?
A: After Tito Joel did that to me, Bernardo Cortezano also did it to me and after that, Boyet, a cousin of mine when inside the room and ask what they were doing and Tito Joel answered, you also have to do what we are doing, otherwise we will hurt you, so Boyet did the same thing to me.

Q: You testify (*sic*) that one of the accused's (*sic*), Bernardo Cortezano, after Joel Cortezano did the same thing to (*sic*), tell the Honorable Court what is this thing that Bernardo Cortezano did to you, if any?
A: Tito Joel went beside the window and watch while Bernardo Cortezano also inserted his penis to my vagina.

Q: When Bernardo Cortezano inserted his penis into your vagina, what did you feel, if any?

---

[18] Refers to accused Joel Cortezano.

[19] Refers to accused Bernardo Cortezano.

Supreme Court E-Library

A: I feel that there was something slippery again was left inside my vagina.

Q: And so, after Bernardo Cortezano did this to you, what happened next, if any?

A: Boyet went inside the room followed by Tito Joel who went inside again and told Boyet to do what they were doing otherwise he will hurt Boyet and since Boyet was frightened, he also did the same thing to me.

Q: What is that same thing Boyet did to you, if any?

A: He also held my arms and inserted his penis into my vagina.

Q: And so after that, what happened next?

A: They laughed at me and then they called my brother and sister and told them to peep at me and they saw me naked.

Q: At the time when these accused Joel and Bernardo Cortezano started making advances, did you not resist their advances?

A: I fought back but they were too strong for me, one held my arms and the other was on top of me while he inserted his penis, I want to shout but Joel told me not to because nobody can hear me.

Q: Now we come to the incident of June 10, 1990, as far as you can recall, where were you on June 10, 1990.

A: I was at the house of my "*lola.*"

Q: While you were at the house of your "*Lola,*" what incident took place, if any?

A: On June 10, 1990 it was the last time they did it to me.

Q: What time was that already?

A: It was after lunchtime, they warned me not to tell anybody otherwise they will kill me and my family.

Q: When you say they, to whom are you referring to?

A: Joel and Bernardo Cortezano.

Q: If they are inside the courtroom, will you please point to them?

A: (Witness pointing to a man wearing stripe[d] polo who identify (*sic*) himself as Bernardo Cortezano and the man wearing a gray polo who identify (*sic*) himself as Joel Cortezano).

Supreme Court E-Library

Q: Please tell the Honorable Court what is that same thing you are referring to which was done to you by the accused's in this case on June 10, 1990?
A: They remove (*sic*) my panty and they place saliva in my vagina and then they held my arms and pinned my legs and then kiss me on the lips.

Q: Who kissed you on the lips?
A: Joel Cortezano.

Q: And after kissing you on the lips, what happened next, if any?
A: They left the room and went to the *sampaloc* tree and they laughed at me, then I went out of the room and wash my lips.[20]

Leah was brought by her mother to Sipocot to spend her vacation with her grandparents, only to be waylaid and enslaved by the appellants, her own uncles. Well-settled is the rule that the testimonies of young victims deserve full credence and should not be so easily dismissed as a mere fabrication.[21] As emphasized by this Court in *People v. Quezada*:[22]

No woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, unless she is motivated solely by the desire to have the culprit apprehended and punished. Considering that the young victim had not been exposed to the ways of the world, it is most improbable that she would impute a crime so serious as rape to any man, if the charge were not true.[23]

In *People v. De Guzman*,[24] we held:

Well-established is the rule that testimonies of rape victims, especially child victims, are given full weight and credit. It bears

---

[20] TSN, 27 January 1995, pp. 2-6.

[21] *People v. Quezada*, 375 SCRA 248 (1992), citing *People v. Ibalang*, 286 SCRA 387 (1998) and *People v. Molas*, 286 SCRA 684 (1998).

[22] *Supra*.

[23] *Id.* at 259.

[24] 372 SCRA 95 (2001).

