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SECOND DIVISION

[G.R. No. 133237. July 11, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERNESTO DIZON *Y* ILARDE,** *appellant.*

SYNOPSIS

Appellant was convicted of rape by the Regional Trial Court of Pasay City and was sentenced to suffer the penalty of *reclusion perpetua.* In his appeal before the Court, appellant assailed the credibility of the victim as he asserted that his guilt for the crime of rape was not proven beyond reasonable doubt. According to the appellant, the complainant's narration of how he raped her, *i.e.*, he embraced her from behind, shoved her inside the comfort room, forced her to lie down on the floor, lay on top of her, pulled down her pants and panty, removed his short pants, inserted his finger then his penis into her vagina, and during the entire time his left hand covered her mouth, was incredulous. Appellant insisted that it was physically impossible for him to have raped the complainant in the said manner.

The Supreme Court affirmed appellant's conviction. According to the Court, the discrepancy in the sequence of events as narrated by the complainant in her "*sinumpaang salaysay*" and her testimony in court could be explained by the fact that when the former was taken, she had just been through the ordeal. She could not be expected to immediately remember with accuracy every ugly detail of her harrowing experience especially so when she might in fact have been trying not to remember the same. The important thing is that complainant was consistent in her testimony before the trial court that the appellant shoved her inside the comfort room, forcibly made her lie down on the floor, lay on top of her and inserted his penis into her vagina. At what point he actually removed her pants and panty is but a minor and inconsequential detail which does not affect the crux of the case — that the appellant had carnal knowledge of the complainant against her will. The Court also ruled that the absence of external signs of application of any form of violence does not negate the fact that appellant raped the complainant.

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SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION THEREOF BEST UNDERTAKEN BY TRIAL COURTS.— The trial court characterized Jennie's testimony as straightforward and declared that the details narrated by her could not have been merely concocted. The trial court found that her detailed testimony bore the badge of sincerity and truthfulness. The unbroken line of jurisprudence is that this Court will not disturb the findings of the trial court as to the credibility of witnesses considering that it is in a better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. There is nothing in the records that would impel this Court to deviate from said findings and conclusion of the trial court. Indeed, this Court finds that Jennie testified in a categorical, straightforward and consistent manner.

2. ID.; ID.; ID.; DISCREPANCIES AND/OR INCONSISTENCIES BETWEEN A WITNESS' AFFIDAVIT AND TESTIMONY IN OPEN COURT DO NOT IMPAIR CREDIBILITY.— [M]inor inconsistencies between Jennie's testimony and *sinumpaang salaysay* do not at all detract from her credibility as a witness. It is doctrinally settled that discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer. The discrepancy in the sequence of events as narrated by Jennie in her *sinumpaang salaysay* and her testimony in court could be explained by the fact that when the former was taken, Jennie had just been through the ordeal. She could not be expected to immediately remember with accuracy every ugly detail of her harrowing experience especially so when she might in fact have been trying not to remember the same. On the other hand, testimonies during trial

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are more detailed and elaborate than those stated in sworn statements. The important thing is that Jennie was consistent in saying that the appellant shoved her inside the comfort room, forcibly made her lie down on the floor, lay on top of her and inserted his penis into her vagina. At what point he actually removed her pants and panty is but a minor and inconsequential detail which does not affect the crux of the case — that the appellant had carnal knowledge of Jennie against her will.

3. ID.; ID.; ID.; ACCUSATION NOT IMPELLED BY REVENGE OR IMPROPER MOTIVE.— It is unthinkable that a sister would expose her sibling to the ignominy of a rape trial merely to satisfy her alleged motive. Moreover, no family member would expose a fellow family member to the shame and scandal of having to undergo such a debasing ordeal if the charge were not true. Significantly, the appellant failed to ascribe any plausible motive which would have impelled Jennie to perjure herself and knowingly hurl false accusations against an innocent man. A girl as young as Jennie would not concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma, of a public trial, unless she was in fact raped.

4. CRIMINAL LAW; RAPE; ABSENCE OF EXTERNAL SIGNS OF VIOLENCE DOES NOT NEGATE RAPE.— Contrary to the appellant's contention, the absence of external signs of application of any form of violence does not negate that he raped Jennie. Moreover, that there were healed lacerations on Jennie's hymen do not disprove that she was raped. A freshly broken hymen is not an essential element of rape. Healed lacerations do not negate rape. In any case, Dr. Vergara observed that there was fresh laceration at 9 o'clock position in Jennie's hymen indicating that it was inflicted several hours prior to the examination. This finding corroborates Jennie's testimony that the rape occurred just several hours prior to her physical examination. When the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.

