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SECOND DIVISION

[G.R. No. 144053. December 11, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSEPH DIZON *Y* NARIDO,** *appellant.*

SYNOPSIS

On appeal is appellant's conviction for rape of complainant Janice May Salvador, who was then fifteen years old at the time of the alleged incident. In essence, appellant's defense is a variant of the "sweetheart theory," denying the charge, but alleging that he and Janice had engaged in sex with her consent at the time and date in question. His mother corroborated his testimony.

The Supreme Court upheld his conviction for rape with the use of a deadly weapon. The Court also ruled: that a broken hymen is not an essential element of rape; that incomplete penile penetration alone does not portray appellant as the considerate and gentle lover; that appellant took advantage of Janice's naivete when he tricked her and used threats to cow her; and that Janice's conduct immediately after the alleged sexual assault is eloquent proof of the truth of her claim.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY NOT DISTURBED ON APPEAL; EXCEPTIONS; CASE AT BAR. — Well-settled is the general rule that when the credibility of witnesses is at issue, appellate courts will not disturb the finding of the trial court on the ground that the trial court had the opportunity to observe the witnesses' deportment, demeanor, and manner of testifying. Only in exceptional cases will such finding be rejected where, for instance, the records reveal contradictory observations. After careful scrutiny of the records, particularly the testimony of private complainant Janice May Salvador, this Court finds no reason to disturb the findings of the trial court on the matter of credibility of witnesses for the prosecution.

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2. **ID.; ID.; ID.; STRAIGHTFORWARD AND CONSISTENT TESTIMONY OF RAPE VICTIM BEARS THE EARMARKS OF TRUTH; CASE AT BAR.** — Indeed, Janice's account of her ordeal in the hands of the appellant was straightforward, firm, candid and consistent. Notwithstanding the rigid, lengthy and rigorous cross-examination of the defense, Janice May Salvador remained steadfast in her narration of the details of her harrowing experience. To us, the observations of the trial court were well-founded. A thorough reading of the transcript shows that Janice's testimony bears the earmarks of truth and credibility.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; A BROKEN HYMEN IS NOT AN ESSENTIAL ELEMENT THEREOF; CASE AT BAR.** — That the victim's hymen is intact does not negate a finding that rape was committed. In rape cases, a broken hymen is not an essential element thereof – a mere knocking at the doors of the pudenda, so to speak, by the accused's penis suffices to constitute the crime of rape. In this case, appellant himself testified that he inserted half the length of his penis into Janice's vagina. This is admission that sexual congress took place. Penetration of the penis by entry into the lips of the female organ, even without rupture or laceration of the hymen suffices to warrant conviction for rape.

4. **ID.; ID.; ID.; INCOMPLETE PENILE PENETRATION ALONE DOES NOT PORTRAY APPELLANT AS A GENTLE LOVER; CASE AT BAR.** — Granting *arguendo* that there was incomplete penile penetration, this fact alone does not persuade us to accept appellant's sweetheart theory. Appellant could be the considerate and gentle lover he portrayed himself to be. But this would not detract from the pain and dishonor the victim suffered. Moreover, the records show, despite half-way penetration, appellant's carnal lust was satiated in full measure, as evidenced by his having reached orgasm. Nothing in the law of rape excuses appellant's offense simply because he claims he acted as a reluctant Lothario.

5. **ID.; ID.; ID.; APPELLANT PLAYED ON YOUNG GIRL'S NAIVETE AND USED THREATS TO COW HER IN CASE AT BAR.** — Considering the circumstances that led to the commission of the offense, it appears to us that appellant used his gun to sufficiently establish fear in Janice's mind, enough for her to succumb to appellant's actual designs. He took

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advantage of her immaturity, he played on her naivete, he used threats to cow her. There was no attributable negligence on her part that contributed to the rape.

6. **ID.; ID.; ID.; CONDUCT OF A WOMAN IMMEDIATELY AFTER AN ALLEGED SEXUAL ASSAULT IS CRUCIAL TO ESTABLISH THE TRUTH OR FALSITY OF THE RAPE CHARGE; CASE AT BAR.** — The conduct of the woman immediately after an alleged sexual assault is crucial to establish the truth or falsity of the rape charge. The victim's instant willingness, as well as courage, to face interrogation and medical examination could be a mute but eloquent proof of the truth of her claim. In this case, the complainant after the assault hurried out of the room and asked for help from two persons she saw in the lodge, but they unfortunately hesitated to help her. She then turned to the cashier and security guard of the lodge, but they also proved uncaring. Certainly, the OSG contends, it is hard to believe that she went to the extent of narrating her experience to complete strangers if she was not telling them the truth. Janice lost no time in disclosing the incident to her mother the same night when she arrived home. Accompanied by her parents and a policeman-neighbor, she reported the incident to the police, and she submitted herself to medical examination.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Benjamin E. Paggao for accused-appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the decision[1] dated March 6, 2000, of the Regional Trial Court of Pasay City, Branch 110, finding appellant Joseph Dizon *y* Narido guilty of rape, imposing on him the penalty of *reclusion perpetua* and ordering him to indemnify private

[1] *Rollo*, pp. 115-137. Penned by Judge Porfirio G. Macaraeg.

