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[G.R. No. 135563. September 18, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BOBBY SANCHEZ** *y* **PAGUIA,** *appellant.*

SYNOPSIS

In an information, 17-year old Arlene Sanchez accused her brother, appellant herein, of rape. Upon arraignment, appellant pleaded not guilty. The trial court upheld the prosecution evidence and found the accused guilty beyond reasonable doubt of raping his minor sister and sentenced him to the supreme penalty of death. Hence, the case was brought before the Supreme Court on automatic review.

The Supreme Court found no error on the part of the trial court in giving full faith and credence to the testimony of the victim Arlene. Appellant's failure to substantiate the imputation of ill motive against the complainant and his own father constrained the Court to affirm the jurisprudential presumption that they were not so moved, hence, their testimonies are entitled to full faith and credence. The minority of the victim and her relationship with the accused are circumstances that qualify the crime of rape and warrant the imposition of the death penalty. In this case, the prosecution had well-established Arlene's minority and her relationship with the appellant. Thus, the trial court correctly imposed on the appellant the penalty of death. The Supreme Court affirmed the conviction and penalty imposed by the trial court.

SYLLABUS

1. CRIMINAL LAW; RAPE; CONTROLLING PRINCIPLES IN DECIDING RAPE CASES. — At the outset, we reiterate that in rape cases, certain well-established principles and precepts are controlling. These are (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are

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usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (c) 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 for the defense. Consequently, it is the primordial duty of the prosecution to present its case with clarity and persuasion to the end that conviction becomes the only logical and inevitable conclusion.

2. **ID.; ID.; MAY BE COMMITTED BY USING FORCE OR INTIMIDATION; CASE AT BAR.** — Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age or is demented. Appellant in this case is charged with rape by using force or intimidation and not when the victim is unconscious. Force was clearly used by appellant in committing the crime of rape. Arlene sufficiently demonstrated that the sexual act was forced on her as she was initially threatened at knifepoint, boxed on the stomach twice, then carried to the sugarcane field where her hands were tied behind her back, her mouth gagged with a small blanket and then boxed again on the stomach four times which rendered her unconscious.

3. **ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY OF THE VICTIM AND HER RELATIONSHIP WITH THE ACCUSED WAARANT IMPOSITION OF DEATH PENALTY.**— The minority of the victim and her relationship with the accused are circumstances that qualify the crime of rape and warrant the imposition of the death penalty. In the present case, the Information alleges that Arlene was 17 years old and a sister of appellant. The prosecution had established Arlene's minority and her relationship with appellant. Arlene's Certificate of Birth shows that she was seventeen years old when she was raped. Her testimony, corroborated by that of her father, Emvencio Sanchez, proved that appellant is her brother, not to mention the fact that appellant himself admits that Arlene is his sister.

4. **ID.; ID.; QUALIFYING CIRCUMSTANCES; RELATIONSHIP; THAT THE OFFENDER IS A "RELATIVE BY CONSANGUINITY OR**

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AFFINITY WITHIN THE THIRD CIVIL DEGREE" NEED NOT BE ALLEGED IN THE INFORMATION IF THE OFFENDER IS A BROTHER; EXCEPTION TO FEROLINO CASE.— We have held in *People vs. Ferolino*, that: If the offender 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 or affinity (as the case may be) within the civil degree. That relationship by consanguinity or affinity was not alleged in the informations in these cases. Even if it was, it was still necessary to further allege that such relationship was within the third civil degree. The present case is not within the contemplation of said ruling considering that in the *Ferolino* case, the victim is a niece of the offender while in the present case the victim is a sister of the offender. It was deemed necessary in the *Ferolino* case to require that it must be specifically alleged in the Information that the offender is "a relative by consanguinity or affinity (as the case may be) within the third civil degree" because we acknowledge the fact that there are niece-uncle relationships which are beyond the third civil degree, in which case, death penalty cannot be imposed on an accused found guilty of rape. However, a sister-brother relationship is obviously in the second civil degree and no other sister-brother relationship exists in civil law that falls beyond the third civil degree. Consequently, it is not necessary in this case that the Information should specifically state that the appellant is a relative by consanguinity within the third civil degree of the victim. This is an exception to the requirement enunciated in the *Ferolino* case. Thus, the trial court correctly imposed on appellant the penalty of death.

5. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, AWARDED IN CASE AT BAR.— Based on prevailing jurisprudence, the award of indemnity *ex delicto*, where the penalty imposed is *reclusion perpetua*, should be in the amount of ₱50,000.00 while the award for moral damages should be in the amount of ₱50,000.00. Moral damages are awarded in rape cases without need of showing that the victim suffered from mental, physical, and psychological trauma as these are too obvious to require recital by the victim during the trial. Moreover, exemplary damages in the amount of ₱25,000.00 should be awarded to the victim due to the presence

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of the qualifying circumstance of the use of a deadly weapon and to deter the commission by others of similar dastardly act.

6. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF RAPE VICTIM; EVALUATION OF THE CREDIBILITY OF THE VICTIM BY TRIAL COURT IS ACCORDED GREAT RESPECT BY THE APPELLATE COURT; RATIONALE.** — In an appeal from a judgment of conviction in rape cases, the issue boils down, almost invariably, to the credibility of the victim and, just as often, we are constrained to rely on the observations given by the trial court, not equally enjoyed by us, during the reception of testimony. It has thus since become doctrinal that the evaluation of testimonial evidence by the trial court is accorded great respect precisely for its chance to observe first-hand the demeanor on the stand of the witness, a matter which is important in determining whether what has been said should be taken to be the truth or falsehood.

7. **ID.; ID.; ID.; THE TESTIMONY OF A RAPE VICTIM IS ENTITLED TO EVEN GREATER WEIGHT WHEN SHE ACCUSES A CLOSE RELATIVE; APPLICATION IN CASE AT BAR.** — The long-standing rule that "*when a woman testifies that she has been raped, she says, in effect all that is necessary to show that the crime did take place*" finds no better application than when the offender is the victim's blood relation. Indeed, the testimony of a rape victim is entitled to even greater weight than ordinarily it would when she accuses a close relative, in this case her own brother, of having been the responsible party therefor. This is so because incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological and social toll. It is against human nature for a sister to fabricate a charge that would expose herself as well as her entire family to a lifetime of dishonor especially when her charge could mean the death of her own brother. It is highly improbable for a sister to go out in public to falsely accuse her brother of rape if it were not true. And for the parents, it would be too high a price to pay in exposing their daughter to public ridicule and indignity, coupled with the rigors of a public trial, just to vent an ire on the accused, who in the present case is their own son.

8. **ID.; ID.; ID.; WHEN VICTIM'S TESTIMONY IS CORROBORATED BY PHYSICIAN'S FINDINGS OF PENETRATION.** — Furthermore, the fact of rape was confirmed

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by the medico-legal examination conducted on Arlene. According to the medical findings, Arlene's hymen is "no longer appreciated", meaning "a hard object might have been inserted to the vagina which caused the breaking of the hymen." We have held that when the victim's testimony is corroborated by the physician's findings of penetration, as when the hymen is no longer intact, then, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Thus, the complainant's testimony and the medical evidence establish that the offense charged was committed beyond a shadow of doubt.

