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SECOND DIVISION

[G.R. No. 139609. November 24, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EXEQUIEL MAHINAY**, *appellant.*

SYNOPSIS

On appeal is the decision of the trial court convicting Exequiel Mahinay of the crime of rape for sexually abusing his eleven-year old niece, Leny Riovaldez, and imposing on him the penalty of *reclusion perpetua*. In his appeal, Mahinay questioned the credibility of the complainant.

The appeal was bereft of merit. The trial court found the testimony of Leny positive, straightforward and credible, and deserving of full probative weight. The legal aphorism is that the findings of the trial court, its calibration and assessment of the testimonial evidence of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive effect. Further, Leny was merely 11 years old when she was raped by no less than her uncle. It is inconceivable for a young girl, inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public ridicule and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the outrageous wrong committed against her. Consequently, the decision of the trial court was affirmed.

SYLLABUS

1. **CRIMINAL LAW; STATUTORY RAPE; CONSENT OF THE OFFENDED PARTY IS IMMATERIAL.**— We note from the evidence of the prosecution that Leny was below 12 years old when the appellant had carnal knowledge of her. Born on April 13, 1986, Leny was only eleven years and four months old at the time of the alleged rape on August 24, 1997. Carnal knowledge of a girl under 12 years of age is statutory rape under Article 335, paragraph 3 of the Revised Penal Code. Such offense

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is established upon proof that the accused sexually violated the offended party who was under 12 years of age at the time of the sexual assault. Consent of the offended party is immaterial. Being of tender age, she is presumed not to have any will of her own. The use of force or intimidation is not an element of statutory rape.

2. **REMEDIAL LAW; CRIMINAL; PROCEDURE; PROSECUTION OF OFFENSES; IN STATUTORY RAPE, AGE OF THE OFFENDED PARTY MUST BE ALLEGED IN THE INFORMATION; NOT COMPLIED WITH IN CASE AT BAR.**— The fact that the offended party was under 12 years old at the time of the commission of the crime is an essential element of the crime and must be proved beyond reasonable doubt. It must also be alleged in the Information/criminal complaint as mandated by the Rules of Criminal Procedure[.] x x x Even if the prosecution proved beyond cavil that the victim was below 12 years old when the appellant raped her, he cannot be convicted of statutory rape if the age of the victim was not alleged in the Information because he would thereby be deprived of his right to be informed of the nature of the charge against him. In this case, the prosecution was able to prove by presenting Leny's birth certificate, that she was only 11 years and 4 months old when the appellant had carnal knowledge of her. As this was not alleged in the Information, the appellant cannot be convicted of statutory rape. However, he may still be found guilty of rape under Article 335, paragraph 1 of the Revised Penal Code since it was alleged in the Information that, by means of force and intimidation employed upon the person of Leny, the appellant succeeded in having sexual intercourse with her.

3. **CRIMINAL LAW; RAPE; WHEN THE TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS, SUFFICIENT BASIS EXISTS TO WARRANT A CONCLUSION THAT CARNAL KNOWLEDGE HAS BEEN ESTABLISHED.**— The testimony of Leny was corroborated by Dr. Jose Marquez's report that when the victim was subjected to a genital examination, he found a fleshy-type hymen with a deep-healed laceration at 5 o'clock and a shallow-healed one at 3 and 9 o'clock positions. We have held that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the

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essential requisite of carnal knowledge has thereby been established.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT ARE ACCORDED BY THE APPELLATE COURT HIGH RESPECT, IF NOT CONCLUSIVE EFFECT.**— The trial court found the testimony of Leny positive, straightforward and credible, and deserving of full probative weight. The legal aphorism is that the findings of the trial court, its calibration and assessment of the testimonial evidence of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive effect. This is because of the trial court's unique advantage of observing at close range the conduct, demeanor and deportment of the witnesses as they testify. An exception to this rule is when the trial court overlooked, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case. We have minutiosely reviewed the records and found no basis to deviate from the findings of the trial court, that the appellant in fact raped Leny.