Supreme Court E-Library

emphasis that the victim was barely seven years old when she was raped. In a litany of cases, we have applied the well settled rule that when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor particularly in cases of incestuous rape, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and to have the offender apprehended and punished.[25]

The barefaced fact that the public prosecutor opted to charge the appellants with only four counts of rape on May 6 and June 10, 1990, but Leah, in her sworn statement to the police authorities, stated that she had been raped by the appellants on a daily basis and testified thereon, does not render her testimony implausible. Even the municipal trial court which conducted the preliminary investigation of the cases found probable cause against the appellants for thirty-six counts of rape:

> From the evidence of the prosecution, it is clear that statutory rape was committed to victim Leah Cedilla Cortezano for thirty six (36) times by accused Joel Cortezano and Bernardo Cortezano, and the rapes were committed in the house of the paternal grandparents of victim Leah Cedilla Cortezano located in Barangay Azucena, Sipocot, Camarines Sur, from May 6, 1990, until June 10, 1990.
>
> WHEREFORE, for all the foregoing considerations, it is respectfully recommended that THIRTY-SIX (36) complaints for rape should be filed in the Regional Trial Court against accused JOEL CORTEZANO and BERNARDO CORTEZANO.
>
> Forward this case and its entire records to the Honorable Senen C. Lirag, the Provincial Prosecutor of Camarines Sur, Camarines Sur Hall of Justice, Naga City, for appropriate action.
>
> SO ORDERED.[26]

The provincial prosecutor may have opted to file only four counts of rape instead of thirty-six counts of rape for reasons

---

[25] *Id.* at 109-110.

[26] Records, Criminal Case No. L-1679, p. 18.

Supreme Court E-Library

other than the implausibility of Leah's testimony. Neither is Leah's testimony enfeebled by her siblings' failure to report to their parents or grandparents that they saw her naked on May 6, 1990. At the time, Leah Lou was barely three, while Lionel was only a year old. The children were too young to realize the importance of reporting such an incident to their parents or grandparents.

In the present recourse, the appellants' defense of alibi deserves scant consideration. As consistently held by this Court:

> [A]libi is the weakest of all defenses. It is a settled rule that for an alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely the accused was somewhere else.[27]

For alibi to prosper, the following must be established with clear and convincing evidence: (a) the presence of the appellant in another place at the time of the commission of the offense; and, (b) physical impossibility for him to be at the scene of the crime.[28] Alibi cannot prevail over the positive, straightforward and spontaneous testimony of the victim identifying the appellants as the malefactors and how they consummated the crimes charged.

Bernardo failed to show that it was physically impossible for him to have been in Sipocot on May 6 and June 10, 1990. Bernardo even testified that it was possible for him to have returned to Sipocot if he wanted to, as there were passenger jeepneys and buses plying the route four times a day.[29] There is no evidence that his running away from their house was even reported to the police authorities. The appellant merely relied on his testimony and that of his father to prove his defense. He even failed to present his cousin Alvin Reoval to corroborate his testimony.

---

[27] *People v. Del Valle*, 372 SCRA 297 (2001).

[28] *People v. Plana*, 370 SCRA 542 (2001).

[29] TSN, 5 September 1995, p. 18.

Supreme Court E-Library

Appellant Joel Cortezano likewise failed to substantiate his alibi. He failed to prove that he was treated at the PGH and was confined thereat on May 6 and June 10, 1990. When asked to produce any certification to prove his claim, he failed to produce any, on his incredible claim that the person releasing the certification was very busy and could not issue a certification. This was belied by the certifications issued by the PGH that the appellant had consulted the PGH as an outpatient only on August 16, 1989, November 2, 1989 and April 6, 1990, but was never confined in the said hospital.[30]

Boyet Orcine's bare denial that he was forced by the appellants to have sexual intercourse with Leah cannot prevail over Leah's positive and categorical testimony. The appellants failed to adduce a morsel of evidence to prove that Leah had any ill motive to implicate her cousin Boyet.

