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EN BANC

[G.R. Nos. 133759-60. October 17, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LEONITO LORENZO,** *appellant.*

SYNOPSIS

Appellant was convicted of two counts of qualified rape. He was sentenced to death for each count and hence, this automatic review.

The Court found no reason to reverse the ruling of the trial court. The young victim's testimony of her violation was corroborated by the physical findings of penetration, hence, the presence of sufficient foundation to prove the existence of the essential requisite of carnal knowledge. As to the victim's failure to mention that appellant inserted his penis into her vagina, the Court ruled that this does not discredit her testimony. The victim was barely four years old when raped and when she testified.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; DECLARATION OF RAPE VICTIM, HOW APPRECIATED. – In rape cases, the testimony of the private complainant must be considered and calibrated in its entirety and not merely by truncated portions or isolated passages thereof. The true meaning of answers to isolated questions is to be ascertained by due consideration of all the questions propounded to the witness and her answers thereto. To distill the facts established by the testimony of a witness, everything stated by her on direct examination, on cross-examination, redirect and re-cross-examination must be considered. Facts imperfectly or incompletely stated in answer to one or more questions on direct examination supplied by her answers to other questions on redirect or re-cross-examination; and when from one statement considered by itself an inference may be deduced, that inference may be strengthened or repelled by the facts disclosed in another. The testimonies of witnesses must not be merely selected to conveniently suit the claim of a party.

Supreme Court E-Library

2. ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM CORROBORATED BY HER PHYSICAL EXAMINATION CONSIDERED SUFFICIENT PROOF OF CARNAL KNOWLEDGE. — The Medical Certificate issued by Dr. Romeo Andal regarding the physical examination conducted on the private complainant confirms the veracity of the private complainant's testimony. In *People vs. Baring,* the Court held that when the victim's testimony of her violation is corroborated by physical findings of penetration, there is sufficient foundation to prove the existence of the essential requisite of carnal knowledge.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY LAPSES IN TESTIMONY. — Error-free testimony cannot be expected, most especially when a witness is recounting vivid details of a harrowing experience, one which even an adult would like to bury in oblivion. Victims of rape often take into memory lapse in their desire to forget their dreadful experience. These memory gaps should not necessarily be taken as evidence of false testimony. Faultless testimony cannot be expected of a rape victim of tender age for she may be trying not to recall in her mind, much less, recount in open court every ugly detail of her distressing experience, and the appalling outrage she went through, as it is too painful and horrific to remember. Also, the Court cannot impose the burden of exactness in the victim's recollection of her harrowing experience, more so in this case where the victim was barely four years old. She may have been confused as to the exact details of each and every sexual abuse she was subjected to by the appellant. It is in fact expected that such a victim would rather wish and even purposely forget the abhorrent memories of every single occasion. It would be exacting too much should the Court demand a very accurate and flawless account of the two crimes subject of her charges. It is not unnatural for inconsistencies to creep into the testimony of a rape victim, especially one who is of tender age as the victim Lea, in narrating the details of her shocking experience.

4. ID.; ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED. – The trial court gave credence and full probative weight to the testimony of the private complainant and those of the other witnesses for the prosecution. Case law has it that the calibration by the trial court of the testimonial evidence of the parties and its assessment of the probative weight thereof are accorded by the appellate court high respect, if not conclusive effect,

Supreme Court E-Library

precisely because of the unique advantage of the trial court of observing and monitoring at close range the demeanor and deportment of the witnesses as they testify. We find no reason to deviate from the findings of the trial court and its assessment of the credibility and probative weight of the testimonial evidence on record.

5. ID.; ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY. — The appellant's bare denial of the crimes charged are mere negative self-serving evidence and cannot prevail over the testimony of the prosecutrix and her witnesses, which the trial court found positive, credible and entitled to full probative weight.

6. ID.; ID.; ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL IN THE ABSENCE OF SUFFICIENT EVIDENCE THAT ACCUSED WAS IN A PLACE OTHER THAN THE PLACE OF CRIME AT THE TIME OF ITS COMMISSION. — The appellant's alibi is likewise barren of merit, given the proximity of the house of the appellant to the house of Delacrosa and that of Eddie delos Reyes, where the appellant rape the victim. Alibi is a weak, if not the weakest of defenses. The appellant is burdened to adduce clear and convincing evidence that he was in a place other than the situs of the crime at the time of its commission such that it was physically impossible for him to have committed the same. The appellant failed to prove his alibi, relying solely on his fragile testimony.