5. **ID.; ID.; ID.; TESTIMONY OF A WITNESS MUST BE CONSIDERED IN ITS ENTIRETY AND NOT BY TRUNCATED PORTIONS OR ISOLATED PASSAGES.**— There are lapses and inconsistencies in Leny's testimony, but such lapses or inconsistencies do not weaken her credibility and derail her testimony. It is a hornbook doctrine that the testimony of a witness must be considered in its entirety and not by truncated portions or isolated passages thereof. Besides, it is an accepted rule that the credibility of a rape victim is not impaired by mere inconsistencies, if there are any, in her testimony. Inconsistencies are to be expected of young victims of heinous crimes, such as Leny, who was barely 11 years old when the appellant raped her. Protracted and grueling cross-examination of a young girl, not accustomed to public trial, may produce contradictions that may not necessarily destroy her credibility. Error-free testimonies cannot be expected of a young witness who is recounting details of a harrowing, traumatic, humiliating, and painful experience such as rape, one which even an adult would like to bury into the deepest recesses of oblivion.

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6. **ID.; ID.; ID.; INCONSISTENCY WHICH HAS NOTHING TO DO WITH THE ELEMENTS OF THE CRIME CANNOT BE A GROUND FOR THE ACQUITTAL OF THE ACCUSED.**— For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, such must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused. Even if the offended party may have erred in some aspects of her testimony, the same does not necessarily impair her testimony nor corrode her credibility. The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. The doctrine of *FALSUS IN UNO FALSUS IN OMNIBUS* deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application. What is vital is that the act of copulation be proven under any of the conditions enumerated in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.

7. **ID.; ID.; ID.; INCONCEIVABLE FOR YOUNG GIRL TO FABRICATE CHARGE OF DEFLORATION.**— Leny was merely 11 years old when she was raped by no less than her uncle. It is inconceivable for a young girl, inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public ridicule and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the outrageous wrong committed against her. It is highly absurd that Leny would concoct a reprehensible story of rape, undergo the scandal of a public trial, recount the ugly details of her harrowing experience, and be subjected to harassment, embarrassment and humiliation during grueling cross-examination unless she was indeed raped.

APPEARANCES OF COUNSEL

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

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DECISION

CALLEJO, SR., *J.*:

Leny Riovaldez was born on April 13, 1986 to the couple Eliseo and Norma Riovaldez, residents of San Diego Street, Canumay, Valenzuela.[1] The couple had another daughter, Ellen. Norma's first cousin, then 29-year-old Exequiel Mahinay ("*Kuya* Ese"), lived near their house.[2] During the school year 1997-1998, Leny was already in Grade V.

At about 7:00 p.m. on August 24, 1997, Leny was playing near their house with Nonoy, Jay-R and Inday.[3] Leny's father was at work. Momentarily, Exequiel arrived and told Leny to fetch water from the house of her Ate Nena, about twenty to thirty meters away. Leny did as she was told.[4] Exequiel then ordered Leny to look for his common-law wife, Rowena Guillero, at the house of her Ate Nena. Leny returned and told Exequiel that Rowena was not there.[5] Exequiel ordered Leny and Nonoy to go with him to look for Rowena at the house of one Ilon. Leny and Nonoy agreed. Exequiel, Leny and Nonoy went to the said house but failed to find Rowena there. Exequiel and the two children decided to go home. Exequiel told Nonoy to go ahead.[6] As they neared Ate Nena's house, Exequiel suddenly held Leny by the hand and dragged her to a grassy area. Leny tried to run away but Exequiel pulled her down to the ground. She pushed him and shouted for help, but Exequiel covered her mouth with his hand.[7] He then removed Leny's T-shirt, bra, shorts and panties, and kissed her on her lips. He himself

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[1] Exhibit "F", Records, p. 42.

[2] TSN, 23 April 1999, pp. 2-3.

[3] TSN, 11 May 1999, p. 4.

[4] *Id.* at 4-5.

[5] *Id.* at 6-7.

[6] *Id.* at 7.

[7] TSN, 4 June 1999, pp. 9-10.