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complainant Janice May Salvador the amount of ₱50,000, plus the costs of suit.[2]

Appellant was charged in an information which reads:

That on or about the 21st day of May, 1996, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Joseph Dizon *y* Narido, being armed with a gun, by means of force, threats and intimidation upon the person of Janice May Salvador, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said complainant Janice May Salvador against her will and consent.

Contrary to Law.[3]

Appellant pleaded not guilty upon arraignment.

During trial, seven witnesses testified for the prosecution, including its principal witness, the private complainant Janice May Salvador. Hereunder is the prosecution's version of facts in the case.

Complainant Janice May Salvador testified she was fifteen years old, and had just graduated from Ramon Magsaysay High School at the time of the alleged incident. Sometime in early May 1996, her best friend and classmate Sheryl[4] Manlulu confided to her through the phone, that she was upset because she (Sheryl) was supposed to meet with a certain Joseph Dizon, but the latter stood her up ("*Inindiyan siya*"). Janice was told that this Joseph had been courting Sheryl since April 1996. Sheryl then gave Joseph's number to Janice, pleading with the latter to call Joseph and find out why the latter did not show up.[5] Janice obliged and immediately called Joseph. She introduced herself as Sheryl's friend. In the course of their conversation, Joseph asked for her phone number.[6] Thereafter, Joseph had

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[2] *Id.* at 53.

[3] *Id.* at 12.

[4] Sheril, Cheryl in some parts of the records.

[5] TSN, 8 August 1997, pp. 6-7.

[6] *Id.* at 8-9.

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become an occasional caller.[7] Janice found him interesting.[8] Their phone conversations generally dwelt on Sheryl and the state of Joseph's courtship.

On May 18, 1996, Joseph called Janice and asked her to accompany him to Sheryl's house on the 20th of May, as it was Sheryl's birthday. Janice advised Joseph to ask permission from Sheryl first. Sheryl in turn informed Joseph that the 20th was her enrollment day, and so Sheryl suggested instead that they visit her the following day, May 21st. After asking permission from her mother, Janice agreed to meet Joseph on said date at the LRT Tayuman Station between 4:00 to 4:30 p.m.[9]

On May 20, 1996, Joseph again called Janice. Aside from asking whether she had already greeted Sheryl on her birthday, to which she positively replied, Joseph described what he would be wearing the next day, so that Janice would easily recognize him at their first meeting. Joseph however told Janice that there was no need for her to describe herself, as Joseph already knew what she looked like from the pictures Sheryl had shown him.[10]

On May 21, 1996, Janice was awakened by a telephone call from Joseph, asking her to accompany him in buying a gift for Sheryl but Janice refused. Later that day, at the appointed hour, the two met. Joseph first saw Janice, called out to her, approached and introduced himself. They were talking as they climbed the stairs of the LRT station. Joseph's beeper suddenly sounded. Joseph stepped back, read the message and then told Janice it was his mother. Joseph then asked Janice to accompany him to the Manila Doctor's Hospital where his mother worked as a Medical Assistant. Janice was reluctant at first, because Sheryl might already be waiting for them. However, Joseph assured

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[7] *Id.* at 11.

[8] *Id.* at 13.

[9] *Id.* at 13-15.

[10] *Id.* at 16.

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her that it would only be for a short while, and that it was important.[11]

They proceeded to the 7th floor of the hospital. Joseph entered a room, after which he asked Janice to come in as well. There, Joseph introduced her to his mother, saying, "Ma, *si* Janice, my friend."[12] Joseph's mother smiled at Janice.

As they were leaving the hospital, Joseph asked Janice to accompany him first to Pasay City in order to deliver some important documents. Again, Janice reminded him that they might be late for their appointment with Sheryl. Joseph however assured her that they won't take long, so Janice agreed to go. They again took the LRT and alighted at the Buendia station. From there they hailed an FX taxi, as Joseph told her it was quite far if they walked. Joseph opened the door of the taxi and got in beside Janice. He then whispered something to the driver, which Janice said she was unable to hear. Janice inquired from Joseph where they were bound, but Joseph only told her "*Diyan lang.*"[13] It was about 6:30 p.m. when they boarded the FX taxi. When she asked about the documents to be delivered, Joseph told her that they were the financial reports of his business. Janice then noticed that the taxi suddenly turned right in a very dark place.[14]

Janice asked Joseph why they made a sudden turn, and the latter justified it by saying that somebody had detected he was armed with a gun.[15] He assured her that he would explain everything to her after they had alighted, as the taxi driver might hear them.[16] The taxi entered a compound that appeared

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[11] TSN, 8 August 1997, pp. 17-19.

[12] *Id.* at 20.

[13] *Id.* at 20-21.

[14] *Id.* at 21.

[15] "*Natiktikan na ako na may dalang baril.*" See TSN, 8 August 1997, p. 8.

[16] TSN, 8 August 1997, pp. 22-23.

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to Janice as an apartelle. They were ushered into a room on the second floor.[17] Inside, Joseph took out a calling card from his wallet and told Janice that he was going to call his "boss." Janice saw the name of a certain SPO Gagangco on the card.[18] Joseph instructed Janice to sit in the corner while he made the call. Their conversation was quite long and Janice only heard bits of it, with Joseph saying, "Send men as soon as possible because I have with me a girl."[19] Joseph then pulled out his firearm from his beltbag and toyed with the firearm while he talked on the phone.