7. CRIMINAL LAW; RAPE; DEATH PENALTY AND PROPER CIVIL DAMAGES WHERE THE VICTIM IS BELOW SEVEN YEARS OLD. — The trial court correctly ruled that the appellant is guilty of two counts of rape under Article 335 of the Revised Penal Code, as amended, by Republic Act No. 7659 which reads: Art. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: . . . When the woman is under twelve years of age or is demented. . . . The trial court also correctly sentenced the appellant to suffer the death penalty. The private complainant was barely four years old when she was raped by the appellant. Under Article 335 of the Revised penal Code, as amended by Rep. Act No. 7659, the death penalty shall be imposed if the victim is a child below seven years old: . . . He is also directed to pay the private complainant Lea Vanessa Aday ₱75,000 as civil indemnity for each count, for a total amount

Supreme Court E-Library

of ₱150,000; ₱75,000 as moral damages for each count or ₱150,000; and ₱25,000 as exemplary damages for each count of rape or a total of ₱50,000. Cost *de oficio*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

This is an automatic appeal from the Decision[1] of the Regional Trial Court of Oriental Mindoro, Branch 40, in Criminal Cases Nos. 4832 and 4833, convicting appellant Leonito Lorenzo of two counts of qualified rape and sentencing him to suffer the penalty of death for each count, and to pay civil indemnity and moral damages, likewise for each count.

The Indictments

On October 12, 1995, an Information, docketed as Criminal Case No. C-4832, was filed, charging the appellant with qualified rape. The accusatory portion of the Information reads:

That on or about the 24th day of July, 1995, at 2:30 o'clock in the afternoon, at Barangay Water, Municipality of Baco, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd design, and by taking advantage of innocence and minority of LEA VANESSA ADAY *y* DELOS REYES, who is only four (4) years old, did then and there, willfully, unlawfully and feloniously had carnal knowledge to said LEA VANESSA ADAY by touching and inserting in some degree his penis within the labia of the pudendum of the offended party but was not able to penetrate deeply due to the accused excitement of the moment caused an untimely ejaculation, all against her will and consent.

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[1] Penned by Judge Tomas C. Leynes.

Supreme Court E-Library

Contrary to law.[2]

A second Information, docketed as Criminal Case No. C-4833, was filed, where the appellant was also charged with qualified rape. The accusatory portion reads as follows:

That on or about the 17th day of August, 1995, at around 1:00 o'clock in the afternoon, at Barangay Water, Municipality of Baco, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd design, and by taking advantage of innocence and minority of LEA VANESSA ADAY y DELOS REYES, who is only four (4) years of age, did then and there, wilfully, unlawfully and feloniously had carnal knowledge to said LEA VANESSA ADAY by touching and inserting in some degree his penis within the labia of the pudendum of the offended party but was not able to penetrate deeply due to the accused excitement of the moment caused an untimely ejaculation, all against her will and consent.

Contrary to law.[3]

The appellant was arraigned, assisted by counsel, and entered a plea of not guilty to the charges.

The Evidence of the Prosecution[4]

Delacrosa Aday and her husband had seven children: Richard, 19 years old; Ruel, 12 years old; Leonel, 10 years old; Leo, 8 years old; Glenver, 7 years old; Lea Vanessa, 4 years old; and Clarissa Apples, 1½ years old. Delacrosa made a living by selling vegetables and pastries, while her husband was a fisherman. When the couple parted ways, Delacrosa stayed with her children in Water, Baco, Oriental Mindoro, while her husband resided somewhere in Batangas. Delacrosa lived about 50 meters away from her aunt Lucinia and the latter's husband, Leonito Lorenzo.

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[2] *Rollo*, p. 8.

[3] *Id.* at 11.

[4] The prosecution presented 4 witnesses: Dr. Romeo G. Andal, Lea Vanessa Aday, Delacrosa Aday, and Avelino Belano.

Supreme Court E-Library

In June 1995, four-year-old Lea Vanessa, who was born on May 15, 1991,[5] was seated at her mother's lap. Delacrosa was talking to her daughter, and told the child that she was growing up, and that she should not allow others to see or touch her private parts; if she wanted to answer the call of nature, she should be the one to clean her private parts, and not someone else. When Lea asked her mother why, Delacrosa replied that it was bad. Lea then asked her mother why her grandfather Leonito Lorenzo, whom she called "Mamay Lito," stripped off her clothes, fondled her private parts. Lea recounted how Mamay Lito exposed his private organ and rubbed it against her private parts; she was even asked to hold his private organ and to rub it against her private parts, but she refused. Lea further stated that she noticed something milky coming out from his penis and that Leonito thereafter placed his organ inside his pants. Delacrosa was aghast at her young daughter's revelation. She wanted to confront her Uncle Leonito, but desisted.