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removed his shirt, shorts and brief, and laid on top of her. Leny tried to shout, but Exequiel choked her. He then inserted his penis, which was already hard, into her vagina. Leny felt pain in her vagina, and felt something hot afterwards.[8] She felt dizzy and weak. Satiated, Exequiel then removed his penis, licked Leny's vagina and spat on it.[9] He warned Leny not to tell anyone what he had done to her. Exequiel initially put ₱900 in her pocket, but took back ₱600. Before leaving, Exequiel threatened to kill her and her family if she reported the incident.[10] Leny then put her clothes back on and went back home with Exequiel.

Leny was in the province when she received a letter from her sister Ellen that Exequiel had raped her.[11] When her aunt Vilma arrived, Leny revealed that Exequiel had also raped her in Valenzuela.[12] On March 8, 1998, Leny finally told her mother Norma that she was raped by Exequiel on August 24, 1997. Norma was furious at her daughter for not telling her about the incident much earlier.[13]

On May 27, 1998, Norma brought Leny to Dr. Jose Arnel Marquez, Medico-Legal Officer of the Philippine National Police Crime Laboratory, who forthwith subjected Leny to a genital examination and prepared a report containing the following findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

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

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[8] TSN, 11 May 1999, pp. 8-11.

[9] Exhibit "H".

[10] TSN, 11 May 1999, pp. 12-13.

[11] *Id.* at 13-14.

[12] *Id.* at 14.

[13] TSN, 23 April 1999, p. 2.

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GENITAL:

There is moderate growth of pubic hair. Labia majora are slightly gaping with pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed laceration at 5 o'clock and shallow healed at 3 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are NEGATIVE for gram-negative diplococci and for spermatozoa.[14]

On May 28, 1998, Norma gave her sworn statement to SPO1 Jesus Sagisi.[15] Leny gave a separate sworn statement to the policeman on the same date.[16]

On December 22, 1998, Exequiel was charged with rape in an Information filed with the RTC of Valenzuela City, Branch 171, the accusatory portion of which reads:

That on or about the 24th day of August 1997 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation employed upon the person of one LENNY (*sic*) RIOVALDEZ *y* POSADA, did then and there wilfully, unlawfully and feloniously have sexual intercourse with the said LENNY RIOVALDEZ *y* POSADA, against her will and without her consent.

CONTRARY TO LAW.[17]

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[14] Exhibit "E".

[15] Exhibit "G".

[16] Exhibit "H".

[17] Records, p. 1.

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Exequiel, now the accused, was arraigned, assisted by counsel, and entered a plea of not guilty.

The accused denied raping Leny. He testified that the charge against him was instigated by his cousin Virgilio delos Santos and Vilma Posadas. Vilma, Leny's aunt, wanted her son to replace Exequiel as a salesman in an electrical store. Vilma's plan was made known to him by his own employer, Raemay Co Ching.

The accused testified that on August 24, 1990, he was in his house at Vitas, Tondo, Manila, with his live-in partner Rowena Guillero and his younger sister Merly Mahinay.[18] On September 3, 1997, he moved to No. 63 G. San Diego Street, Canumay, Valenzuela City, about twenty meters from the house of his cousin Virgilio.[19] On October 5, 1997, at 5:30 p.m., he was with Virgilio at the latter's house playing *tong-its* with Roy Moreno. Leny was outside playing with Virgilio's children. The accused ordered Leny and the other children to look for his wife Rowena at No. 21-A G. San Diego Street, Canumay, Valenzuela City. The children returned at 6:00 p.m. and told the accused that they were not able to find Rowena.[20] Leny and her companions asked for money to buy candy. Since the accused had no loose change, he gave Leny and her companions a ₱100 bill to buy *tocino*. As they were unable to buy any, the accused ordered them to buy eggs instead. The children did as they were told, and the accused gave Leny ₱20 afterwards. Leny and her companions then asked permission to watch television in his house. The accused agreed.[21] By 6:30 p.m., when the accused went back home to have dinner, Leny and her companions were no longer there. He went back to Virgilio's house, and resumed playing *tong-its*. By then, there were already many players. Virgilio's wife, Florida, was accepting bets for the "ending" in a basketball game and it was agreed that the

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[18] TSN, 16 June 1999, pp. 5-6.