Janice sat in the corner of the room, she was already panicky. She didn't know the place and was also told by Joseph that they would only go to that place "when the situation worsens."[20] She then felt scared, for if the person who had detected Joseph was a policeman, she feared that she could get involved in his trouble.[21]

After hanging up, Joseph sat on the floor beside Janice and started to embrace her. Surprised, Janice blurted out, "*Putang ina mo. Anong nangyayari sa 'yo?*"[22] She tried to reach the main door and the door leading to the bathroom, in order to escape from Joseph, but he blocked the way.[23] Joseph then chased her around the room while she, in turn, screamed and shouted for help.[24] This prompted Joseph to poke a gun at her neck and threaten to kill her, saying, "Don't make me mad, I am going to kill you."[25] Frightened, Janice slumped in a corner

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[17] *Id.* at 23-24.

[18] *Id.* at 24.

[19] *Id.* at 24-25.

[20] *Id.* at 25.

[21] *Ibid.*

[22] Translated as "Son of a bitch. What's happening to you?"

[23] TSN, 8 August 1997, p. 26.

[24] *Id.* at 27.

[25] *Id.* at 28.

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of the room. Joseph then sat in front of her, and again started to embrace and kiss her. Janice tried to fight back, scream and push him away in vain.[26] Joseph succeeded in removing her sleeveless cotton shirt and her brassiere, then kissed her all over her face, neck and breast and thereafter, unzipped and removed her pants.[27]

Joseph dragged the complainant to the bed, laid her down and took off her panty. She kicked him and tried to remove his hands from her forearms but he proved too strong for her.[28] Joseph then removed his pants and brief and positioned himself between her legs, at the same time pinning her down by holding her wrists with both of his hands.[29] She then felt Joseph's penis coming in and out of her organ, and she felt terrible pain. She felt so weak and scared.[30]

After some time, Joseph stopped and she noticed a mucous-looking substance left in her pubic hair.[31] She then covered her nudity with the bed sheet. She felt scared and mad at the same time. Joseph put on his brief, sat on the bed, and dialed Sheryl's phone number. He ordered Janice to tell Sheryl that they would be arriving soon. He also told her not to tell Sheryl about what had just happened and threatened her again. Out of fear, Janice complied and did as told. While Janice was on the phone, Joseph was beside her, holding his gun.[32] Janice then got dressed and hurriedly left the room.

Once outside the room, at the gate of the compound, she met two men to whom she related her ordeal. The two men, however, referred her to the cashier where she again narrated

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[26] *Id.* at 29.

[27] *Id.* at 29-31.

[28] *Id.* at 32.

[29] *Id.* at 33.

[30] *Id.* at 33-34.

[31] *Id.* at 34.

[32] TSN, 8 August 1997, pp. 34-35.

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what she had gone through.[33] She told them to report the matter to the police as Joseph was armed with a gun. However, she was ignored and even blamed for going with Joseph.[34] After more or less 10 minutes, Joseph appeared before the cashier to pay the bill. Short of cash, Joseph asked money from her, but she did not give any. Instead, she discreetly exited towards the driveway. She again related her fateful experience to the guard at the driveway who then advised her to stay so she would not be harmed. Thereafter, a call on the intercom came through to the guard, and Janice was told that it was okay for her to leave.[35] At past 9:00 p.m. she left the compound of Queensland Lodge. She arrived home at 10:00 p.m.

As she was nearing her house, her father, Juanito Salvador, saw her and asked why she was late in coming home. Janice did not answer but instead rushed inside their house. Then she immediately told her mother, Myrna Salvador, everything that had happened to her.[36]

The family sought the help of their policeman-neighbor who accompanied them to the Western Police District (WPD) station along Taft Avenue. They were immediately advised to go to the National Bureau of Investigation (NBI) for medical examination.[37]

At the NBI, the physical examination was conducted by the medico-legal officer, Dr. Eduardo Vargas, Jr. From the NBI, they were referred to the Pasay City Police Station. The police asked for the address of Joseph but Janice did not know it. Thus, Janice was instructed by the police to call Joseph at home to get the exact address, but the person who answered the phone did not entertain her call.[38]

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[33] *Id.* at 36-37.

[34] *Id.* at 37-38.

[35] *Id.* at 39.

[36] *Id.* at 40.

[37] *Id.* at 41.

[38] *Id.* at 42.

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Together with the police, Janice and her father went to Queensland Lodge for ocular inspection and there, they were able to redeem Joseph's beeper and driver's license which Joseph had earlier used as security for the unpaid balance of his bill. From his driver's license they were able to determine Joseph's exact address.[39] The following day, May 22, 1996, Janice and her father returned to the police station where Joseph was already held in custody. Janice pointed to Joseph as the person who had raped her.

The defense presented appellant Joseph Dizon and his mother Ma. Cristina Narido Dizon as witnesses. In essence, appellant's defense is a variant of the "sweetheart theory," denying the charge but alleging that appellant and Janice had engaged in sex with her consent at the time and date in question. Hereunder is the defense's version of the incident.