The appellants' claim that the charges against them were instigated by Lourney to hit back at her husband and his family deserves scant consideration. No mother in her right mind would subject her child, who is of tender age, to go through the rigors of undergoing a rape case just to exact revenge. In this light, this Court had the occasion to say:

> Indeed, it is accused-appellant's claim that the rape charge against him was merely fabricated by complainant's mother in order to get back at him, which we find to be implausible. As the trial court well-observed, it would be contrary to human nature for a mother like Lucita to expose her daughter of six years to the rigors of a trial of rape which may leave her stigmatized for life, and, in addition, involve another daughter as corroborative witness, just so she could exact her pound of flesh against accused-appellant. In several rape cases, this Court has uniformly rejected similar defenses on the ground that it is unbelievable.[31]

This Court also held in *People v. De Guzman*[32] that:

---

[30] Exhibits "I" and "J".

[31] *People v. Ombreso*, 372 SCRA 675 (2001).

[32] *Supra*.

Supreme Court E-Library

All told, the proffered alibi of accused-appellant cannot stand against the positive identification by the complainant that he is the defiler of her womanhood. Indeed, the revelation of an innocent girl not even into her teens whose chastity has been abused deserves full credit, as the willingness of complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint. In short, it is most improbable for an innocent and guileless girl of seven years as herein-offended party, to brazenly impute a crime so serious as rape to any man, let alone her uncle, if it were not true.[33]

The Court notes that the appellants were still minors when they committed the offense. At the time, Joel was 13 years and 6 months old, while Bernardo was 12 years and 4 months old. Nevertheless, they are not exempt from criminal liability.

Article 12, paragraph 3 of the Revised Penal Code provides:

Article 12. *Circumstances, which exempt from liability.* — The following are exempt from criminal liability:

. . . . . .

3. A person over nine years of age and under fifteen, unless he acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.

A minor who is over nine years old and under fifteen years old at the time of the commission of the crimes is exempt from criminal liability only when the said minor acted without discernment. It is the burden of the prosecution to prove that a minor acted with discernment when he committed the crime charged. In determining if such a minor acted with discernment, the Court's pronouncement in *Valentin v. Duqueña*[34] is instructive:

The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine,

---

[33] *Id.* at 111-112.

[34] 68 Phil. 580 (1939), citing *U.S. v. Maralit*, 36 Phil. 155 (1917).

Supreme Court E-Library

who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong, and such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of said minor, not only before and during the commission of the act, but also after and even during the trial.

In this case, the evidence on record shows beyond cavil that the appellants acted with discernment when they raped the victim, thus: (a) they wetted the victim's vagina before they raped her; (b) one of them acted as a lookout while the other was raping the victim; (c) they threatened to kill the victim if she divulged to her parents what they did to her; (d) they forced Boyet to rape the victim; (e) they laughed as Boyet was raping the victim; (f) they ordered Leah Lou and Lionel to look at their sister naked after the appellants had raped her.

The Proper Penalties

The imposable penalty for rape committed by two or more persons under Article 335 of the Revised Penal Code was *reclusion perpetua* to death.[35] Since the appellants were both minors at the time they committed the offenses, they are entitled to the benefits of the privileged mitigating circumstance of minority under Article 68(1) of the Revised Penal Code which reads:

Art. 68. *Penalty to be imposed upon a person under eighteen years of age.* — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed,

---

[35] The crimes were committed before the effectivity of Rep. Act No. 7659, An Act to Impose the Death Penalty on Cerain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, other Special Penal Laws, and for Other Purposes.

Supreme Court E-Library

but always lower by two degrees at least than that prescribed by law for the crime which he committed.