On July 24, 1997 at 10:00 a.m., Delacrosa and Leo left their house to see a doctor as Leo was ill. Ruel and Leonel were in school, while Richard, Glenver, Lea and Clarissa were left in the house. At about 2:00 p.m., Richard put Clarissa to sleep and left to gather firewood at the foothills. He told Glenver and Lea to go to sleep. Momentarily, Leonito arrived and asked Glenver to buy candies. Glenver left, leaving Lea and Clarissa alone in the house. Leonito removed his pants and Lea's panties, and placed his penis in her vagina. However, only the tip of his penis touched her vagina. Shortly thereafter, Leonito left the house.

Delacrosa and Leo arrived home at 4:00 p.m. Lea told her mother that Leonito had been to their house. She narrated that when Glenver left to buy candies as instructed, Leonito removed his pants. He then removed Lea's panties and knelt on the floor, caressed her vagina and rubbed his penis against it. He tried to insert his penis into her vagina but only the tip of his penis touched her organ. Delacrosa examined her daughter's

[5] Exhibit "E", Records, p. 8.

Supreme Court E-Library

vagina and saw that it was swollen and reddish. She saw traces of semen in front of Lea's panties. Delacrosa was so furious that she wanted to kill Leonito.

At 1:00 p.m. on August 17, 1995, Delacrosa was at the well washing soiled clothes, about 50 meters away from her house. She had instructed Leo, Glenver, Lea and Clarissa to sleep, and that she would be back shortly. On her way to the well, Delacrosa had seen Leonito standing in front of his house. Aunt Lucinia was also at the well, washing soiled clothes with Delacrosa. The place was also about 50 meters away from a house which was under construction, that belonged to Eddie delos Reyes, Delacrosa's younger brother.

In the meantime, Wilson Dulce, a member of the *Iglesia ni Cristo*, was on his way home after gathering nipa palm. He passed by the house of Eddie delos Reyes and saw Leonito, holding Lea's hand. Wilson spoke with Leonito for about three minutes and then left. It appeared that aside from Lea and Leonito, there was no one else in the house.

After washing and rinsing clothes, Delacrosa went home. The door was locked. When she eventually got inside the house, she discovered that Lea was not there. Delacrosa was so incensed and, in a loud voice, demanded to know where Lea was. Leo told his mother that Lea had refused to go inside the house after she left, and to tease their sister, he and Glenver closed the door to keep her out.

Momentarily, Leonito and Lea arrived. Leonito declared that they had been to the "house under construction" owned by Eddie delos Reyes. After Leonito left, Delacrosa noticed that Lea was trembling. Unconsciously, Lea lowered her panties, scratched her crotch and pulled up her panties anew. Suspicious, Delacrosa pulled down Lea's underwear and was shocked when she saw traces of semen in her daughter's navel, her crotch, and the front portion of her panties. Delacrosa asked Lea what happened, but the child merely shook her head in reply. After a couple of hours, Lea calmed down and told her mother that Leonito had removed his pants, then her panties and attempted

Supreme Court E-Library

to insert his penis into her vagina. He failed to do so, as only the tip of his penis was able to penetrate her vagina.

Delacrosa, who was a member of the *Iglesia ni Cristo*, sought help from their head Avelino Belano and reported the incident to him. Delacrosa brought Avelino to her house and showed him Lea's panties. Avelino noticed that the panties were wet with a sticky substance. He advised Delacrosa to report the matter to the minister of the *Iglesia ni Cristo*, who thereafter advised her to report the incidents involving Leonito and her daughter to the police authorities.

On September 22, 1995, Delacrosa brought Lea to the police, where she gave a sworn statement to SPO1 Dante Abarquez, subscribed and sworn to before the Presiding Judge of the Municipal Circuit Trial Court of Puerto Galera. Delacrosa also executed a sworn statement.[6] Mother and daughter signed two criminal complaints for rape against Leonito, thereafter filed with the Municipal Circuit Trial Court.[7] As suggested by the public prosecutor, Delacrosa brought Lea to the Provincial Health Office on October 19, 1995 where Dr. Romeo G. Andal, Medical Officer V, conducted a physical examination of Lea. The doctor's report contained the following findings:

PHYSICAL EXAMINATION:

HEENT]
C/L] No abrasions nor hematoma
Abdomen]

VAGINAL SPECULUM & INTERNAL EXAMINATION:
- Absence of pubic hair, with complete healed hymenal lacerations on 2, 5, 7 & 9 o'clock positions.
- Vagina — admits the 5th finger with ease.

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[6] Exhibit "B".

[7] Exhibits "B", "B-1", "C", and "C-1".

Supreme Court E-Library

LABORATORY EXAMINATION:

> Cervice vaginal smear for the presence of spermatozoa revealed. Negative results.[8]

The Evidence of the Accused

Leonito denied the charge. He testified that on July 24, 1995, he was busy plowing his ricefield, which was about nine meters away from his house. At noontime, while he and his wife Lucinia were resting, Delacrosa arrived and asked Lucinia to take care of her children as Leo had to be brought to the doctor. Lucinia agreed and took care of Delacrosa's children until 4:00 p.m. when Delacrosa arrived home from the clinic. There were other previous occasions when Lucinia took care of the children while Delacrosa was away.