9. ID.; ID.; DENIAL AND ALIBI; A SELF-SERVING NEGATIVE EVIDENCE THAT CANNOT BE GIVEN GREATER WEIGHT THAN THE DECLARATION OF A CREDIBLE WITNESS WHO TESTIFIED ON AFFIRMATIVE MATTERS; CASE AT BAR. — Universally accepted is the rule that denial is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testifies on affirmative matters. Appellant's reliance on his alibi is futile because he failed to prove the physical impossibility of his presence at the *locus criminis* at the time the crime occurred: According to him, he was still asleep in his parent's house at the time of the incident. The crime was committed not too far away, around 28 meters from the house of his parents. Truly, such does not render impossible his presence within the scene of the incident.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

Before us on automatic review is the decision,[1] dated August 20, 1998 of the Regional Trial Court of Malaybalay, Bukidnon (Branch 8) convicting appellant Bobby Sanchez *y* Paguia of rape in Criminal Case No. 8742-97, sentencing him to the supreme

[1] Penned by Judge Vivencio P. Estrada.

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penalty of death and ordering him to pay the offended party the amount of ₱30,000.00 as civil indemnity and the amount of ₱15,000.00 as moral damages.

In an Information dated December 15, 1997, 17-year old Arlene Sanchez accuses her brother, Bobby Sanchez *y* Paguia, of rape, committed as follows:

> That on or about the 30th day of September 1997, in the morning, at Barangay Lorugan, Municipality of Valencia, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, prompted with lewd design, armed with a sharp bladed weapon and by means of violence and intimidation, did then and there willfully, unlawfully and criminally hold the right hand of ARLENE SANCHEZ, and at knife point tied and box (sic) her and brought her inside the sugar plantation and have sexual intercourse with ARLENE SANCHEZ his 17 year old sister against her will, to the damage and prejudice of ARLENE SANCHEZ in such amount as may be allowed by law.
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> Contrary to law and in violation of Republic Act No. 7659.[2]

On February 10, 1998, appellant was arraigned and pleaded not guilty.[3] Thereafter, trial ensued.

The prosecution presented as its witnesses Arlene Sanchez, the complainant; Embencio Sanchez, the father of both the complainant and appellant; and Dr. Marlyn V. Agbayani, the medico-legal who conducted examination on Arlene.

The prosecution evidence established the following facts:

On September 30, 1997, Arlene was a 17-year old third year high school student of Lurogan National High School. At around 6:00 in the morning of that day, Arlene left home and walked on a pathway towards the highway where she can take a ride to school. After walking some 25 meters away from her parents' house, her brother, appellant Bobby suddenly appeared from the cornfield beside the pathway. While holding a knife in one

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[2] *Rollo*, p. 4.

[3] Original Records, p. 32.

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hand, appellant boxed Arlene two times in the stomach. Because of the strength of the blows, Arlene lost strength. Appellant then lifted her up and carried her to the sugarcane field which was 3 meters away. There, appellant took a small blanket from a bag he brought along and tied it around Arlene's neck which covered her mouth. With the use of the sling of Arlene's schoolbag, he tied her hands behind her back. Then, appellant boxed her four times on the stomach. Extreme pain made her lose consciousness. When she woke up, she saw appellant sitting beside her. She saw that her uniform was soiled. She felt weak, dirty and could hardly stretch her legs. She realized that she was raped because she felt pain in her vagina and noticed that her panty was inverted, inside out. Appellant warned her not to report the incident to their parents or else he will kill them. Appellant then told her to wear his jacket before she goes to school to cover her soiled uniform. Instead of going to school, she went home. At around 3:00 in the afternoon of that same day, she finally mustered enough courage to tell her parents what happened to her.[4]

The next day, October 1, 1997, Arlene, together with her parents reported the matter to the police. The police referred Arlene to Dr. Marlyn Agbayani, the Municipal Health Officer[5] who conducted a pelvic examination on Arlene. She inserted two fingers without resistance in Arlene's vagina and found out that Arlene was having her menstrual period and that her hymen was "no longer appreciated." Considering Arlene's menstruation, Dr. Agbayani advised her to return on October 6.[6]

On October 6, 1997, Dr. Agbayani conducted another medico-legal examination on Arlene. External examination of Arlene's genitalia revealed no discoloration, no hematoma, no laceration and no contusion while the internal examination again showed that the hymen was "not appreciated," admits two fingers without

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[4] TSN, Testimony of Arlene Sanchez, April 1, 1998, pp. 5-20; 25-26.