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5. ID.; ID.; "SWEETHEART DEFENSE"; REJECTED AS IT SHOULD BE SUBSTABTIATED BY SOME DOCUMENTARY OR OTHER EVIDENCE OF THE RELATIONSHIP.— [A] "sweetheart defense" should be substantiated by some documentary or other evidence of the relationship — like mementos, love letters, notes, pictures and the like. No such evidence was presented in this case.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Severino T. Cabañero for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

Before this Court on appeal is the Decision[1] dated March 16, 1998 of the Regional Trial Court of Pasay City, Branch 110, in Criminal Case No. 96-8676 finding appellant Ernesto Dizon *y* Ilarde guilty beyond reasonable doubt of the crime of rape and meting on him the penalty of *reclusion perpetua* and directing him to indemnify the victim, Jennie Galoza, the amount of ₱50,000.

Ernesto Dizon was charged with rape upon the sworn complaint of the victim that reads:

That on or about the 12th day of May, 1996, in Pasay City, Metro Manila, Philippines, and with[in] the jurisdiction of this Honorable Court, the above-named accused, Ernesto Dizon *y* Ilarde, by means of force and intimidation employed upon the person of Jennie Galoza *y* Salilican, 14 years of age, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the said complainant Jennie Galoza *y* Salilican against her will and consent.

Contrary to law.[2]

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[1] Penned by Judge Porfirio G. Macaraeg.

[2] Records, p. 1.

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At his arraignment, the accused, assisted by counsel, pleaded not guilty to the charge. Trial ensued.

The Case for the Prosecution[3]

In the evening of May 11, 1996, the victim, Jennie, then 14 years old, joined the other youngsters of Barangay Malibay, Pasay City, in making banners (*banderitas*) for their *barangay*'s forthcoming fiesta. They dispersed at around 2:00 a.m. the next day. On the way home, Jennie noticed that the accused was following her. He was about one meter behind her. She did not mind his presence as she thought that he was likewise on his way home. After all, they both lived in the same vicinity and even had the same address, 507 B. Vizcarra Street, Malibay, Pasay City, with only one house separating their respective homes. Further, Jennie knew the accused as he was the former live-in partner of her sister Aileen.

As Jennie passed the comfort room of the house of the accused which was just a door away from her house, the accused suddenly embraced her, covered her mouth with his left palm and shoved her inside the comfort room. Jennie struggled but she was no match to Dizon's strength. He forced her to lie down on the wet floor of the comfort room. He placed himself on top of her and simultaneously pulled down her pants and panty. The accused also removed his short pants. He initially inserted the middle finger of his right hand into her vagina. He then inserted his penis into Jennie's sexual organ and made pumping movements. Jennie tried to push him away but to no avail. To Jennie, the pumping motions seemed to last for ten minutes. After he had satisfied his bestial desires, Dizon stood up, pulled up his short pants and warned Jennie against reporting the incident to anyone. He then left her.

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[3] The prosecution presented as its witnesses Jennie, her mother Alejandra Galoza, Barangay Chairman Angelito Cruz, SPO2 Felicito Medina, SPO3 Milagros Carrasco and Dr. Jesusa Nieves Vergara, a Medico-Legal Officer of the PNP Crime Laboratory.

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As soon as the accused was gone, Jennie pulled up her pants and panty and hurriedly went home. She loudly knocked at their door, which was opened by her mother, Alejandra Galoza. Alejandra noticed that Jennie was crying and that her hair and clothes were wet. Alejandra asked her what happened but Jennie just ignored her and went directly upstairs. Alejandra followed her and asked her again what happened. Jennie continued crying and told her mother that the accused had raped her. Alejandra became hysterical causing the entire family to wake up. When Jennie's father learned about what happened, he was furious. He immediately got a knife and wanted to go directly to Dizon's house but Alejandra prevailed upon him. Alejandra instructed her husband to go instead to the police and report the matter. Jennie's father went to Barangay Chairman Angelito Cruz and together they went to the police station and reported the incident.