Leonito insisted that he could not have possibly molested Lea on August 17, 1995. He was in the house of Eddie delos Reyes, which was about ten meters away from his house. Delacrosa and his wife Lucinia were then at the well washing soiled clothes.

Leonito averred that the charges against him were instigated by Delacrosa because she was envious of him; the farmland, which her deceased mother and her aunt Lucinia inherited from their parents, were given to him to till and work on. Instead of suing Leonito and Lucinia, Delacrosa fabricated the charges and ordered her daughter Lea to testify against him.

Lucinia corroborated her husband's testimony. She testified that she asked Delacrosa to have Lea examined by a doctor but Delacrosa refused. She demanded that Delacrosa drop the charges against Leonito because they were baseless, but Delacrosa refused.

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[8] Exhibit "D", Records, p. 78.

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The Verdict of the Trial Court

After trial, the court rendered judgment convicting Leonito with two counts of qualified rape. The decretal portion of the decision reads:

> ACCORDINGLY, finding the accused Leonito Lorenzo *y* Maligo guilty beyond reasonable doubt of the crime of rape (2 counts) with the qualifying circumstance that the victim is a child below 7 years old, he is hereby sentenced to suffer the maximum of two (2) death penalties, together with the accessory penalties as provided for by law, and to indemnify the victim Lea Vanessa Aday the amount of fifty thousand (₱50,000.00) pesos for each crime of rape or a total amount of one hundred thousand (₱100,000.00) pesos, without subsidiary imprisonment in case of insolvency and to pay the cost.
>
> SO ORDERED.[9]

In this case, the appellant asserts that the prosecution failed to prove his guilt for the felonies charged beyond reasonable doubt. He contends that the private complainant admitted in her testimony that he merely removed her panties but did nothing to her private parts; and that she was merely instructed by her mother Delacrosa to testify that the appellant had raped her. The Office of the Solicitor General, for its part, argues that the appellant merely nit-picked the testimony of the private complainant and ascribed ill motive to her mother, in a last ditch effort to extricate himself from certain conviction. It contends that in calibrating the testimony of the private complainant, the entirety of her testimony must be considered.

We agree with the Office of the Solicitor General. In rape cases, the testimony of the private complainant must be considered and calibrated in its entirety and not merely by truncated portions or isolated passages thereof.[10] The true meaning of answers

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[9] Records, p. 114.

[10] *People v. Valez*, 354 SCRA 225 (2001); *People v. Gaorana*, 289 SCRA 652 (1998).

[11] Francisco, *Rules of Court of the Philippines*, Vol. VII, Part II, p. 542.

Supreme Court E-Library

to isolated questions is to be ascertained by due consideration of all the questions propounded to the witness and her answers thereto. To distill the facts established by the testimony of a witness, everything stated by her on direct examination, on cross-examination, redirect and re-cross-examination must be considered. Facts imperfectly or incompletely stated in answer to one or more questions on direct examination supplied by her answers to other questions on redirect or recross-examination; and when from one statement considered by itself an inference may be deduced, that inference may be strengthened or repelled by the facts disclosed in another.[11] The testimonies of witnesses must not be merely selected to conveniently suit the claim of a party.[12] In *People v. Ortega*,[13] this Court ruled:

> It is sound policy that self-contradictions in testimonies should be reconciled, if possible, the rule being the same as that which obtains where witnesses apparently contradict each other. These contradictory statements should be considered in light of explanations and attending circumstances, and whether inconsistencies or incongruities result from misconception of an innocent witness or willful and corrupt misrepresentation.. . .[14]

In this case, the appellant merely quoted a portion of the private complainant's testimony on redirect examination which appeared to support the claim that he did not insert his penis into the vagina of the victim:

> PROS. SEÑOREN:
> Q How did your Mamay Lito sexually abuse you or "*hinindot*?"
>
> ATTY. ABAS:
> Your Honor, it is improper for the prosecutor to ask that question in the redirect.
>
> COURT:
> That is a follow-up question.

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[12] *People v. Morata*, 354 SCRA 259 (2001).

[13] 360 SCRA 159 (2001).

[14] *Id.* at 168.

Supreme Court E-Library

WITNESS:
A Mamay Lito first removed my pants and then my panty, sir.

PROS. SEÑOREN:
Q What did your Mamay Lito do after he removed your pants and panty?
A He told me to hold his penis, sir.

Q And did you hold the penis of Mamay Lito?
A No, sir.

Q After Mamay Lito told you to hold your penis, what did Mamay Lito do with his penis?

ATTY. ABAS:
Leading, Your Honor.