Appellant Joseph Dizon testified that he got to know the complainant, Janice May Salvador, through the girl he was courting, namely Sheryl Manlulu. In the second week of April 1996, Joseph said Janice called him up on the phone and introduced herself as the best friend of Sheryl. Janice called in order to help him and Sheryl settle a petty argument. Prior to the telephone call, he had already heard Janice's name mentioned by Sheryl, but that was the first time they talked.[40] The conversation lasted about 30 minutes. They exchanged personal information about each other, such as their likes, dislikes, hobbies, *etc*. Thereafter, Joseph and Janice would already exchange telephone calls. She called him about five times a week, while he would call her about thrice a week.[41] Joseph found Janice to be a nice person to talk to and very interesting.[42] Eventually, they found themselves talking about more serious matters, with her asking him his preference in a woman, and

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[39] *Id.* at 43.

[40] TSN, 24 February 1999, pp. 5 and 8.

[41] *Id.* at 8.

[42] *Id.* at 9.

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him asking Janice the latter's concept of an ideal man.[43] The phone conversations usually lasted 30 minutes on the average, and would happen at around 8:00 p.m.

On May 18, 1996, during another phone conversation, Joseph and Janice agreed to meet on May 21, 1996, at 2:00 p.m., at the LRT Tayuman Station. Janice had previously informed him that Sheryl's birthday was forthcoming. Joseph stated that Sheryl's birthday was actually on the 20th of May but he was informed by Janice that Sheryl will have a birthday party at her house on the 21st. Thus, he made the date with Janice so that she can accompany him to Sheryl's house as it would be his first time to go there. Although he had been courting Sheryl for some time, he would visit her at her grandparents' house as Sheryl tended a store there. Appellant in fact had already professed his love for Sheryl at this time but she was not yet his girlfriend as they had some petty arguments. Joseph also suspected that Janice might have told Sheryl something against him.[44]

On May 20, 1996, Joseph called Janice in order to finalize the date they had set for the following day, May 21. Since they haven't met before, they each described what they would be wearing. However, Joseph stated that he already had an idea of how she looked, based on Janice's photograph which Sheryl had shown him. He was also aware that Sheryl had shown Janice his picture.

On May 21, 1996, Joseph called Janice in the morning but was told by the person on the other end that Janice was still asleep. Later that day, Joseph arrived at the LRT Tayuman station at about 3:30 p.m. He was late due to the traffic and the fact that he came from Parañaque. Janice was not there when he arrived. He went down from the station and found a pay phone from which he called Janice at her house. He was informed that Janice had in fact left their house since early

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[43] *Ibid.*

[44] *Id.* at 15.

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morning. He then called Sheryl's house, but the latter was also not around. Joseph asked the person who answered the phone if there was indeed a party there. He was informed that there was none. After hanging up the phone, Joseph again went up the LRT station. Joseph had a hunch that Janice was only roaming around the mall, thus, he also went around the mall and returned to the LRT station at around 4:30. Janice was already there waiting for him. Janice appeared friendly and they smiled at each other. After which, Joseph held her hand and apologized for being late. Janice said, "*Okey lang, sige*."[45] Janice then told her that she had also been late because she had to pass by her school and also dropped by Sheryl's house as she had to talk to Sheryl. Joseph confronted her about the fact that he learned there was no party at Sheryl's house. Janice insisted that it was Sheryl who had told her. So, the two of them agreed to just stroll around, forgetting about their previous plan of going to Sheryl's party. Joseph then suggested they go first to his mother's office at the Manila Doctor's Hospital, located along U.N. Avenue.

Joseph said he was already courting Janice at this time. Since Janice already said bad things about him to Sheryl ("*Sinisiraan niya ako kay Sheryl*"), his attention became focused on Janice. Joseph added that a week after the first phone call from Janice, he and Sheryl argued over the phone. He suspected that Janice had bad-mouthed him before Sheryl. Sheryl was also asking him why he was courting Janice. Joseph denied that he was courting Janice. However, Joseph admitted that, on the same month of April, his attention had already shifted to Janice, and the reason he agreed to go to Sheryl's party was because of Janice.[46] Joseph testified later on that he and Janice had been sweethearts since May 10.[47]

Continuing his testimony,[48] Joseph admitted he possessed a beeper that day, but he denied that the beeper sounded as Janice

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[45] *Id.* at 21.

[46] *Id.* at 24-25.

[47] TSN, 16 April 1999, p. 9.

[48] *Id.* at 2-24.

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testified. Joseph said that the beeper was not his and he only found it that same day, near the LRT. According to him, it could not have sounded as the beeper was not operational then. Appellant said that he planned on turning over the beeper to the LRT security desk after he met Janice. The court then inquired why he left the beeper at the Queensland Lodge as security if it was not really his. Joseph replied that he did not have any money then and had nothing else to leave as collateral. Joseph denied that he had a gun in his possession, much less a holder of a license to possess one.

After meeting Janice at the LRT, they proceeded to the office of Joseph's mother who worked as a Medical Assistant at the Manila Doctor's Hospital. Joseph said this was for formality, so that his mother would get to know Janice. Joseph introduced Janice to his mother as his girlfriend. His mother was happy to meet Janice, his mother even said "so this is Janice your girlfriend whom you have always been talking to on the phone."[49] Janice, in turn, smiled and greeted his mother good afternoon. They left about 30 minutes after.