Two policemen went to the house of the accused and brought him to the police station for investigation. On the other hand, Jennie, together with her parents and godfather, went to the Pasay police headquarters where she was investigated by SPO3 Milagros Carrasco. On SPO3 Carrasco's instruction, Jennie submitted the clothes that she wore at the time of rape to the policewoman. There were bloodstains on her panty. Jennie was then brought to Camp Crame where she underwent physical examination conducted by Dr. Jesusa Nieves Vergara.

The medico-legal report of Dr. Vergara contained, in part, the following findings:

> There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed a congested and abraded vestibule and posterior fourchette and an elastic, fleshy-type and congested hymen with deep healed laceration at 3 o'clock, shallow healed laceration at 5 o'clock and shallow fresh laceration at 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.[4]

[4] Exhibit "E", Records, p. 199.

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When she took the witness stand, Dr. Vergara explained that the congestion and abrasion found on the vestibule of Jennie's vagina indicated that there was forcible entry of a hard blunt object therein. The fresh laceration at 9 o'clock position also signified that the laceration was inflicted several hours prior to the examination. Further, the bloodstains found on Jennie's panty could have been from the fresh laceration caused by the insertion of a penis or other hard blunt object into her vagina. According to Dr. Vergara, the absence of spermatozoa did not negate sexual intercourse because there would usually be no smear taken from the vagina when the male did not ejaculate inside the female sexual organ.

The Case for the Accused[5]

The accused vigorously denied raping Jennie. He claimed that he and Jennie were lovers and that they agreed to a rendezvous at 2:00 in the morning of May 12, 1996. He testified that in the evening of May 11, 1996, after having supper at his sister's house, he stayed there and watched video until it was time for his tryst with Jennie. At 2:00 in the morning the next day, Dizon stood in front of Jennie's house and, as agreed upon by them, he whistled twice to let her know that he was already outside. After several minutes, Jennie came out of the house. They immediately embraced and kissed each other. The accused told her that they should go to a secluded place so nobody would see them. They went to the comfort room of his house. As soon as they were inside, they kissed each other again. Jennie pulled down her pants and panty to her knees. The accused inserted the middle finger of his right hand into her vagina. He made a push and pull movement. Just then, Dizon's wife came down and saw them. She instantly slapped Jennie hitting her mouth. Jennie cried and hurriedly left. The accused and his

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[5] The defense presented as its witnesses Dizon, his wife Lydia, Reynante Ramos and Dr. Antonio S. Vertido, medico-legal officer of the National Bureau of Investigation (NBI).

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wife had a heated argument. After a while, a policeman arrived at their house and arrested him. He was brought to the police sub-station in Malibay, Pasay City.

In support of the claim of the accused that Jennie was his girlfriend, Reynante Ramos, a *compadre* of his brother, testified that on several occasions prior to May 12, 1996, he had seen the accused and Jennie holding hands with each other. For her part, Lydia averred that Aileen, the victim's sister, wrote a letter to the accused once threatening to take revenge on him for leaving her (Aileen) for Lydia. Lydia further narrated that in the early morning of May 12, 1996, she was awakened by the crying of their baby. While preparing the baby's milk, she noticed that the accused was not in bed. She looked for him and found him in their comfort room with Jennie in a compromising situation. Lydia shouted invectives at them and slapped Jennie, who hurriedly left.

Commenting on the medico-legal report, Dr. Vertido gave the opinion that the fresh laceration at 9 o'clock position in Jennie's hymen may not have been caused by a penis but could have been caused by a fingernail.

After the prosecution and defense presented their respective evidence, the trial court rendered judgment finding the accused guilty beyond reasonable doubt of raping Jennie. The decretal portion of the trial court's decision reads:

> WHEREFORE, the Court finds the herein accused, ERNESTO DIZON *Y* ILARDE GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*.
>
> ACCUSED is further ordered to indemnify the private complainant, JENNIE GALOZA, the amount of FIFTY THOUSAND PESOS (₱50,000.00) and to pay the costs.
>
> SO ORDERED.[6]

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[6] *Id.* at 307.

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The accused forthwith filed his notice of appeal with the trial court.[7] In his appeal brief, the accused, now the appellant, alleges that the trial court erred:

I

IN MERELY RELYING ON THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING AND RATIONALIZING THE PIECES OF EVIDENCE ADDUCED DURING THE TRIAL IN FAVOR OF ACCUSED-APPELLANT THAT THE CRIME CHARGED OF [sic] WAS NOT COMMITTED;

II

IN CONVICTING ACCUSED-APPELLANT WITHOUT THE REQUIRED PROOF BEYOND REASONABLE DOUBT.[8]

Essentially, the appellant assails the credibility of the victim as he asserts that his guilt for the crime of rape was not proven beyond reasonable doubt.