COURT:
Let the witness answer.

WITNESS:
A Something like milk oozed from his penis, sir.

PROS. SEÑOREN:
Q And what more did your Mamay Lito do to you?
A None anymore, sir.

Q How about his penis, what did he do with his penis after something milky was ejaculated?

ATTY. ABAS:
Incompetent, Your Honor.

COURT:
Answer.

WITNESS:
A He put on his pants, sir.

Supreme Court E-Library

PROS. SEÑOREN:

Q Lea Vanessa, before your Mamay Lito requested you or directed you to hold his penis, what did Mamay Lito do with your sexual organ, if any?

ATTY. ABAS:

Very leading, Your Honor.

COURT:

Answer.

WITNESS:

A He just removed my pants but did nothing with my private part, sir.[15]

By itself, the aforequoted portion of the testimony of the private complainant would negate the charges of qualified rape against him. He would be guilty only of acts of lasciviousness. However, the rest of the testimony of the private complainant conclusively proves that she was raped by the appellant. She testified on direct examination, redirect examination and even on re-cross-examination that the appellant had raped her. On direct examination, she testified that the appellant had sexual intercourse with her several times:

Q By the way, Lea Vanessa, why do you know *Mamay* Lito or Leonito Lorenzo?

A Because this Leonito Lorenzo is the husband of *Nanay* Senia, sir.

Q Do you know, Lea Vanessa, why your *Mamay* Lito is here now?

A Yes, sir.

Q Why is your *Mamay* Lito here now?

A *Mamay* Lito was arrested by the police, sir.

Q Why did the police arrest your *Mamay* Lito?

A Because he had sexual intercourse with me, sir ("*hinindot po ako*").

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[15] TSN, 28 October 1996, pp. 8-10.

Supreme Court E-Library

Q Lea Vanessa, how many times did your *Mamay* Lito or Leonito Lorenzo have sexual intercourse with you?
A Several times, sir.

Q Where did your *Mamay* Lito have sexual intercourse with you?
A In our house and in the house of Tito Eddie, sir.

Q Who is this *Tito* Eddie you have just mentioned?
A He is the brother of my mother, sir.

Q How far is the house of your Tito Eddie from your house?
A Near, sir.[16]

On incisive re-cross-examination by the appellant's counsel, the private complainant stuck to her testimony on direct examination that the appellant inserted his penis into her vagina several times, thus:

ATTY. ABAS:
Q How may times did *Mamay* Lito insert his penis to your vagina?

WITNESS:
A Many times, sir.

Q When was the first?
A "*Noong matagal na po.*"

Q The second time?
A "*Noong anim pong araw.*"

Q The third time?
A "*Pampito po.*"

Q When was the fourth time you were abused by *Mamay* Lito?
A Seven[th] days, sir.

Q The fifth time?

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[16] TSN, 2 May 1996, pp. 7-8.

Supreme Court E-Library

Q Where for the first time were you abused by *Mamay* Lito?
A In the house of Tita Zeny, sir.

Q The second time, in what place?
A In our house, sir.

Q When you were abused by *Mamay* Lito the second time, you were together with your brothers and sisters?
A No, sir.

Q Your mother was there?
A My mother at that time brought my brother to a doctor for treatment, sir.

Q You were alone in your house?
A No, sir, *Kuya* Glen was there but *Mamay* Lito sent him to a store to buy candies.

Q Immediately, your *Kuya* Glen returned from buying candies?
A Yes, sir.

Q And your *Mamay* Lito was still there when your *Kuya* Glen returned?
A Yes, sir.

Q Where were you abused by *Mamay* Lito the third time?
A In the house of Mamay Lito, sir.

Q Who was there?
A That house was still under construction, sir.

Q Were there persons in that house?
A None, sir.

Q The fourth time, where were you abused by *Mamay* Lito?
A Also in the house of *Mamay* Lito, sir.

Q And that house was still under construction?
A Yes, sir.

Supreme Court E-Library

Q No flooring yet?
A Yes, sir.

Q And it had no walling yet at that time?
A Yes, sir.

Q No door yet?
A Yes, sir.

Q The next time, in what place were you sexually abused by *Mamay* Lito?
A He always abused me in the house which was still under construction, sir.[17]

It bears stressing that the private complainant on redirect examination testified not only on the number of times she was raped by the appellant, but also indicated the places where she was raped, and revealed the details relating to the crimes. Although the private complainant mistakenly testified that the house under construction where she was raped was owned by the appellant, when in fact the house was owned by Eddie delos Reyes, Delacrosa's younger brother and the private complainant's uncle, such mistake should not be taken against a four-year-old girl, who innocently thought that the appellant owned the house.