Joseph had planned on strolling around Makati with Janice so they took the LRT again and alighted at the Buendia Station. Janice had previously agreed but when they got off, she told him that she was tired and wanted to rest as she had been out of the house since morning. Appellant took it as a suggestion that Janice was in fact intimating indirectly that she wanted to go to bed with him. Thus, appellant told her that he knew of a place, Queensland motel, where she could rest. They took an FX taxi. Janice boarded first, assisted and followed by Joseph. The FX taxi proceeded to the Queensland Lodge at F.B. Harrison St. Upon arriving at the motel's compound, a roomboy opened the door. Janice alighted ahead of him as he was still paying for the fare. The roomboy then asked him whether they were staying for "short time" only, and he said yes. Janice was beside him while he was talking to the roomboy and was positive that she heard their conversation as the three of them were very

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[49] *Id.* at 7.

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near each other. The roomboy left and when he came back, led them upstairs to the second floor of the building, particularly Room 11 thereof. When the roomboy had left, Janice, who was sitting on the bed watching TV, invited him to sit beside her and watch the movie with her. They watched for about 10 minutes and then they started kissing. Joseph kissed Janice on the cheeks and forehead while holding her hands. Janice then asked him if he really loved her and he told her yes. Joseph added that even during their telephone conversations, he had already developed feelings for her and that during the time he and Sheryl had quarrels, it was Janice who comforted him. Janice paused to ask him why he loved her and what was it in her that he liked. Joseph answered that aside from being the one who comforted him, Janice was also "*mabait*" (kind), "*matalino*" (intelligent) and "*malambing*" (sweet). They continued kissing and since they were on the foot of the bed, they accidentally fell to the floor while they were kissing. They were then horsing around ("*Nagkukulitan kami*") on the floor. Joseph testified that while all this was going on, the door was closed but he had not locked it.[50] Joseph also denied poking a gun at Janice while ordering her to undress. Joseph said this did not happen, as he did not have a gun. According to him, they undressed each other and no violence was used upon Janice to remove her clothing.[51] In tears, appellant again denied the charges against him, and stated that he loved Janice.

Continuing his testimony,[52] appellant said Janice seemed happy when he kissed her. He denied threatening her, saying that the truth was that they were lovers.[53] In fact, it was Janice who removed her *maong* pants first, and then let him remove her panties while she was already lying on the bed.[54] Janice passionately kissed him back.[55] Joseph went on to describe in

[50] *Id.* at 20-21.

[51] *Id.* at 23-24.

[52] TSN, 4 June 1999, pp. 3-39.

[53] *Id.* at 8.

[54] *Id.* at 9.

[55] *Id.* at 12.

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detail their sexual encounter. He testified that only half of his private organ was able to penetrate Janice. He did so about three to five times before pulling it out as he was about to ejaculate and was afraid of impregnating her.[56] He did not attempt to insert the full length of his organ into her as, although she was already wet, he was so concerned as she was telling him it was painful.[57]

Thereafter, according to appellant, he asked Janice to first call her parents so that they would not worry, as it was already past 8:00 in the evening. Janice did not do so, but instead called up Sheryl Manlulu.[58] He could hear her telling Sheryl that they were still together in his mother's office.[59]

Appellant claimed that the reason Janice testified against him was that her father did not like him.[60] He said Mr. Salvador was reputedly very strict, and did not allow anyone to court his daughter, especially considering that Janice was the youngest child.[61]

Appellant also testified that Janice was beside him when he was settling the bill at the motel's cashier. It was true that he ran short of cash and asked Janice if he could borrow some money, but she replied "*Wala akong pera, bahala ka.*"[62] Thus, he left his beeper and driver's license as security. Thereafter, Joseph wanted to take Janice home but she forbade him to do so, saying her father might kill her. Janice then boarded a jeep in front of the motel. Appellant walked towards Libertad Street where he borrowed money from a classmate. He reached home at 3:00 a.m.

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[56] *Id.* at 14-16.

[57] TSN, 4 June 1999, p. 16.

[58] *Id.* at 18-19.

[59] *Id.* at 19.

[60] *Id.* at 21.

[61] *Id.* at 22.

[62] *Id.* at 26.

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Early the next day, Joseph was told by his grandmother that there were policemen who came to their house. Joseph then proceeded to the police headquarters at 8:00 p.m. From the headquarters, early the next day, May 23, Joseph called Mr. Salvador, asking what was going on. The latter said they would proceed to the headquarters right away. A confrontation ensued, but appellant denied that he raped Janice. He was detained right there and then.

On cross-examination, Joseph stated that Janice told him she was already 18 years old, as old as Sheryl, who also told him that she was 18. Janice became his girlfriend on May 10, 1996, according to Joseph. His relationship with Sheryl allegedly ended because of Janice.[63] Sheryl was allegedly disappointed because Janice "discredited" him before Sheryl.[64] Janice allegedly did so after the first phone call. Despite this, appellant testified that he started courting Janice during their second phone conversation, as Janice was a "caring" person, "a shoulder to cry on."[65] Appellant added that he in fact wanted to marry Janice.[66] Joseph confirmed that he inserted about half of his penis inside Janice's vagina and made in and out movements.[67] Janice pleaded with him to go "*dahan-dahan*," and he was so concerned for her as she said it was painful.[68]

Appellant's mother, MA. CRISTINA NARIDO DIZON, corroborated his testimony. She stated that at around 5:00 p.m. of May 21, 1996, her son Joseph came to see her at the clinic where she worked. According to her, Joseph wanted to borrow some money as well as introduce his girlfriend to her.[69] She

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[63] TSN, 16 June 1999, p. 9.