The appellant harps on the seeming inconsistent statements made by Jennie in her *sinumpaang salaysay* and during her testimony in court. In her *sinumpaang salaysay*, Jennie stated that the appellant removed her pants and t-shirt then forced her to lie down on the floor of the comfort room. On the other hand, during her testimony, Jennie averred that the appellant shoved her inside the comfort room, forcibly made her lie down on the floor, lay on top of her, pulled down her pants and panty, inserted his finger then his penis into her vagina. The discrepancy in Jennie's narration of the sequence of events, he avers, taints her credibility as a witness.

Moreover, according to the appellant, Jennie's narration of how he raped her, *i.e.*, he embraced her from behind, shoved her inside the comfort room, forced her to lie down on the floor, lay on top of her, pulled down her pants and panty, removed

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[7] *Id.* at 308.

[8] *Rollo*, pp. 103-104.

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his short pants, inserted his finger then his penis into her vagina, and during the entire time his left hand covered her mouth, is incredulous. The appellant insists that it was physically impossible for him to have raped Jennie in the said manner. The appellant likewise points out that the medico-legal report stated that "there are no external signs of application of any form of violence."[9]

The appellant further contends that the fact that Jennie had swollen mouth after the incident corroborates his claim that his wife slapped Jennie when she caught them (the appellant and Jennie) in an intimate position inside the comfort room. The appellant maintains that he did not have sexual intercourse with Jennie and that his acts of embracing and kissing her and inserting his middle finger into her vagina arose out of mutual passion and consent.

The appellant's contentions fail to persuade.

In reviewing rape cases, the Court has always been guided by three well-entrenched principles: (a) that 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) that in view of the intrinsic nature of the crime which usually involves two persons, the complainant's testimony must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of evidence of the defense.[10] Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of the complainant's testimony.[11]

When she took the witness stand, Jennie testified how the appellant succeeded in raping her as follows:

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[9] Records, p. 199.

[10] *People v. Quiñanola*, 306 SCRA 710 (1999).

[11] *People v. Turco*, 337 SCRA 714 (2000).

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FISCAL VIBANDOR:
q Now Miss [W]itness, do you recall the date May 11, 1996 at around may be prior to midnight of May 12, where were you?

COURT
About what time?

FISCAL VIBANDOR
Prior to midnight Your Honor.

WITNESS
a I was in the place where small banners (*banderitas*) were being prepared sir.

COURT
q You are making or you manufacture is that an industry or what?

WITNESS
a We were making *banderitas* for our forthcoming fiesta Your Honor.

COURT
q You are referring "we" (*kami*) who is this "*kami*" you are referring?

WITNESS
a The youth in our place, Your Honor.

COURT
q Where were you making this *banderitas*?

WITNESS
a In the middle of the road, Your Honor.

COURT
q How far in relation to your house?

WITNESS
a Around 50 meters Your Honor.

COURT
q So you were making this *banderitas* in open space or in a house?

WITNESS
a We were on the road Your Honor.

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COURT
Proceed, fiscal.

FISCAL VIBANDOR
q Now you said that you are at that time and date you were making *banderitas*, will you tell the exact addres[s] where you are making this *banderitas*?

WITNESS
a 96 B Vizcarra St., Malibay, Pasay City, sir.

FISCAL VIBANDOR
q Now tell us Miss [W]itness what time did you start making this *banderitas* you are referring to?

WITNESS
a Around 8:30 in the evening sir.

COURT
q How many teenagers were there making *banderitas*?

WITNESS
a There were many of us (*marami po*).

COURT
q When you say "*marami*" how many, 100, 200, 300 . . .?

WITNESS
a About 50 Your Honor.

FISCAL VIBANDOR
q Will you tell us what time did you finish and did you end making this *banderitas*?

WITNESS
a Around 2:00 in the morning sir.

FISCAL VIBANDOR
q You said that you finish[ed] making *banderitas* at around 2:00 in the morning of May 12, 1996, now after you finish[ed] making *banderitas* will you tell us where did you go?