The Medical Certificate issued by Dr. Romeo Andal regarding the physical examination conducted on the private complainant confirms the veracity of the private complainant's testimony, that she was raped by the appellant not only on July 24 and August 17, 1995, but on other occasions as well. The doctor found completely-healed hymenal lacerations at two o'clock, five o'clock, seven o'clock and nine o'clock positions and that the vagina admitted the entry of the fifth finger with ease.[18] In *People v. Baring*,[19] the Court held that when the victim's testimony of her violation is corroborated by physical findings

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[17] TSN, 28 October 1996, pp. 12-15.
[18] Exhibit "D".
[19] 354 SCRA 371 (2001).

Supreme Court E-Library

of penetration, there is sufficient foundation to prove the existence of the essential requisite of carnal knowledge.[20]

Apparently, Lea erred when on redirect examination, she failed to mention that the appellant inserted his penis into her vagina. However, such circumstance should not discredit her and her testimony. It must be stressed that Lea was barely four years old when she was raped and when she testified. She could not be expected to understand every question asked of her in the course of examination. Ample margin of error and understanding should be accorded to Lea who, much more than adults, would be gripped with tension due to the novelty of the experience of testifying before a court.

Error-free testimony cannot be expected, most especially when a witness is recounting vivid details of a harrowing experience, one which even an adult would like to bury in oblivion.[21] Victims of rape often take into memory lapses in their desire to forget their dreadful experiences. These memory gaps should not necessarily be taken as evidence of false testimony.[22] Faultless testimony cannot be expected of a rape victim of tender age for she may be trying not to recall in her mind, much less, recount in open court every ugly detail of her distressing experience, and the appalling outrage she went through, as it is too painful and horrific to remember.[23] Also, the Court cannot impose the burden of exactness in the victim's recollection of her harrowing experience, more so in this case where the victim was barely four years old. She may have been confused as to the exact details of each and every sexual abuse she was subjected to by the appellant. It is in fact expected that such a victim would rather wish and even purposely forget the abhorrent memories of every single occasion. It would be exacting too much should the Court demand a very accurate and flawless account of the two crimes subject of her charges.[24]

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[20] *Id.* at 381.

[21] *People v. Osing*, 349 SCRA 310 (2001).

[22] *People v. Regala*, 364 SCRA 134 (2001).

[23] *People v. Puerta*, 363 SCRA 684 (2001).

[24] *People v. Villar*, 322 SCRA 393 (2000).

Supreme Court E-Library

It is not unnatural for inconsistencies to creep into the testimony of a rape victim, especially one who is of tender age as the victim Lea, in narrating the details of her shocking experience.[25]

The Court is inclined to believe that the incident referred to by the private complainant on redirect examination was that which she revealed to Delacrosa, her mother, in June 1995 as gleaned from the latter's testimony, thus:

Q Prior to July 24, 1995, did you have any conversation with your daughter Leah (*sic*) Vanessa about his *Mamay* Lito?
A Yes, sir.

Q When was that?
A It was on June 1995, sir.

Q What was the subject matter of your conversation with your daughter Leah Vanessa?
A That afternoon while I was resting, my daughter Leah Vanessa who is by nature *cariñosa* was then lying on my lap, I was telling her how to take care of herself, sir.

Q After that what happened?
A What I wanted is that while she is growing up, she should take care of herself, sir.

Q What other things did you talk with your daughter?
A While she was lying on my lap, I touched her vagina and told her not to allow that vagina of hers to be touched and I told her that if she is going to answer the call of nature she should be the one to fix herself and not allow her brothers to clean it, sir.

Q What was the reply of your daughter Leah Vanessa after saying that?
A She asked me "why?", sir.

Q And what was your answer?
A I told her to take care of herself not to show her private organ especially so that she is growing up, sir.

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[25] *People v. Velasco*, 353 SCRA 138 (2001).

Supreme Court E-Library

Q What was the reply of Leah Vanessa, if any?
A She asked me again and I told her that it is bad, sir.

Q And what was her reply?
A She told me in question manner, "Is it bad?"

Q What other thing did she say?
A When I asked her that she also asked me, "Why is it bad?" and then she told me, "*Bakit si Mamay Lito*?"

Q What more did she say to you?

ATTY. ABAS:
May I move that the answer be stricken out, Your Honor.

PROS. SEÑOREN:
That is part of her narration, Your Honor.

WITNESS:
She told me that, "Why did *Mamay Lito* stripped me and touched my private parts.

PROS. SEÑOREN:
Q What happened, if any?
A She told me that after the accused stripped off her clothes and fondled her private parts, *Mamay* Lito will expose his private organ and rub it in her vagina, sir.

Q What else did your daughter tell you?
A She also told me that after *Mamay* Lito exposed his organ, he told her to rub it in her vagina, sir.