[5] *Id.*, at pp. 20-21.

[6] TSN, Testimony of Dr. Marlyn V. Agbayani, April 6, 1998, p. 5.

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resistance, and negative for sperm cells.[7] Dr. Agbayani explained that a hymen which is "no longer appreciated" means that "a hard object might have been inserted to the vagina which caused the breaking of the hymen."[8]

Appellant denied the charge against him. He claims that the accusation was fabricated by their father who disliked him very much and treated him differently from his siblings even when he was still small. Appellant testified that his wife had left him on September 26 and went back to her own parents in Cebu. On the evening of September 29, 1997, he drank hard liquor at a store near the plaza of Lurogan where a disco dance was held. He got very drunk and did not leave the plaza until very early in the following morning. Instead of going to his own house, he went directly to his parents' house. Seeing his drunken condition, his father advised him not to take too seriously the fact that his wife had left him for there are other women in the world. He was still inebriated and sleepy that morning that he was soon sound asleep while sitting on the floor and leaning against the wall. He woke up at 1:00 in the afternoon of September 30, 1997.[9]

The trial court upheld the prosecution evidence, found appellant guilty beyond reasonable doubt of raping his minor sister and sentenced him to the supreme penalty of death, *viz*:

> WHEREFORE, the court finds the accused Bobby Sanchez GUILTY beyond reasonable doubt of the crime of rape in violation of Section II of Republic Act No. 7659. He is hereby sentenced to suffer the maximum penalty of DEATH. He is also ordered to indemnify his victim Arlene Sanchez the sum of Thirty Thousand (₱30,000.00) Pesos, and moral damages of Fifteen (₱15,000.00) Pesos.
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> SO ORDERED.[10]

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[7] Original Records, p. 3.

[8] TSN, Testimony of Dr. Marlyn V. Agbayani, April 6, 1998, p. 6.

[9] TSN, Testimony of Bobby Sanchez, May, 4, 1998, pp. 7-12.

[10] *Rollo*, p. 16.

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Hence, the case is before us on automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

In his Brief, appellant raises a single assignment of error:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[11]

At the outset, we reiterate that in rape cases, certain well-established principles and precepts are controlling. These are (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (c) 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 for the defense.[12] Consequently, it is the primordial duty of the prosecution to present its case with clarity and persuasion to the end that conviction becomes the only logical and inevitable conclusion.[13]

Appellant insists that the quantum of proof required in criminal cases has not been met in this case considering that the fact of rape was not proved beyond reasonable doubt. He stresses that the complainant failed to testify as to how she was raped, if the same was indeed committed against her. Neither did she indicate that appellant had any malicious and lustful intentions on her. When she was asked why she did not offer any resistance during that time, she merely answered that it was because at that instance, she was already unconscious. Appellant argues that by her very own admission that she was indeed unconscious at that time, anyone can tell that she herself was not fully aware of what really transpired during the period of her unconsciousness.

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[11] *Rollo*, p. 29.

[12] *People vs. Villaflores*, 371 SCRA 429, 438 (2001); *People vs. Dumlao*, 370 SCRA 571, 583 (2001).

[13] *People vs. Aballe*, 357 SCRA 802, 810 (2001).

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The contentions of appellant are devoid of merit.

Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

Appellant in this case is charged with rape by using force or intimidation and not when the victim is unconscious.

Force was clearly used by appellant in committing the crime of rape. Arlene sufficiently demonstrated that the sexual act was forced on her as she was initially threatened at knifepoint, boxed on the stomach twice, then carried to the sugarcane field where her hands were tied behind her back, her mouth gagged with a small blanket and then boxed again on the stomach four times which rendered her unconscious.