WITNESS
a We already packed up and we were on our way home to our respective house [*sic*] sir.

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FISCAL VIBANDOR
q While you are [*sic*] ón your home is [*sic*] there anything unusual which transpired?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q Tell the Court, Miss [W]itness.

WITNESS
a While I was on my way home, I suddenly notice[d] Ernesto Dizon at my back.

FISCAL VIBANDOR
q What was Ernesto Dizon the accused doing when you noticed him at your back?

WITNESS
a He was following me and I though[t] he was on his way home sir.

FISCAL VIBANDOR
q When you noticed the accused how far was he from you?

WITNESS
a About one meter sir.

FISCAL VIBANDOR
q At that moment Miss [W]itness do [*sic*] have any conversation with the accused?

WITNESS
a None sir.

FISCAL VIBANDOR

q Will you please describe the lighting condition of the place when you first noticed the accused?

ATTY. CABAÑERO
Objection Your Honor . . .

COURT
She is still confronted with a fact.

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WITNESS
a It is somewhat dark sir.

FISCAL VIBANDOR
q Now when you said somewhat dark, will you tell us what do you mean by that?

WITNESS
a I was referring to the dark road, it was just illuminated by the light sir.

COURT
q Why do you say that the person immediately following you was the accused when according to you the lighting condition was somewhat dark?

WITNESS
a Well, I know that it was him because when we were still in a well-lighted place he was already there. I saw him there Your Honor.

FISCAL VIBANDOR
q When you first saw the accused what was he wearing if you can remember?

WITNESS
a He was wearing T-shirt and basketball shorts sir.

COURT
q What was the color of the T-shirt?

WITNESS
a I did not notice Your Honor.

COURT
q Alright, he was wearing T-shirt and basketball shorts. Proceed, fiscal.

FISCAL VIBANDOR
q Now when you noticed the accused following you were you walking in a road or in an alley?

WITNESS
a In an alley, sir.

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COURT
q According to you the place where you are making *banderitas* is 50 meters in [*sic*] your house, how far were you able to travel? [*sic*] when you first notice[d] the accused?

WITNESS
a About 15 meters Your Honor.

COURT
q This 15 meters you said the distance in relation to you[r] house when you first saw the accused taking this measurement from this end to the other end

COURT INTERPRETER
That is about 10 meters Your Honor.

COURT
q So the first time you noticed the accused is you were about 10 meters from your house is that what you want to tell the Court?

WITNESS
a Yes, Your Honor.

COURT
q Prior to that distance you did not see the accused following you?

WITNESS
a Not yet, Your Honor.

COURT
q It is very clear the first time you notice[d] the accused is you were about 10 meters away from your house?

WITNESS
a Yes, Your Honor.

COURT
Proceed fiscal.

FISCAL VIBANDOR
q Now after you noticed the accused following you what happened next?

WITNESS
a We continued walking and we reached their CR and he suddenly embraced me covered my mouth with his palm.

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COURT
q How far is this place in relation to your house?

WITNESS
a *Isang pinto lang po ang pagitan.*

COURT
Estimate in meters.

WITNESS
a It is about 4 to 5 meters Your Honor.

FISCAL VIBANDOR
q Now you mentioned about CR when you said CR are you referring to a comfort room?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q Now how big is the CR you are referring to?

WITNESS
a It is quite big, a person can lie down.

FISCAL VIBANDOR
q Now what was it made of?

WITNESS
a Concrete sir, (*semento at kahoy*) The other side is concrete and the other side is made of wood.

FISCAL VIBANDOR
q When you said that it is made of concrete was it of [*sic*] was the concrete up to the roof?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q Does it have a door?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q Describe the appearance of the door?

WITNESS
a It is like the door of this courtroom sir.

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FISCAL VIBANDOR
q Does it have a lock?

WITNESS
a None sir.

FISCAL VIBANDOR
q Now this CR that you are referring to who is the owner of this CR?

WITNESS
a Ernesto Dizon sir.

FISCAL VIBANDOR
q Now this CR you are referring to, will you tell us the use of this CR?

WITNESS
a Use[d] for taking a bath and as a toilet sir.

FISCAL VIBANDOR
q Now what about the flooring of the CR?

WITNESS
a Made of concret[e] sir.

FISCAL VIBANDOR
q Alright, you testified a while ago that [the] accused embraced you and covered your mouth with his palm after that what happened?

WITNESS
a He pulled me inside the CR.