[64] *Id.* at 10.

[65] *Id.* at 13.

[66] *Id.* at 14.

[67] *Id.* at 19.

[68] *Id.* at 20.

[69] TSN, 29 July 1999, p. 3.

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confirmed meeting Janice May Salvador.[70] She said Janice and Joseph were a few feet away from her, and she could see that the two were holding hands.[71] She also knew that prior to that day, her son and Janice were already phone pals, because she would sometimes be the one to pick up the phone when Janice called, asking for her son.[72] The meeting at the clinic was her first time to meet Janice in person. Her son borrowed money from her so that he could treat somebody, whom she surmised meant Janice, on a date. Joseph was not carrying a belt bag then, and she did not ask Joseph to bring papers or documents.[73]

On March 6, 2000, the trial court promulgated its judgment as follows:

> WHEREFORE, the Court finds the herein accused JOSEPH DIZON *Y* NARIDO 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 8353 and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*.
>
> The period during which the accused was in detention during the pendency of this case shall be credited to him in full provided that he agreed to abide by and comply with the rules and regulations of the Pasay City Jail.
>
> Accused is further ordered to indemnify the private complainant, JANICE MAY SALVADOR, the amount of FIFTY THOUSAND PESOS (₱50,000.00) and to pay the costs.
>
> SO ORDERED.[74]

Hence, the instant appeal.

Before us, appellant raises the following issues:

WHETHER OR NOT THERE ARE FACTUAL AND LEGAL BASES TO SUPPORT THE TRIAL COURT'S SUBJECT DECISION, FINDING

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[70] *Id.* at 3-4.

[71] *Id.* at 4.

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

[73] *Id.* at 16.

[74] *Rollo*, p. 53.

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THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT,

and

WHETHER OR NOT THERE ARE CIRCUMSTANCES THAT ENGENDER REASONABLE DOUBT TO WARRANT HIS ACQUITTAL OF THE OFFENSE CHARGED.[75]

Stated simply, the principal issue for resolution is whether or not the prosecution has proved beyond reasonable doubt the guilt of appellant for the crime of rape. Basically, appellant assails the credibility of complainant Janice May Salvador. Thus, the resolution of the main issue rests upon the credibility of the testimony of the offended party herself and other witnesses for the prosecution.

In reviewing rape cases, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[76]

Appellant stresses that the testimony of the complainant should be determined under the "severest" scrutiny.[77] Appellant assails the trial court's finding that the narration of the complainant was given in a "direct and straightforward manner." Appellant says that this refers only to the "manner" of the narration and not to the "substance" thereof. It was merely the "presentation" of complainant's testimony which was credible, he said.[78]

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[75] *Id.* at 81.

[76] *People v. Dayna*, G.R. No. 134486, 16 November 2001, 369 SCRA 245, 250-251.

[77] *Rollo*, p. 84.

[78] *Id.* at 85.

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Appellant avers that the trial court did not consider the manner in which complainant testified in her cross-examination. The trial court also did not explain why and how it got the impression that the narration of the complainant was "direct and straightforward."[79] Insofar as the "substance" of the narration is concerned, appellant avers that there was insufficient discussion on the substance of complainant's testimony by itself and in relation to the other testimonial evidence adduced by the prosecution.[80] Appellant further avers that the facts are simple and no difficult details are needed. Thus, he contends the trial court erred in concluding that "the detailed and minutiae manner of narration indicates sincerity and truthfulness, and thus, deserves credence."[81]

For the appellee, the Office of the Solicitor General (OSG) contends that an examination of the testimony of Janice would disclose that she was forced or intimidated by appellant to submit to his carnal designs. Citing pertinent portions of the transcript of Janice's testimony, the OSG avers that Janice's credibility is beyond question, she gave a straightforward and honest account of what actually happened.[82] The OSG adds that Janice was lengthily and intensively grilled by the defense for possible loopholes in her testimony, or any disposition on her part to prevaricate. However, according to the OSG, there was not an instance that she faltered or gave a conflicting statement. All throughout, she was very firm and candid.[83]

Well-settled is the general rule that when the credibility of witnesses is at issue, appellate courts will not disturb the finding of the trial court on the ground that the trial court had the opportunity to observe the witnesses' deportment, demeanor, and manner of testifying. Only in exceptional cases will such

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[79] *Id.* at 86.

[80] *Id.* at 87.

[81] *Id.* at 95.

[82] *Id.* at 159.

[83] *Id.* at 169.

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finding be rejected where, for instance, the records reveal contradictory observations. After careful scrutiny of the records, particularly the testimony of private complainant Janice May Salvador, this Court finds no reason to disturb the findings of the trial court on the matter of credibility of witnesses for the prosecution.