[19] TSN, 11 June 1999, pp. 5-6.

[20] TSN, 16 June 1999, pp. 7-8.

[21] *Id.* at 8-10.

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winner would buy beer. The accused and the other players then had a drinking spree in front of Virgilio's house. By midnight, the accused had consumed five glasses of beer and went back home.[22] When he woke up at 6:30 a.m., he took a bath. Florida then arrived and asked him if he had given Leny some money the night before. When he asked what the problem was, she replied that while she was looking for her own money, she discovered that Leny had ₱300 with her. When she asked where the money had come from, Leny replied that it was given to her by the accused. The accused explained that he gave Leny ₱20 because she and her playmates asked for money so that they could buy candy. Florida forthwith looked for Leny and scolded her for receiving money from the accused.[23]

On January 11, 1998, the accused was arrested without any warrant therefor and was also charged with the rape of Ellen.[24]

After due trial, the trial court rendered judgment on July 9, 1999, finding the accused guilty beyond reasonable doubt of statutory rape, the decretal portion of which reads:

> WHEREFORE, finding accused Exequiel Mahinay Guilty beyond reasonable doubt as charged, he is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with the accessory penalties prescribed by the law and to pay the costs.
>
> He is likewise ordered to indemnify the child victim the amount of ₱50,000.00 plus ₱50,000.00 moral damages.
>
> SO ORDERED.[25]

The accused, now the appellant, assails the decision of the trial court contending that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED OF THE CRIME CHARGED DESPITE FAILURE OF

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[22] *Id.* at 11-12.

[23] *Id.* at 12-13.

[24] *Id.* at 19-20.

[25] *Id.* at 69.

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THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[26]

The appellant avers that the prosecution failed to prove beyond reasonable doubt his guilt for the crime charged. He asserts that in the crime of rape, the testimony of the offended party is ordinarily most vital and must be received with greatest caution. The victim's testimony must be credible and must bear the stamp of truth and candor. He contends that in this case, the testimony of the private complainant is incredible, besides being inconsistent. He argues that it is incredible that the private complainant was able to narrate before the trial court the lurid details of her deflowerization despite her testimony on cross-examination that she lost consciousness when the appellant raped her. He insists that the claim of the private complainant, that she shouted for thirty minutes without anybody hearing her and rushing to her succor is, likewise, incredible. Another concoction is her claim that she was raped by the appellant for four hours. Leny could not have known that she was raped for four hours since, as testified to by her, she regained consciousness only when she was already in their house. Moreover, on direct examination, she testified that the appellant gave her ₱300 after she was raped, only to contradict herself, on cross-examination, when she testified that she was given the amount before she was raped. Because she was unconscious at the time, she could not have known that the appellant gave her ₱300. The appellant contends that the trial court should have acquitted him instead of finding him guilty of the crime charged.

For its part, the Office of the Solicitor General contends that the trial court found the testimony of Leny worthy of belief. High respect is given to the factual findings of the trial court unless it is shown that certain facts of value have been plainly overlooked which, if considered, would affect the result of the case; no such facts were shown to have been overlooked in this case.

The appeal lacks merit.

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[26] *Rollo*, p. 42.

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We note from the evidence of the prosecution that Leny was below 12 years old when the appellant had carnal knowledge of her. Born on April 13, 1986, Leny was only eleven years and four months old at the time of the alleged rape on August 24, 1997. Carnal knowledge of a girl under 12 years of age is statutory rape under Article 335, paragraph 3 of the Revised Penal Code. Such offense is established upon proof that the accused sexually violated the offended party who was under 12 years of age at the time of the sexual assault. Consent of the offended party is immaterial.[27] Being of tender age, she is presumed not to have any will of her own.[28] The use of force or intimidation is not an element of statutory rape.[29]

The fact that the offended party was under 12 years old at the time of the commission of the crime is an essential element of the crime and must be proved beyond reasonable doubt. It must also be alleged in the Information/criminal complaint as mandated by the Rules of Criminal Procedure which reads:

> SEC. 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts of omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.[30]

Even if the prosecution proved beyond cavil that the victim was below 12 years old when the appellant raped her, he cannot be convicted of statutory rape if the age of the victim was not alleged in the Information because he would thereby be deprived

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[27] *People v. Oliva*, 282 SCRA 470 (1997); *People v. Andres*, 253 SCRA 751 (1996).