The claim of appellant that there is no detailed account on how the rape was actually consummated because according to Arlene she was unconscious when she was raped is outrightly fallacious. If we were to adopt appellant's argument, then the clever rapist would simply knock his potential victim out of her senses before actually raping her so as to immunize himself from conviction.

In an appeal from a judgment of conviction in rape cases, the issue boils down, almost invariably, to the credibility of the victim and, just as often, we are constrained to rely on the observations given by the trial court, not equally enjoyed by us, during the reception of testimony.[14] It has thus since become doctrinal that the evaluation of testimonial evidence by the trial court is accorded great respect precisely for its chance to observe

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[14] *People vs. Francisco*, 350 SCRA 55, 63 (2001); *People vs. Lopez*, 302 SCRA 669, 675 (1999).

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first-hand the demeanor on the stand of the witness, a matter which is important in determining whether what has been said should be taken to be the truth or falsehood.[15]

In this case, we do not find any error on the part of the trial court in giving full faith and credence to the testimony of the victim Arlene. We are convinced of Arlene's candid and unequivocal testimony, excerpts of which we quote verbatim:

Q: . . . how did Bobby Sanchez rape you?
A. At first we were on a pathway then he boxed me on my stomach.

Q: Now, when you said that you were on a pathway, what pathway are you referring from your house to the highway?
A: Yes.

Q: Now, you said that you were boxed by Bobby Sanchez. How many times that you were boxed?
A: While we were on the pathway he boxed me two (2) times, but when we were already on the sugarcane farm for four (4) times.

COURT: (to witness)
Q: He boxed you two times while you were walking towards the road, correct?
A: Yes.

Q: Why was he there?
A: He suddenly appeared from the cornfield at that time when I was on that pathway.

Q: You mean there is a cornfield beside where the path you were walking on?
A: Yes.

Q: Right after he boxed you for two times, what did he do to you next if any?
A: When I already lost strength he lifted me and carried me.

Continue.

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[15] *Ibid.*

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PROSECUTOR TORIBIO:

Q: Now, you said that you were already awaken and this Bobby Sanchez lifted with you. To what place were you brought by this Bobby Sanchez?

A: In the sugarcane farm.

Q: That is where you said that you were again boxed for four times by Bobby Sanchez?

A: Yes.

COURT: (to witness)

Q: The same thing when he boxed you in your stomach?

A: Yes.

PROSECUTOR TORIBIO:

Q: This sugarcane field wherein you were brought by Bobby Sanchez, how far from the pathway?

A: It is very near. (Witness pointing to a distance of about 3 meters).

Q: So you mean to tell this court Arlene that the other side of the path is a cornfield and the other side is a sugarcane field?

A: Yes.

Q: Now, after you were brought by Bobby Sanchez to the sugarcane field wherein you were boxed four times, what happened to you?

A: I lost consciousness.

Q: Now Arlene, aside from being boxed by Bobby Sanchez, what else did he do to you before you were brought to the sugarcane plantation?

A: When we reached the sugarcane field he boxed me again for four times and so I lost consciousness.

Q: Now, aside from boxing did he do any other things to you?

A: Yes.

Q: What was that?

A: He tied my hands with my bag.

Q: Now, how did he tie your hands?

A: (Witness demonstrating by putting his two hands on his back).

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Q: Now, you said that you were tied with your bag. Is it a bag that you were bringing during that time when you were able to go to school?
A: Yes.

Q: Why, is the sling of your bag long enough to tie your hands?
A: Yes.

Q: Aside from tying your hands at your back Arlene, what else did Bobby Sanchez do to you aside from tying and boxing?
A: He gagged my mouth.

Q: What did he use?
A: A blanket.

COURT: (to witness)
Q: You mean he had a blanket with him?
A: Yes, a small blanket.

Q: How did he gag you, he tacked that into your mouth or he just wrapped around your neck?
A: He did it this way. (Witness demonstrated to show that the gagging was tied around her neck on the level of her mouth. The eyes can be seen but not the mouth).