Two degrees lower than *reclusion perpetua* to death is *prision mayor*, which has a range of 6 years and 1 day to 12 years. The maximum of the indeterminate penalty shall be taken from the proper period of the said penalty, depending upon the presence or absence of modifying circumstances. The minimum of the indeterminate penalty shall be taken from the full range of the penalty, one degree lower than *prision mayor*, *prision correccional*, which has a range of 6 months and 1 day to 6 years.

In these cases, the crimes were not aggravated by abuse of superior strength because the said circumstance is already considered in the penalty imposed by the law for the crimes. However, the crimes were aggravated by relationship, pursuant to the second paragraph of Article 15 of the Revised Penal Code, as amended.[36] The appellants are the uncles of the victim. The crime charged in Criminal Case No. L-1679 was aggravated by the appellants, adding ignominy to the natural effects of the crime.[37] In *People v. Fuertes*,[38] this Court ruled:

Ignominy is a circumstance pertaining to the moral order which adds disgrace and obloquy to the material injury caused by the crime. The clause "Which add ignominy to the natural effects of the act"

---

[36] Article 15. Their concept. —

. . . .

The alternate circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

[37] Art. 14. *Aggravating circumstances.* — The following are aggravating circumstances:

. . . .

17. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

[38] 326 SCRA 382 (2000).

Supreme Court E-Library

contemplates a situation where the means employed or the circumstances tend to make the effects of the crime *more humiliating or to put the offended party to shame. . . .*

Ignominy was attendant when the appellants forced Boyet Orcine to rape the victim, and laughed as the latter was being raped by Boyet, and when they ordered Leah Lou and Lionel to look at their naked sister after the appellants had raped her. However, the aforementioned modifying circumstances cannot aggravate the crimes and the penalties therefor because the same were not alleged in the Information as mandated by Section 9, Rule 110 of the Revised Rules of Criminal Procedure. Although the crimes were committed before the effectivity of the said Rule, it shall be applied retroactively because it is favorable to the appellants.[39]

Civil Liabilities of the Appellants

The trial court awarded ₱50,000 as moral damages and ₱50,000 as exemplary damages to the victim in each case. The court did not award civil indemnity in both cases. The decision of the trial court shall thus be modified.

The trial court convicted the appellants of two counts of rape in each case. However, Leah is entitled to civil indemnity of ₱50,000 and moral damages of ₱50,000 for every crime committed by the appellants.[40] The appellants are also liable to the said victim for exemplary damages for each count of rape in the amount of ₱25,000.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Libmanan, Camarines Sur, Branch 56, in Criminal Cases Nos. L-1679 and L-1680, finding the appellants Bernardo Cortezano and Joel Cortezano guilty beyond reasonable doubt of four counts of rape is *AFFIRMED WITH MODIFICATIONS*.

---

[39] *People v. Delima*, G.R. No. 142773, January 28, 2003.

[40] *People v. Glabo*, 371 SCRA 567 (2001).

Supreme Court E-Library

In Criminal Case No. L-1679, the appellants are sentenced to suffer an indeterminate sentence of imprisonment (two counts) of nine (9) years and one (1) day of *prision mayor* in its medium period, as maximum, to four (4) years and two (2) months of *prision correccional* in its medium period, as minimum. Each of the appellants is ordered to pay the offended party Leah Cortezano ₱50,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 as exemplary damages for each count of rape. Thus, each of the appellants shall pay the offended party the total amount of ₱100,000 as civil indemnity; ₱100,000 as moral damages; and ₱50,000 as exemplary damages.

In Criminal Case No. L-1680, the appellants are sentenced to suffer an indeterminate sentence (two counts) of nine (9) years and one (1) day of *prision mayor* in its medium period, as maximum, to four (4) years and two (2) months of *prision correccional* in its medium period, as minimum. Each of the appellants is ordered to pay the offended party Leah Cortezano ₱50,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 as exemplary damages for each count of rape. Thus, each of the appellants shall pay the offended party the total amount of ₱100,000 as civil indemnity; ₱100,000 as moral damages; and ₱50,000 as exemplary damages.

SO ORDERED.

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