Indeed, Janice's account of her ordeal in the hands of the appellant was straightforward, firm, candid and consistent. Notwithstanding the rigid, lengthy and rigorous cross-examination of the defense, Janice May Salvador remained steadfast in her narration of the details of her harrowing experience. To us, the observations of the trial court were well-founded. A thorough reading of the transcript shows that Janice's testimony bears the earmarks of truth and credibility.

Thus, as held by this Court, "when the testimony of a rape victim is plain and straightforward, to the point and unflawed by any material or significant inconsistency, it deserves full faith and credit; certainly, it is one that cannot be discarded."[84]

Appellant contends that the absence of vaginal lacerations and the absence of bleeding by the complainant, who was only 15 years old and a virgin, cast doubt on the commission of rape.[85] Citing *People v. Paragsa*[86] appellant claims that "the absence of laceration in the vaginal walls of the minor private complainant negates the charge of rape." According to appellant, the absence of bleeding or laceration indicates that at the time of sexual encounter, complainant's organ was already adequately lubricated. Such lubrication can only come about in a consensual intercourse, says appellant,[87] citing: "No laceration, no forced copulation."[88]

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[84] *People v. Lopez*, G.R. No. 129397, 8 February 1999, 302 SCRA 669, 678.

[85] *Rollo*, p. 88.

[86] No. L-44060, 20 July 1978, 84 SCRA 105, 114.

[87] *Rollo*, p. 91.

[88] *Id.* at 93.

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Appellant argues that the medical findings support his contention. The gynecological examination, according to the defense, found that the area around the hymen was abraded and contused on all sides. Hymen was intact, "distensible" and without any laceration. The defense adds that the abrasions and contusions were incurred in accord with the ordinary and natural deflowering of a virgin, hence the vaginal trauma attendant to a virgin's first sex.[89] This, plus an intact hymen, according to the defense, bolsters appellant's testimony that he inserted only half of his penis into complainant's vagina. With regard to the physical examination findings, appellant contends that it is simply highly improbable and incredible that despite the purported struggle in the course of a sexual assault, complainant only sustained such peculiarly localized abrasions. She incurred seven abrasions at the back of her arms which, according to the defense, are least expected to be found, considering the circumstances given. Thus, the defense concludes, the trial court did not have sufficient factual basis to conclude that the "medical findings further strengthened the story of complainant that she was forced to copulate.[90]

In reply, the OSG maintains that the absence of vaginal lacerations does not negate the commission of rape. As explained by the examining physician, Dr. Vargas himself, penetration of the vagina does not necessarily produce laceration of the hymen.[91] The absence of extensive abrasions and contusions on the vaginal wall does not rule out rape because the slightest penetration is enough.[92]

The contention of the OSG is well-taken. That the victim's hymen is intact does not negate a finding that rape was committed.[93] In rape cases, a broken hymen is not an essential

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[89] *Id.* at 91.

[90] *Id.* at 95.

[91] *Id.* at 173.

[92] *Id.* at 175, citing *People v. Sanchez*, G.R. Nos. 121039-45, 25 January 1999, 302 SCRA 21, 53.

[93] *People v. Gagto*, G.R. No. 113345, 9 February 1996, 253 SCRA 455, 464.

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element thereof — a mere knocking at the doors of the pudenda, so to speak, by the accused's penis suffices to constitute the crime of rape.[94] In this case, appellant himself testified that he inserted half the length of his penis into Janice's vagina. This is admission that sexual congress took place. Penetration of the penis by entry into the lips of the female organ, even without rupture or laceration of the hymen suffices to warrant conviction for rape.[95]

Moreover, as testified to by Dr. Vargas, Janice's hymen was the distensible or elastic kind, in which case, it can be penetrated by an adult Filipino male organ in full erection without producing hymenal laceration.[96] This satisfactorily explains the absence of genital injury, according to the medico-legal officer.[97]

But the defense argues that the "incomplete penile penetration" merits another interpretation in favor of appellant's innocence. It is not improbable that due to a first timer's pain, and soft pleas from the private complainant, the appellant contented himself to half the pleasure and desisted from going deeper into her. This, according to the defense, is not the way a rapist behaves.[98]

Granting *arguendo* that there was incomplete penile penetration, this fact alone does not persuade us to accept appellant's sweetheart theory. Appellant could be the considerate and gentle lover he portrayed himself to be. But this would not detract from the pain and dishonor the victim suffered. Moreover, the records show, despite half-way penetration, appellant's carnal lust was satiated in full measure, as evidenced by his having

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[94] *People v. Echegaray*, G.R. No. 117472, 25 June 1996, 257 SCRA 561, 573.

[95] *People v. Galimba*, G.R. No. 111563-64, 20 February 1996, 253 SCRA 722, 730.

[96] TSN, 21 May 1997, p. 10.

[97] See *People v. Conde*, G.R. No. 112034, 31 January 1996, 252 SCRA 681, 689.

[98] *Rollo*, pp. 92-93.

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reached orgasm.[99] Nothing in the law of rape excuses appellant's offense simply because he claims he acted as a reluctant Lothario.