PROSECUTOR TORIBIO:
Q: Now, where was this blanket you said was taken by Bobby Sanchez?
A: From his bag.

Q: You mean to tell this court that he was bringing a bag at that time?
A: Yes.

Q: Now, aside from bringing you, tying your hands and then gagged up your mouth, what else Bobby Sanchez do to you?
A: He raped me.

Q: Were you not able to resist Bobby Sanchez during that time?
A: I was already unconscious.

Q: Now, were you able to regain your consciousness?
A: Yes.

Q: Now, after you regain your consciousness, were you able to see Bobby Sanchez near you during that time?
A: Yes.

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Q: Now, after you regain your consciousness where was Bobby Sanchez when you saw him?
A: Beside me.

Q: What did he do when you saw him after you regain your consciousness?
A: He was already sitting down and I observed that my uniform was already very soiled.

Q: Now, aside from your uniform being soiled, what else did you observe as far as your body is concerned?
A: I felt very much weak and I was dirty. I was so weak that I can hardly stretch my legs.

Q: Now my question is, aside from your uniform being soiled, what else did you observe with your uniform?
A: That was all it was very dirty.

Q: Now, were you able to have a talk with Bobby Sanchez after you regain consciousness?
A: He was the one who talked to me.

Q: What was the conversation of Bobby Sanchez to you?
A: He told me that if I am going to report the incident to my mother and my father he is going to kill me.[16]

. . . . . .

Q: Now, you mean to tell this court Arlene that this knife was used by Bobby Sanchez in threatening you?
A: Yes.

Q: Now, how did he use this knife in threatening you?
A: He did it this way. (Witness demonstrated with a motion by pointing the said knife).

Q: Now, at what point in time wherein this knife was pointed to you, before you were boxed or after you were already boxed when you were still in the pathway?
A: Before he boxed me.

COURT: (to witness)
Q: How did you know you were raped when you said you were unconscious?
A: I felt my vagina to be painful during (sic) I urinated.

[16] TSN, Testimony of Arlene Sanchez, April 1, 1998, pp. 8-14.

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Q: That was hours after the incident when you urinated?
A: Yes.

Q: After you regain consciousness you did not yet feel the pain.
A: I felt pain.

Q: Yes, you said pain over your body. Did you feel any pain with your vagina after you already regain consciousness?
A: Yes.

Q: Did you wear a panty when you went to school?
A: Yes.

Q: And when you regain consciousness when he boxed you inside the sugarcane plantation you noticed that your panty was still on?
A: Yes, but it was inverted, inside out.[17]

The long-standing rule that "*when a woman testifies that she has been raped, she says, in effect all that is necessary to show that the crime did take place*"[18] finds no better application than when the offender is the victim's blood relation. Indeed, the testimony of a rape victim is entitled to even greater weight than ordinarily it would when she accuses a close relative, in this case her own brother, of having been the responsible party therefor.[19] This is so because incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological and social toll.[20] It is against human nature for a sister to fabricate a charge that would expose herself as well as her entire family to a lifetime of dishonor[21] especially when her charge could mean the death of her own brother. It is highly improbable for a sister to go out in public to falsely accuse her

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[17] *Id.* at pp. 15-16.

[18] *People vs. Laciste*, 370 SCRA 266, 272 (2001).

[19] *People vs. Sagarino, Jr.*, 364 SCRA 438, 449 (2001); *People vs. Rondilla*, 351 SCRA 410, 422 (2001).

[20] *People vs. Santos*, 366 SCRA 52, 60 (2001).

[21] *People vs. Rabago*, G.R. No. 149893, April 2, 2003; *People vs. Marahay*, G.R. Nos. 120625-29, January 28, 2003.

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brother of rape if it were not true. And for the parents, it would be too high a price to pay in exposing their daughter to public ridicule and indignity, coupled with the rigors of a public trial, just to vent an ire on the accused,[22] who in the present case is their own son.