FISCAL VIBANDOR
q How did he forced you inside the CR?

ATTY. CABAÑERO
There was no force stated by the witness.

COURT
She was pulled, if you are pulled, there is force.

ATTY. CABAÑERO
We submit Your Honor.

WITNESS
a He shove me inside the CR sir.

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FISCAL VIBANDOR
q What did you do when [the] accused shove you inside the CR?

WITNESS
a I struggled sir.

FISCAL VIBANDOR
q When [the] accused shove you inside the CR were there people around?

WITNESS
a None sir.

FISCAL VIBANDOR
q After [the] accused shove you inside the CR what happened next?

WITNESS
a He forced me to lie down on the CR.

FISCAL VIBANDOR
q Where on the floor or on the toilet?

WITNESS
a On the floor sir.

FISCAL VIBANDOR
q At that time when the accused forced you to lie down on the floor of the CR was it wet?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q Now what were you wearing at that time?

WITNESS
a I was wearing pants and T-shirt sir.

FISCAL VIBANDOR
q What kind of pats [*sic*] were you wearing that time?

WITNESS
a Faded pants sir.

FISCAL VIBANDOR
q What kind of material?

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WITNESS
a *Maong* sir.

FISCAL VIBANDOR
q Do you have a belt on your jeans?

WITNESS
a None sir.

COURT
q There were buttons?

WITNESS
a None, Your Honor.

COURT
q Why, you were wearing buttonless jeans?

WITNESS
a It is quite tight, it no longer fits me.

COURT
q What are you trying to tell the Court your jeans has buttons and it does not fit you anymore but it has buttons?

WITNESS
a I can only close it with a zipper.

FISCAL VIBANDOR
q You mean to say you were walking with your pants unbuttoned?

COURT
What the Court understands, it has buttons but it does not fit her anymore.

FISCAL VIBANDOR
q You are [*sic*] walking with your pants unzippered?

WITNESS
a It was zippered but unbuttoned. I just covered it with my T-shirt.

ATTY. CABAÑERO
There was a statement there was buttons [*sic*] . . .

FISCAL VIBANDOR
q Now the pants that you were wearing does it have button on the waistline?

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WITNESS
a None sir.

FISCAL VIBANDOR
q Now Miss [W]itness, you said that [the] accused forced you to lie down on the floor of the CR what happened next?

WITNESS
a I was struggling and he laid on top of me sir.

COURT
Let's have this clear, you want to impress this Court at the time when he laid you down you were still wearing your pants?

WITNESS
a Yes, Your Honor.

FISCAL VIBANDOR
q When the accused was on top of you what was he doing if anything?

WITNESS
a He was trying to remove his pants sir.

COURT
How do you describe "*dinaganan*"?

FISCAL VIBANDOR
Laid on top Your Honor.

FISCAL VIBANDOR
q Will you please show the Court how [the] accused was pulling (*sic*) down your pants?

WITNESS
a One of his hand [was] covering my mouth while the other hand pulled down my pants sir.

FISCAL VIBANDOR
q What hand was used in covering your mouth?

WITNESS
a Left hand sir.

FISCAL VIBANDOR
q And what hand was used in removing your pants?

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WITNESS
a Right hand sir.

FISCAL VIBANDOR
q Now were you wearing underwear at that time?

WITNESS
a Yes sir.

FISCAL VIBANDOR
q Was the accused successful in removing your pants?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q How about your panty?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q And how did he remove your panty?

WITNESS
a Simultaneous with the pulling down of my pants sir.

FISCAL VIBANDOR
q And you said that [the] accused was successful in pulling down you[r] pants how far [did the] accused pulled your pants and panty?

WITNESS
a Up to the knee sir.

FISCAL VIBANDOR
q And when he pulled doen [*sic*] your pants and your underwear what happened next?

WITNESS
a He pulled down his shorts sir.

FISCAL VIBANDOR
q How did he pulled [*sic*] down his shorts?

WITNESS
a He used his right hand sir.

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FISCAL VIBANDOR
q When he pulled down his shorts was he standing or lying on top of you?

WITNESS
a He was still lying on top of me sir.

FISCAL VIBANDOR
q And after he pulled down his shorts what happened next?

WITNESS
a That's it, he inserted his penis [in]to my vagina sir.

FISCAL VIBANDOR
q When [the] accused inserted his penis [in]to your vagina how do [*sic*] you feel about it?