[28] *People v. Magbanua*, 359 SCRA 180 (2001).

[29] *People v. Oliva, supra.*

[30] The crime was committed before the effectivity of the Revised Rules of Criminal Procedure on December 1, 2000.

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of his right to be informed of the nature of the charge against him.[31] In this case, the prosecution was able to prove by presenting Leny's birth certificate, that she was only 11 years and 4 months old when the appellant had carnal knowledge of her. As this was not alleged in the Information, the appellant cannot be convicted of statutory rape. However, he may still be found guilty of rape under Article 335, paragraph 1 of the Revised Penal Code[32] since it was alleged in the Information that, by means of force and intimidation employed upon the person of Leny, the appellant succeeded in having sexual intercourse with her.

In this case, the prosecution did muster the requisite quantum of evidence that the appellant succeeded in raping Leny by using force and intimidation, thus:

Q After that, what happened?
A After that, he suddenly told me to go with him to look for Ate Rowena.

Q What about Nonoy, was (*sic*) he go with you?
A No, sir, he instructed Nonoy to go ahead.

Q What happened when you were with him looking for Ate Rowena?
A Then he brought me outside of the place fronting the house of Ate Rowena.

Q What was the condition of the place, was it grassy or cemented or what?
A Grassy (*sic*) place, sir.

Q When you reached that grassy portion of the place in front of Aling Nena's house, what did he do, if any?
A He pulled me.

Q After that what did he do?

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[31] *People v. Moreno*, 294 SCRA 728 (1998).

[32] ART. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation.

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A I did not go with him and I attempted to run.

Q What happened when you attempted to run, were you able to run?
A No, sir.

Q Why?
A He suddenly held my hands.

Q And after he held you by your hands, what did he do?
A Then he undressed me.

Q After removing your t-shirt, what was the next part of your clothing did he remove?
A My bra, sir.

Q After removing your bra, what was the next part of your clothe (*sic*) was removed?
A My short, sir.

Q After your short, what did he remove next?
A My panty.

Q After you were totally naked, what did he do next?
A Then lie undressed himself.

Q What was the first part of his clothing that he removed?
A His shirt.

Q After his shirt, what come (*sic*) next?
A Short.

Q After the short?
A His brief, sir.

Q After he removed the brief, what did you see if any?
A His penis.

Q What was the condition of the penis when you saw it?
A It's hard, sir.

Q After you saw his hard penis, what did he do next?
A Then put himself on top of me.

Q What did you do, did you shout?
A Yes, sir.

Q What happened when you shouted?
A When I shouted he suddenly choked me.

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Q After choking you, what other things did he do, if any, aside from choking you?
A When he choked me, he suddenly inserted his penis to my vagina.

Q What did you feel when he inserted his penis to your vagina?
A It was painful, sir.

Q After feeling pain, what happened next?
A I felt something hot inside my vagina.

Q What were you doing when he was inserting his penis into your vagina?
A It was very painful and he suddenly pulls (*sic*) it.

Q Did you not ask help from anybody?
A I asked for help I shouted but nobody heard me.

Q What did he tell you?
A That if I reported this matter he will kill my family.

Q After he pulled his penis from your vagina, what happened next?
A Then he dressed.[33]

The testimony of Leny was corroborated by Dr. Jose Marquez's report that when the victim was subjected to a genital examination, he found a fleshy-type hymen with a deep-healed laceration at 5 o'clock and a shallow-healed one at 3 and 9 o'clock positions. We have held that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.[34]

The trial court found the testimony of Leny positive, straightforward and credible, and deserving of full probative weight. The legal aphorism is that the findings of the trial court, its calibration and assessment of the testimonial evidence of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive

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[33] TSN, 11 May 1999, pp. 7-11.