Q What else happened?
A My daughter told me that after the accused exposed his penis, he would ask my daughter to hold it, sir.[26]

The appellant quoted a portion of the private complainant's testimony on cross-examination to show that she was instructed by her mother to testify that the appellant had raped her:

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[26] TSN, 15 January 1996, pp. 7-8.

Supreme Court E-Library

Q By the way, who instructed you to tell before this Court that you were raped by your *Mamay Lito*?
A I withdraw that.

Q You stated before this Court that a child who is telling a lie will go to the sea of fire or as what you call "*dagat-dagatang apoy,*" correct?
A Yes, sir.

Q And that was the instruction made by your mother to you?
A Yes, sir.

Q And your mother instructed you to tell the Court that *Mamay* Lito raped you?
A Yes, sir.[27]

However, the appellant again failed to mention that the private complainant likewise testified on re-cross-examination that she was not thus coached:

Q And you are testifying here because your mother told you to testify?

PROS. SEÑOREN:
I think the question has already been answered, Your Honor.

COURT:
Answer.

WITNESS:
Yes, sir.

ATTY. ABAS:
Q And all you are saying was coached by your mother?
A No, sir.[28]

There is no evidence that Delacrosa instructed her daughter to prevaricate or falsely testify that the appellant had raped

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[27] TSN, 28 October 1996, p. 6.
[28] *Id.* at 16-17.

Supreme Court E-Library

her. The Court finds it incredible that a mother would advise her daughter "not to tell a lie lest she be engulfed in a sea of fire," and thereafter tell the child to falsely testify that the appellant raped her. Indeed, when asked by the public prosecutor if she instructed her daughter to testify as she did against the appellant, Delacrosa explained:

PROS. SEÑOREN:

Q The accused Leonito Lorenzo, including his wife Luciña (*sic*) Lorenzo, also testified that the reason why Lea Vanessa testified against him was because you instructed her to testify in the manner she testified against the accused. What can you say about this statement?

A It is true that I told my daughter Lea Vanessa to come to Court and narrate but what I told her is to tell the Court all that *Mamay* Lito did to her. I also told her to tell all what is only true because I told her that the child who would not tell the truth would be placed in a sea of fire.

Q Who is this *Mamay* Lito you are referring to?

A This Leonito Lorenzo is known to my daughter Lea Vanessa as *Mamay* Lito.

COURT:

Q Are you referring to the accused?

A Yes, Your Honor.[29]

It bears stressing that the private complainant, who was barely four years old when she testified, was subjected to intense and sustained cross-examination and re-cross-examination by the appellant's counsel. The child remained steadfast in her testimony that she was ravished by the appellant, not only twice, but several times; not only in their house, but also in the house of Eddie delos Reyes. The private complainant even spontaneously demonstrated to the trial court, with the use of her fingers, the length and the width of the penis of the appellant:

Q Have you seen the penis of *Mamay Lito*?

A Yes, sir.

[29] TSN, 22 October 1997, pp. 16-17.

Supreme Court E-Library

Q How big is it?

WITNESS:
(Demonstrates showing her arm having a diameter of approximately 2 inches).

Q And that size was inserted in your vagina?
A Only the tip of the penis was able to penetrate, sir.

Q How long is the penis of your *Mamay Lito*?
A Around five inches, sir.
(Witness demonstrates).

Q And you were able to hold that?

A No, sir.

Q Why did you not touch his penis when your *Mamay* Lito told you to touch the same?
A I didn't like to hold it, sir.[30]

It would be at the apex of depravity for a mother to coach her four-year-old daughter into falsely testifying that she was raped by no less than her grandfather, and subject her daughter to such disgrace if the latter was not after all raped by the appellant. In this case, Delacrosa sought the prosecution and conviction of the appellant, her uncle no less, for his bestial acts on her hapless daughter. Before she did, she sought counsel from officials of the *Iglesia ni Cristo*, of which she was a member. Her collective acts were not those of a depraved mother, but one who sought justice for her daughter. Although Lucinia, the appellant's wife, demanded that Delacrosa withdraw the complaints against the appellant, Delacrosa was adamant. To quote Delacrosa's testimony:

Q Luciña (*sic*) Lorenzo also testified that on October 2, 1995, she requested you to drop your charges against her husband, Leonito Lorenzo, when you were in your mother's house, because according to her, there is no truth to your charges

[30] TSN, 28 October 1996, pp. 15-16.

Supreme Court E-Library

against her husband. And in that occasion, you told her that you would only drop your charges against her husband if they would leave that place. What can you say about this statement?

A It is true that she approached me and requested me to drop the charges against her husband but did not acceed (*sic*) to her request because I know that it is true. Although she was saying that it is not true, it is true.

ATTY. ABAS:

May we move that the Tagalog answer of the witness be put on record.

COURT:

Put the Tagalog answer of the witness on record.