Appellant's failure to substantiate the imputation of ill motive against the complainant and his own father constrains us to affirm the jurisprudential presumption that they were not so moved, hence, their testimonies are entitled to full faith and credence.[23]

Furthermore, the fact of rape was confirmed by the medico-legal examination conducted on Arlene. According to the medical findings, Arlene's hymen is "no longer appreciated," meaning "a hard object might have been inserted to the vagina which caused the breaking of the hymen."[24] We have held that when the victim's testimony is corroborated by the physician's findings of penetration, as when the hymen is no longer intact, then, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[25] Thus, the complainant's testimony and the medical evidence establish that the offense charged was committed beyond a shadow of doubt.

We now go to the defense of denial and alibi resorted to by the appellant. In the absence of corroborative evidence, we cannot accept his lame denial over Arlene's straightforward and positive declaration. Universally accepted is the rule that denial is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testifies on affirmative matters.[26] Appellant's reliance on his alibi is futile because he failed to prove the physical impossibility

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[22] *People vs. Mirafuentes*, 349 SCRA 204, 213-214 (2001).

[23] *People vs. De los Reyes*, 327 SCRA 56, 67 (2000).

[24] TSN, Testimony of Dr. Marlyn V. Agbayani, April 6, 1998, p. 6.

[25] *People vs. Managbanag*, 371 SCRA 615, 626 (2001); *People vs. Bulos*, 359 SCRA 621, 629 (2001).

[26] *People vs. Barredo*, 329 SCRA 120, 129 (2000); *People vs. Carizo*, 233 SCRA 687, 701 (1994).

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of his presence at the *locus criminis* at the time the crime occurred.[27] According to him, he was still asleep in his parent's house at the time of the incident. The crime was committed not too far away, around 28 meters from the house of his parents.[28] Truly, such does not render impossible his presence within the scene of the incident.

In imposing the death penalty upon the appellant, the trial court reasoned:

> As testified to by private complainant, and as shown in her Certificate of Birth (Exhibit "C"), she was born on August 19, 1980. She was, therefore, only seventeen years old at the time she was raped by her brother Bobby Sanchez. The offense committed is punishable under Section II of the Republic Act No. 7659, amending Article 335 of the Revised Penal Code, for when rape is committed by a brother against his own sister who is less than 18 years of age at the time of the commission of crime, the maximum penalty is applied.[29]

Pertinent portions of Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which took effect on December 31, 1993,[30] read:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.
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> . . . . . .
>
> (Emphasis supplied)

Thus, the minority of the victim and her relationship with the accused are circumstances that qualify the crime of rape and

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[27] *People vs. Dacara*, 368 SCRA 278, 284 (2001).

[28] TSN, Testimony of Arlene Sanchez, April 1, 1998, pp. 25-26.

[29] *Rollo*, p. 16.

[30] *People vs. Simon*, 234 SCRA 555, 569 (1994).

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warrant the imposition of the death penalty.[31] In the present case, the Information alleges that Arlene was 17 years old and a sister of appellant. The prosecution had established Arlene's minority and her relationship with appellant. Arlene's Certificate of Birth[32] shows that she was seventeen years old when she was raped. Her testimony, corroborated by that of her father, Emvencio Sanchez,[33] proved that appellant is her brother, not to mention the fact that appellant himself admits that Arlene is his sister.[34]

We have held in *People vs. Ferolino*,[35] that:

> If the offender is merely a *relation* — not a parent, ascendant, stepparent, 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 or affinity (as the case may be) within the civil degree. That relationship by consanguinity or affinity was not alleged in the informations in these cases. Even if it was, it was still necessary to further allege that such relationship was within the third civil degree.[36]

The present case is not within the contemplation of said ruling considering that in the *Ferolino* case, the victim is a niece of the offender while in the present case the victim is a sister of the offender. It was deemed necessary in the *Ferolino* case to require that it must be specifically alleged in the Information that the offender is "a relative by consanguinity or affinity (as the case may be) within the third civil degree" because we acknowledge the fact that there are niece-uncle relationships which are beyond the third civil degree, in which case, death

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[31] *People vs. Umayam*, G.R. No. 147033. April 30, 2003; *People vs. Baniqued*, 372 SCRA 1. 19 (2001).