[34] *People v. Munta*, 371 SCRA 208 (2001).

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effect. This is because of the trial court's unique advantage of observing at close range the conduct, demeanor and deportment of the witnesses as they testify. An exception to this rule is when the trial court overlooked, misunderstood or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case.[35] We have minutiosely reviewed the records and found no basis to deviate from the findings of the trial court, that the appellant in fact raped Leny.

As an aftermath of the appellant's threats, Leny feared for her life and those of her family and thus kept the devastating incident to herself. She even had to stop her schooling. However, when Leny learned that the appellant had also raped her younger sister Ellen, she found courage to reveal her ordeal to her Aunt Vilma, that the appellant had earlier raped her on August 24, 1997:

Q Do you know of a certain person by the name of Ellen?
A Yes, sir.

Q Why do you know her?
A She is my sister, sir.

Q Is she your younger sister or older sister of you (*sic*)?
A She is younger than me, sir.

Q Of your personal knowledge, do you know what happened to her?
A Yes, sir.

Q What is that thing that you know about your sister?
A I was in the province when I received a letter reporting that she was raped.

Q Who raped her?
A Exequiel, sir. (pointing to the accused)

Q After that, did you not report the matter to your mother?
A When my auntie arrived, I was forced to reveal what happened.

Q What did you tell her?
A I told her that I was raped.

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[35] *People v. Belga*, 349 SCRA 678 (2001).

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Q Who was your auntie?
A Vilma, Sir.

Q When was that that you reveal (*sic*) the matter to your auntie?
A March 27, 1998, sir.[36]

Leny later told her mother that the appellant had raped her. Leny explained to her mother that she was afraid to reveal the matter earlier because the appellant had threatened to kill her and all the members of her family:

Q Where did you talk to her?
A In Valenzuela.

Q Where in Valenzuela did you talk [with] your daughter?
A At the house of my nephew.

Q Where is that?
A San Diego, Valenzuela, Metro Manila.

Q Madam Witness, what was the conversation about?
A That she was raped by her Kuya Ese.

Q If you stated "Ese," do you refer to the accused in this case?
A Yes, Sir.

Q If he is inside the courtroom, could (*sic*) you be able to point to him?
A Yes, Sir.
(Witness pointing to a person inside the courtroom, who when asked his name answered Exequiel Mahinay)

FISCAL RAZON: (To the witness)

Q Now, Madam Witness, aside from telling you that she was raped, did she also tell the date and place where she was raped?
A August 24, 1997.

Q And where?
A In front of the store of Nena.

Q Upon being informed that your daughter Leny Riovaldez was raped by the accused in this case, what step did you take, if any?

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[36] TSN, 11 May 1999, pp. 13-14.

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A I got mad because she did not tell me at once.

Q After that, what did you do?
A I pulled her hair and I asked her why did she not tell me at once and she tell (*sic*) me that if she will tell it to me, the accused will kill all of us.

Q After that, what did you do, did you bring her to any hospital for examination?
A Yes, sir.[37]

There are lapses and inconsistencies in Leny's testimony, but such lapses or inconsistencies do not weaken her credibility and derail her testimony. It is a hornbook doctrine that the testimony of a witness must be considered in its entirety and not by truncated portions or isolated passages thereof.[38] Besides, it is an accepted rule that the credibility of a rape victim is not impaired by mere inconsistencies, if there are any, in her testimony. Inconsistencies are to be expected of young victims of heinous crimes, such as Leny, who was barely 11 years old when the appellant raped her. Protracted and grueling cross-examination of a young girl, not accustomed to public trial, may produce contradictions that may not necessarily destroy her credibility.[39] Error-free testimonies cannot be expected of a young witness who is recounting details of a harrowing, traumatic, humiliating, and painful experience such as rape, one which even an adult would like to bury into the deepest recesses of oblivion.[40]

For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, such must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of

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[37] TSN, 23 April 1999, p. 3.