A *"Kaya ho siya lumapit ay nakikiusap ho siya sa akin na iurong ko ang demanda laban sa kanyang asawa dahil sa paniniwala niya na hindi ginawa ng kanyang asawa iyon. Hindi po ako pumayag na iurong ang demanda laban sa kanyang asawa dahil sa ang totoo ay talagang ginahasa niya ang anak ko.*

COURT:

Proceed.[31]

Delacrosa also belied the claims of the appellant and his wife Lucinia that the appellant was charged with rape because Delacrosa was envious of him for having been allowed to cultivate a big portion of the properties left by her grandparents, while she and her family did not have any farm to cultivate. Delacrosa testified that the properties which her mother and her siblings had inherited from their parents had already been divided among the heirs. Besides, she explained, she was not interested with the land as she was not a farmer; neither was her husband, thus:

Q Luciña (*sic*) Lorenzo likewise stated and it was also the statement of the accused Leonito Lorenzo that the reason why you filed these two rape cases against the accused Leonito Lorenzo was because you envied him for cultivating a big portion of land

[31] TSN, 22 October 1997, pp. 12-14.

Supreme Court E-Library

while you and your family do not have any farm to work on. What can you say about this statement?
A It is not true that I envied him.

Q What is then the truth?
A The farm that they were referring to had already been divided among my mother and her other sisters including Luciña Lorenzo. They have their own share. I did not envy him because my husband and my children even do not know how to farm, so, why should I envy him.

Q What is the occupation of your husband?
A Fisherman, sir.

Q How about you, what is your occupation?
A Vegetables and pastries vendor, sir.

Q Do you know how to farm?
A No, sir.[32]

The trial court gave credence and full probative weight to the testimony of the private complainant and those of the other witnesses for the prosecution. Case law has it that the calibration by the trial court of the testimonial evidence of the parties and its assessment of the probative weight thereof are accorded by the appellate court high respect, if not conclusive effect, precisely because of the unique advantage of the trial court of observing and monitoring at close range the demeanor and deportment of the witnesses as they testify. We find no reason to deviate from the findings of the trial court and its assessment of the credibility and probative weight of the testimonial evidence on record.

The appellant's bare denial of the crimes charged are mere negative self-serving evidence and cannot prevail over the testimony of the prosecutrix and her witnesses, which the trial court found positive, credible and entitled to full probative weight. The appellant's alibi is likewise barren of merit, given the

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

Supreme Court E-Library

proximity of the house of the appellant to the house of Delacrosa and that of Eddie delos Reyes, where the appellant raped the victim. Alibi is a weak, if not the weakest of defenses. The appellant is burdened to adduce clear and convincing evidence that he was in a place other than the *situs* of the crime at the time of its commission such that it was physically impossible for him to have committed the same.[33] The appellant failed to prove his alibi, relying solely on his fragile testimony.

The Crimes Committed by the Appellant and the Proper Penalties Therefor

The trial court correctly ruled that the appellant is guilty of two counts of rape under Article 335 of the Revised Penal Code, as amended, by Republic Act No. 7659[34] which reads:

> 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;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by *reclusion perpetua.*

The trial court also correctly sentenced the appellant to suffer the death penalty. The private complainant was barely four years old when she was raped by the appellant. Under Article 335 of the Revised Penal Code, as amended by Rep. Act No. 7659, the death penalty shall be imposed if the victim is a child below seven years old:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

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[33] *People v. Cachola*, 354 SCRA 577 (2001).

[34] The crimes were committed before Rep. Act No. 8353 took effect.

Supreme Court E-Library

4. when the victim is a religious or a child below seven (7) years old.

Civil Liabilities of the Appellant

The trial court ordered the appellant to pay to private complainant Lea Vanessa Aday the amount of ₱50,000 as civil indemnity for each of the two crimes. The trial court did not award any moral damages, nor did it order the appellant to pay to the private complainant exemplary damages. The decision of the trial court shall thus be modified.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Oriental Mindoro, Branch 40, in Criminal Cases Nos. 4832 and 4833, is *AFFIRMED WITH MODIFICATION*. The appellant Leonito Lorenzo is found guilty beyond reasonable doubt of two counts of qualified rape under Article 335 of the Revised Penal Code, as amended by Rep. Act No. 7659, and is sentenced to suffer the death penalty for each count. He is also directed to pay the private complainant Lea Vanessa Aday ₱75,000 as civil indemnity for each count, for a total amount of ₱150,000; ₱75,000 as moral damages for each count or ₱150,000; and ₱25,000 as exemplary damages for each count of rape or a total of ₱50,000.[35] Costs *de oficio*.

SO ORDERED.

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

Ynares-Santiago and *Corona, JJ.*, are on leave.

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[35] *People v. Nequia*, G.R. No. 146569, October 6, 2003.