[32] Exhibit "C", Records, p. 3.

[33] TSN, Testimony of Arlene Sanchez, April 8, 1998; TSN, Testimony of Emvencio Sanchez, April 6, 1998.

[34] TSN, May 4, 1998.

[35] 329 SCRA 719 (2000).

[36] *Id.*, at p. 735.

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penalty cannot be imposed on an accused found guilty of rape. However, a sister-brother relationship is obviously in the second civil degree and no other sister-brother relationship exists in civil law that falls beyond the third civil degree. Consequently, it is not necessary in this case that the Information should specifically state that the appellant is a relative by consanguinity within the third civil degree of the victim. This is an exception to the requirement enunciated in the *Ferolino* case.

Thus, the trial court correctly imposed on appellant the penalty of death.

Three members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

As to the civil aspect of the case.

Based on prevailing jurisprudence, the award of indemnity *ex delicto*, where the penalty imposed is *reclusion perpetua*, should be in the amount of ₱50,000.00[37] while the award for moral damages should be in the amount of ₱50,000.00.[38] Moral damages are awarded in rape cases without need of showing that the victim suffered from mental, physical, and psychological trauma as these are too obvious to require recital by the victim during the trial.[39] Moreover, exemplary damages in the amount of ₱25,000.00 should be awarded to the victim due to the presence of the qualifying circumstance of the use of a deadly weapon[40] and to deter the commission by others of similar dastardly act.[41]

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[37] *People vs. Dela Cruz*, G.R. No. 135554-56, June 21, 2002, p. 29.

[38] *People vs. Parcia*, G.R. No. 141136, January 28, 2002, p. 11; *People vs. Colisao*, 372 SCRA 20, 32 (2001).

[39] *People vs. Yaoto*, 370 SCRA 284, 295 (2001); *People vs. Rivera*, 362 SCRA 153, 182 (2001).

[40] *People vs. Montemayor*, G.R. Nos. 124474 & 139972-78, January 28, 2003, p. 20.

[41] Ferolino case, *supra*, Note 35.

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WHEREFORE, the Decision, dated August 20, 1998, of the Regional Trial Court of Malaybalay, Bukidnon (Branch 8) in Criminal Case No. 8742-97 finding BOBBY SANCHEZ *y* PAGUIA guilty beyond reasonable doubt of rape with the use of a deadly weapon and sentencing him to suffer the penalty of DEATH is AFFIRMED with MODIFICATIONS as to the civil aspect of the case. Bobby Sanchez *y* Paguia is ordered to pay complainant Arlene Sanchez ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

SO ORDERED.

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

Puno and Azcuna, JJ., on official leave.

THIRD DIVISION

[G.R. No. 144913. September 18, 2003]

PEOPLE OF PHILIPPINES, *plaintiff-appellee, vs.* **GERONIMO CENIZA *y* CASAS,** *accused-appellant.*

SYNOPSIS

The victim herein, SPO1 Joselito Baricuatro, was a member of the Tagbilaran City Police Force. He met his demise when an assailant suddenly stabbed him while he was performing his duty at the corner of Marapao and J. Torralba Sts., Tagbilaran City. Eyewitnesses pointed to accused-appellant Ceniza as the killer. Ceniza was charged with murder. For his defense, Ceniza interposed alibi and presented several witnesses to corroborate his testimony. Meanwhile, an eyewitness returned to the witness stand and retracted his previous testimony. He claimed that