[38] *People v. Butron*, 272 SCRA 352 (1997).

[39] *Ibid.*

[40] *People v. Callos*, 367 SCRA 141 (2001); *People v. Calayca*, 301 SCRA 192 (1999).

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the accused.[41] Even if the offended party may have erred in some aspects of her testimony, the same does not necessarily impair her testimony nor corrode her credibility. The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. The doctrine of *FALSUS IN UNO FALSUS IN OMNIBUS* deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application.[42] What is vital is that the act of copulation be proven under any of the conditions enumerated in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.[43]

Leny erred when she testified that she was raped for four hours, lost consciousness after the appellant raped her and regained consciousness when she was already in the house. Her testimony that the appellant put ₱900 in her pocket *after* raping her but took back ₱600 is inconsistent with her testimony that the appellant placed ₱900 in her pocket *before* she was raped. This is further inconsistent with her sworn statement that the appellant placed the money in her pocket after the rape. Such errors or inconsistencies, however, pertain only to peripheral and collateral matters and not to the essential elements of the crime charged.

The Court is convinced, as the trial court was, that the appellant is guilty of the crime charged.

First. Leny shouted for help at the top of her voice but the appellant covered her mouth with his hand.[44]

Second. On the initial cross-examination by the appellant's counsel, Leny testified that she lost consciousness after the

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[41] *People v. Balmoja*, 364 SCRA 125 (2001).

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

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

[44] TSN, 4 June 1999, pp. 9-10.

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appellant had raped her,[45] and on redirect examination, Leny testified that she merely felt dizzy but did not lose consciousness.[46] Thus, she was still conscious when the appellant undressed her and inserted his penis into her vagina. She felt pain and even felt the appellant licking her vagina with his tongue and saw him spit on her private parts.[47] It was only after the appellant had consummated his sexual assault on Leny that the latter felt dizzy on account of the pain she was feeling and her persistent struggling. It bears stressing that the appellant was 29 years old while Leny was only an 11-year-old wisp of a girl.

Third. Whether the appellant gave ₱300 before or after the rape is immaterial. The evidence on record inscrutably shows that the appellant intimidated Leny and forced her to submit to his lustful desires.

Fourth. Whether Leny lost consciousness or became dizzy before or after the appellant gave her ₱300 is, likewise, irrelevant because by then, she had already been raped by the appellant, and the crime had already been consummated. Significantly, even the appellant admitted that he gave money to Leny, although he claimed that he gave her ₱20 with which to buy candies.

Fifth. Leny was merely 11 years old when she was raped by no less than her uncle. It is inconceivable for a young girl, inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public ridicule and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the outrageous wrong committed against her.[48] It is highly absurd that Leny would concoct a reprehensible story of rape, undergo the scandal of a public trial, recount the ugly details of her harrowing experience, and be subjected to

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[45] *Id.* at 10.

[46] *Id.* at 13.

[47] Exhibit "H".

[48] *People v. Marabillas*, 303 SCRA 352 (1999).

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harassment, embarrassment and humiliation during grueling cross-examination unless she was indeed raped.[49]

The trial court awarded to Leny ₱50,000 as civil indemnity and ₱50,000 as moral damages, but failed to award exemplary damages. Leny is entitled to exemplary damages to deter uncles with perverse tendencies and aberrant behaviors from sexually abusing their nieces.[50]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Valenzuela City, Branch 171, is *AFFIRMED WITH MODIFICATION*. The appellant Exequiel Mahinay is found guilty of simple rape defined in and penalized by Article 335, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 7659, and is sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties prescribed by law; and to pay to the victim Leny Riovaldez ₱50,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 as exemplary damages; and costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 147259. November 24, 2003]

RICARDO ALCANTARA, *petitioner, vs.* **HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES**, *respondents.*

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[49] *People v. Pardillo, Jr.*, 282 SCRA 286 (1997).

[50] *People v. Remudo*, 364 SCRA 61 (2001).