Appellant's defense also contends that complainant was not entirely blameless under the circumstances. She may even be faulted as negligent, according to appellant. Citing *People v. Joven*,[100] appellant claims that complainant must answer for her contributory negligence, hence, the charge must be dismissed and the appellant acquitted.[101]

On this point, the OSG stresses that Janice was tricked and intimidated by the appellant.[102] Under the circumstances, 15-year-old Janice could not be expected to have the steely nerve to disregard the words or commands of the appellant. Surely, according to the OSG, her only fault was her naivete and immaturity.[103]

Considering the circumstances that led to the commission of the offense, it appears to us that appellant used his gun to sufficiently establish fear in Janice's mind, enough for her to succumb to appellant's actual designs. He took advantage of her immaturity, he played on her naivete, he used threats to cow her. But there was no attributable negligence on her part that contributed to the rape.

As the OSG argues, contrary to appellant's allegation, Janice vigorously resisted and tried to stop the sexual assault. She screamed for help but no one came.[104] She kicked and pushed appellant away to prevent him from consummating his lustful desire. But he had a gun and he threatened to kill her.[105]

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[99] TSN, 16 June 1999, p. 20.

[100] No. L-36022, 22 May 1975, 64 SCRA 126.

[101] *Rollo*, p. 97.

[102] *Id.* at 171.

[103] *Id.* at 171-172.

[104] *Id.* at 175.

[105] *Id.* at 176.

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The conduct of the woman immediately after an alleged sexual assault is crucial to establish the truth or falsity of the rape charge. The victim's instant willingness, as well as courage, to face interrogation and medical examination could be a mute but eloquent proof of the truth of her claim.[106] In this case, the complainant after the assault hurried out of the room and asked for help from two persons she saw in the lodge, but they unfortunately hesitated to help her. She then turned to the cashier and security guard of the lodge, but they also proved uncaring. Certainly, the OSG contends, it is hard to believe that she went to the extent of narrating her experience to complete strangers if she was not telling them the truth. Janice lost no time in disclosing the incident to her mother the same night when she arrived home. Accompanied by her parents and a policeman-neighbor, she reported the incident to the police, and she submitted herself to medical examination.

At the time of the incident, Janice had just graduated from high school. She admitted she never had a boyfriend yet. It is apparent that appellant had sufficiently conditioned her mind to believe that he was involved in the drama of carrying a gun, instilling fear in Janice to obediently follow him and his wishes. She became an easy prey to appellant's sexual designs.

On the sweetheart defense, appellant admits that no love letters or notes were available under the circumstances because Janice and he were phone pals. But appellant faults the prosecution for failing to rebut the sweetheart theory proffered by the defense.[107]

For the appellee, the OSG contends that appellant's sweetheart theory is nothing but a sham. In the first place, appellant failed to establish the existence of a romantic relationship. Janice might be a phone pal but she vehemently denied that she had feelings for the appellant.[108] According to the OSG, the appellant

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[106] *People v. Rapisora*, G.R. No. 138086, 25 January 2001, 350 SCRA 299, 309.

[107] *Rollo*, pp. 100-101.

[108] *Id.* at 170.

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merely concocted the alleged romance in order to exculpate him from criminal liability.[109] But, even granting that they were sweethearts, this fact would not, by itself, exonerate appellant.[110]

Having admitted to having had carnal knowledge of the complainant on the date and time in question, the appellant bears the burden of proving his defense, that she consented to the sexual act, by clear and convincing evidence. This, he failed to do. No cogent reason exists to overturn the decision of the trial court. We sustain appellant's conviction for the crime of rape with the use of a gun, a deadly weapon.

The penalty for rape when attended by the circumstance of use of a deadly weapon is *reclusion perpetua* to death. Following Article 63 of the Revised Penal Code, "When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied." Hence we agree that the lesser penalty of *reclusion perpetua* was properly imposed by the trial court.

On the amount of damages awarded, however, modifications are in order. While we find the award of ₱50,000 as civil indemnity to be proper, moral damages in the amount of ₱50,000 and exemplary damages in the amount of ₱25,000 should also be imposed. Moral damages are automatically granted in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[111] The use of a deadly weapon having attended the commission of the crime,[112] exemplary damages ought also to be awarded in favor of private complainant.

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[109] *Id.* at 171.

[110] *Ibid.*

[111] *People v. Lachica*, G.R. No. 143677, 9 May 2002, 382 SCRA 162, 180.

[112] *People v. Añonuevo*, G.R. No. 137843, 12 October 2001, 367 SCRA 237, 251.

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WHEREFORE, the assailed decision of the Regional Trial Court of Pasay City, Branch 110, finding appellant JOSEPH DIZON *Y* NARIDO guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*, is *AFFIRMED with MODIFICATION*. Appellant is hereby ordered to pay private complainant, Janice May Salvador, the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages, together with the costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 145417. December 11, 2003]

FLORENCIO M. DE LA CRUZ, JR., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (4th Division), SHEMBERG MARKETING CORPORATION and ERNESTO U. DACAY, JR.,** *respondents.*

SYNOPSIS

The petitioner was hired as senior sales manager of private respondent company which was engaged in the business of manufacturing, trading, distributing and importing various consumer products. Four months thereafter, petitioner was dismissed due to his failure to meet the required company standards and for loss of trust and confidence. The petitioner filed an illegal dismissal case against private respondent