WITNESS
a I felt that he was pumping on top of me sir.

FISCAL VIBANDOR
q And while [the] accused was pumping on top of you what were you doing?

WITNESS
a I tried to fight sir.

FISCAL VIBANDOR
q How did you fight [the] accused?

WITNESS
a I tried to push him.

FISCAL VIBANDOR
q When you were pushing [the] accused what were you using?

WITNESS
a My right hand sir.

FISCAL VIBANDOR
q And how long was the accused pumping on top of you?

WITNESS
a Ten (10) minutes sir.

FISCAL VIBANDOR
q And when [the] accused was pumping on you are [*sic*] enjoying it Miss [W]itness?

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WITNESS
a No sir.

FISCAL VIBANDOR
q And how do [*sic*] you feel about it?

WITNESS
a I felt pain sir.

FISCAL VIBANDOR
q And you said that [the] accused stayed on top of you pumping for about ten (10) minutes, now what do you think is the reason it only lasted for ten (10) minutes?

WITNESS
a Because I was struggling and I was crying very hard while he was covering my mouth sir.

FISCAL VIBANDOR
q And you think that was the reason he stopped pumping on you?

WITNESS
a Yes, sir.

FISCAL VIBANDOR
q And after that what happened next?

WITNESS
a He pulled up his shorts and left sir.

FISCAL VIBANDOR
q And when [the] accused left what were you doing then?

No answer interrupted by question from the Court.

COURT
q When he pulled his shorts was he standing up or still on top of you?

WITNESS
a Already standing up Your Honor.

FISCAL VIBANDOR
q When [the] accused le[f]t you what were you doing then?

WITNESS
a I pulled up my pants and went home.

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FISCAL VIBANDOR
q You said that the flooring of the CR is wet what happened to your T-shirt and your pants?

WITNESS
a I got wet and with my hair, I got all wet sir.

FISCAL VIBANDOR
q Was there at that time while you were inside the CR with the accused was there any occasion you have conversation with him?

WITNESS
a None sir.

FISCAL VIBANDOR
q Did [the] accused tell you anything?

WITNESS
a There was sir.

FISCAL VIBANDOR
a Not to tell anybody.[12]

The trial court characterized Jennie's testimony as straightforward and declared that the details narrated by her could not have been merely concocted. The trial court found that her detailed testimony bore the badge of sincerity and truthfulness.

The unbroken line of jurisprudence is that this Court will not disturb the findings of the trial court as to the credibility of witnesses considering that it is in a better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[13]

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[12] TSN, 8 July 1996, pp. 10-33 (Jennie Galoza).

[13] *People v. Yaoto*, 370 SCRA 284 (2001).

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There is nothing in the records that would impel this Court to deviate from said findings and conclusion of the trial court. Indeed, this Court finds that Jennie testified in a categorical, straightforward and consistent manner. And contrary to the appellant's contention, the minor inconsistencies between Jennie's testimony and *sinumpaang salaysay* do not at all detract from her credibility as a witness. It is doctrinally settled that discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.[14]

The discrepancy in the sequence of events as narrated by Jennie in her *sinumpaang salaysay* and her testimony in court could be explained by the fact that when the former was taken, Jennie had just been through the ordeal. She could not be expected to immediately remember with accuracy every ugly detail of her harrowing experience especially so when she might in fact have been trying not to remember the same.[15]

On the other hand, testimonies during trial are more detailed and elaborate than those stated in sworn statements.[16] The important thing is that Jennie was consistent in saying that the appellant shoved her inside the comfort room, forcibly made her lie down on the floor, lay on top of her and inserted his penis into her vagina. At what point he actually removed her pants and panty is but a minor and inconsequential detail which does not affect the crux of the case — that the appellant had carnal knowledge of Jennie against her will.

Contrary to the appellant's contention, the absence of external signs of application of any form of violence does not negate that he raped Jennie.[17] Moreover, that there were healed

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

[15] *People v. Cesista*, G.R. No. 131589-90, August 6, 2002.

[16] *People v. Caniezo*, 354 SCRA 298 (2001).

[17] *Ibid.*

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lacerations on Jennie's hymen do not disprove that she was raped. A freshly broken hymen is not an essential element of rape. Healed lacerations do not negate rape.[18] In any case, Dr. Vergara observed that there was fresh laceration at 9 o'clock position in Jennie's hymen indicating that it was inflicted several hours prior to the examination. This finding corroborates Jennie's testimony that the rape occurred just several hours prior to her physical examination. When the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[19]

The appellant's defense that he and Jennie were lovers deserves scant consideration. Ramos' testimony that he saw the accused and Jennie holding hands with each other does not help the appellant's cause as Ramos had no personal knowledge of what transpired between the appellant and Jennie on May 12, 1996. The testimony of Lydia, the appellant's wife, likewise is unavailing. The testimonies of close kin are suspect and cannot prevail over that of the complaining witness.[20]

Moreover, a "sweetheart defense" should be substantiated by some documentary or other evidence of the relationship — like mementos, love letters, notes, pictures and the like.[21] No such evidence was presented in this case.

In contrast, Jennie's actuations immediately after the incident belie the appellant's "sweetheart theory," to wit: (1) immediately disclosing the rape to her mother; (2) seeking the help of the police authorities in apprehending the appellant; (3) subjecting herself to physical examination; and (4) filing the criminal complaint against the appellant.[22]

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[18] *People v. Aguiluz*, 354 SCRA 465 (2001).

[19] *People v. Galisim*, 369 SCRA 727 (2001).

[20] *People v. Barbosa*, 362 SCRA 260 (2001).

[21] *People v. Flores*, 372 SCRA 421 (2001).

[22] *Ibid.*

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The appellant's claim that Jennie's family was motivated by revenge because he left Aileen, Jennie's sister, for Lydia is a desperate clutch at straws. It is unthinkable that a sister would expose her sibling to the ignominy of a rape trial merely to satisfy her alleged motive.[23] Moreover, no family member would expose a fellow family member to the shame and scandal of having to undergo such a debasing ordeal if the charge were not true.[24]

Significantly, the appellant failed to ascribe any plausible motive which would have impelled Jennie to perjure herself and knowingly hurl false accusations against an innocent man.[25] A girl as young as Jennie would not concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma, of a public trial, unless she was in fact raped.[26]

In fine, the trial court correctly convicted the appellant for the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua* consonant with Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. The trial court, following jurisprudence, likewise correctly ordered the appellant to indemnify Jennie in the amount of ₱50,000 as civil indemnity *ex delicto*.[27] In addition, moral damages in the amount of ₱50,000 should also be awarded in Jennie's favor. In rape cases, moral damages may be awarded without need of proof or pleading since it is assumed that the victim suffered moral injuries, more so where the victim is between ages thirteen to nineteen, as in Jennie's case.[28]

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[23] *People v. Hamto*, 362 SCRA 277 (2001).

[24] *Ibid.*

[25] *People v. Colisao*, 372 SCRA 20 (2001).

[26] *People v. Ramos*, G.R. No. 142577, December 27, 2002.

[27] *People v. Manayan*, 368 SCRA 300 (2001).

[28] *People v. Colisao, supra.*

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WHEREFORE, the Decision dated March 16, 1998 of the Regional Trial Court of Pasay City, Branch 110, in Criminal Case No. 96-8676 finding appellant Ernesto Dizon *y* Ilarde guilty beyond reasonable doubt of the crime of rape is *AFFIRMED WITH MODIFICATION*. The appellant is directed to pay moral damages in the amount of ₱50,000 in addition to the civil indemnity *ex delicto* of ₱50,000.

SO ORDERED.

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

Quisumbing, J., on leave.

SECOND DIVISION

[G.R. No. 143958. July 11, 2003]

ALFRED FRITZ FRENZEL, *petitioner, vs.* **EDERLINA P. CATITO,** *respondent.*

SYNOPSIS

Petitioner Alfred Fritz Frenzel is an Australian citizen of German descent. He is an electrical engineer by profession, but worked as a pilot with the New Guinea Airlines. He arrived in the Philippines in 1974, started engaging in business in the country two years thereafter, and married Teresita Santos, a Filipino citizen. In 1981, Alfred and Teresita separated from bed and board without obtaining a divorce. Sometime in February 1983, Alfred arrived in Sydney, Australia for a vacation. He went to King's Cross, a night spot in Sydney, for a massage where he met respondent Ederlina Catito, a Filipina and a native of Bajada, Davao City. Unknown to Alfred, she resided for a time in Germany and was married to Klaus Muller, a German national. She left Germany and tried her luck in Sydney,