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THIRD DIVISION

[G.R. Nos. 136592-93. November 27, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MANOLITO PANCHO,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of rape and attempted rape committed on separate occasions. In this appeal, appellant assailed the sufficiency of evidence for his conviction.

The Supreme Court affirmed the trial court's decision convicting appellant of the crime of rape. In the Information, appellant was being charged of statutory rape considering that the victim was then below twelve years old. The gravamen of the offense of statutory rape is carnal knowledge of a woman below twelve years old. In statutory rape, force, intimidation or physical evidence of injury is immaterial. Where the girl is below twelve years of age, violence or intimidation is not required, and the only subject of inquiry is whether carnal knowledge took place.

The Court likewise ruled that in rape cases, the absence of fresh lacerations does not preclude the finding of rape, especially when the victim is of tender age. Rape is consummated by the slightest penile penetration of the *labia majora* or *pudendum* of the female organ.

Anent the charge of attempted rape, the Supreme Court held that the prosecution failed to prove that appellant started to rape the victim and commenced the performance of acts of carnal knowledge. He did not force her to lie down or remove her garment. In short, there was no showing that he did commence at all the performance of any act indicative of an intent or attempt to rape the victim. The Court cannot conclude that he attempted to rape her. Thus, the Court acquitted appellant of the crime of attempted rape.

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SYLLABUS

1. **CRIMINAL LAW; STATUTORY RAPE; FORCE, INTIMIDATION OR PHYSICAL EVIDENCE OF INJURY IS IMMATERIAL.**— The gravamen of the offense of statutory rape is carnal knowledge of a woman below twelve (12) years old. In statutory rape, force, intimidation or physical evidence of injury is immaterial. Where the girl is below 12 years of age, violence or intimidation is not required, and the only subject of inquiry is whether carnal knowledge took place.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, ACCUSED MAY BE CONVICTED SOLELY ON THE TESTIMONY OF RAPE VICTIM IF HER TESTIMONY IS CREDIBLE, NATURAL AND CONVINCING; CASE AT BAR.**— Michelle's testimony is straightforward, unflawed by significant inconsistency, and unshaken by rigid cross-examination. It deserves full faith and credence. In rape cases, the accused may be convicted solely on the testimony of the rape victim if her testimony is credible, natural, and convincing. When a woman says she was raped, she says in effect all that is necessary to show that rape had been committed, and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. It bears stressing that Michelle, a girl of tender years, innocent and guileless, cannot be expected to brazenly impute a crime so serious as rape to her step-father if it were not true.

3. **CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF HYMENAL RUPTURE OR ANY INDICATION OF VAGINAL LACERATION OR GENITAL INJURY.**— [I]n rape cases the absence of fresh lacerations does not preclude the finding of rape, especially when the victim is of tender age. Moreover, laceration of the hymen is not an element of the crime of rape. Hymenal rupture or any indication of vaginal laceration or genital injury is not necessary for the consummation of rape. Its absence does not negate a finding of forced sexual coitus.

4. **ID.; ID.; CONSUMMATED BY THE SLIGHTEST PENILE PENETRATION OF THE LABIA MAJORA OR PUDENDUM OF THE FEMALE ORGAN.**— [R]ape is consummated by the slightest penile penetration of the *labia majora* or *pudendum* of the female organ. Indeed, the evidentiary

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weight of the medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element for conviction for rape.

5. **REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT BE GIVEN GREATER EVIDENTIARY WEIGHT THAN THE TESTIMONY OF VICTIM WHO TESTIFIED ON AFFIRMATIVE MATTERS.**— Appellant's denial is an inherently weak defense. It has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of positive identification of the accused, as in this case. The defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters.

6. **CRIMINAL LAW; RAPE; WHEN ATTEMPTED.**— Under Art. 6, in relation to Art. 335, of the Revised Penal Code, rape is attempted when the offender commences the commission of rape directly by overt acts, but does not perform all the acts of execution which should produce the crime of rape by reason of some cause or accident other than his own spontaneous desistance.

7. **ID.; ID.; THE THIN LINE THAT SEPARATES ATTEMPTED RAPE FROM CONSUMMATED RAPE IS THE ENTRANCE OF THE MALE ORGAN INTO THE LABIAL THRESHOLD OF THE FEMALE GENITALIA.**— In *People vs. Campuhan*, we held that the thin line that separates attempted rape from consummated rape is the entrance of the male organ into the labial threshold of the female genitalia. In that case, the accused was caught by the mother of the victim kneeling on top of her. The victim testified that the accused's organ *merely touched but did not penetrate* her vagina. We held that he could not be convicted of statutory rape but only attempted rape.

8. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.**— We have consistently ruled that upon a finding of the fact of rape, the award of civil indemnity is mandatory. If the death penalty is imposed, the indemnity *ex delicto* should be ₱75,000.00. Where, as here, the death penalty is not decreed, the victim should be

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entitled to ₱50,000.00 only. In line with current jurisprudence, we also award the victim moral damages in the amount of ₱50,000.00 without need of pleading or proof of the basis thereof. The anguish and pain she has endured are evident.

APPEARANCES OF COUNSEL

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

DECISION

SANDOVAL-GUTIERREZ, *J.*:

This is an appeal from the Joint Decision[1] dated June 19, 1998 of the Regional Trial Court, Branch 15, Malolos, Bulacan, finding appellant Manolito Pancho guilty beyond reasonable doubt of rape in Criminal Case No. 837-M-96 and attempted rape in Criminal Case No. 838-M-96. In Criminal Case No. 837-M-96, the trial court sentenced him to suffer *reclusion perpetua*, while in Criminal Case No. 838-M-96, the penalty of 10 years and 1 day, as minimum, to 12 years, as maximum of *prision mayor*, was imposed upon him.

The Informations in both Criminal Case Nos. 837-M-96 and 838-M-96 read:

For Criminal Case No. 837-M-96 (For Rape):

"That in or about the month of August, 1994, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd designs, have carnal knowledge of said Michelle L. dela Torre, 11 years of age, against her will and without her consent.

"Contrary to law."

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[1] Penned by Judge Carlos C. Ofilada (retired, now deceased), *Rollo* at 18-26.

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For Criminal Case No. 838-M-96 (For Attempted Rape):

"That in or about the month of December, 1995, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd designs, have carnal knowledge of said Michelle L. dela Torre, 11 years of age, against her will and without her consent.

"Contrary to law."

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the crimes charged.

Thereafter, trial ensued. The evidence for the prosecution shows that complainant Michelle dela Torre was born on April 2, 1984[2] to spouses Exequiela Lacanilao and Eduardo dela Torre. After Michelle's father passed away, her mother contracted a second marriage with appellant. Michelle and her two (2) brothers live with the couple at Look First, Malolos, Bulacan.

On August 1, 1994, at around 6:00 o'clock in the morning, Michelle, who was then only ten years old, went home after spending the night at her aunt's house. While she was about to undress, appellant suddenly dragged her and forced her to lie down on the floor. Although frightened, she struggled by kicking and boxing him. However, he forcibly removed her clothes and underwear. Then he took off his clothing. Appellant started kissing and holding her breast and eventually had carnal knowledge of her. She felt pain when he inserted his organ into her vagina which bled. She tried to resist but he held her both arms. He was on top of her making push and pull movements for four (4) minutes. Then he dressed up, threatening to kill her should she complain or tell anyone about the incident.

Sometime in December, 1995 at the family's new residence at Bayugo, Meycauayan, Bulacan, appellant arrived from work. When Michelle opened the door and saw him, she got scared. While he was approaching her, she managed to hit him. Then

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[2] Certificate of Live Birth, Exhibits "B" and "B-1", Records at 71.

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she attempted to jump out of the window, but he dragged her by her feet. At that instance, her uncle (Tito Onio) suddenly arrived.[3] Immediately, appellant stopped, thus thwarting his bestial desire.

After sometime, Michelle mustered enough courage to report the incidents to her mother, but the latter casually ignored her. So, she turned to her grandmother Natividad Lacanilao, who brought her, sometime in February, 1996, to the National Bureau of Investigation (NBI) for examination by a medico-legal officer.[4] Thereafter, they proceeded to the Malolos Police Station where she executed a sworn statement.[5]

Dr. Ida P. Daniel, a Medico-Legal Officer of the NBI, testified that she conducted a medico-genital examination of Michelle dela Torre. Her findings,[6] which she confirmed on the witness stand, are as follows:

"*GENERAL PHYSICAL EXAMINATION:*

Height: 132.0 cms

Weight: 78.0 cms

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, developing, conical, firm. Areolae, brown, 2.5 cms in diameter. Nipples, brown, protruding, 0.5 cm in diameter.

No sign of extragenital physical injury noted.

"GENITAL EXAMINATION:

Pubic hair, fine, scanty. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, moderately tall, moderately thick, intact. Hymenal orifice, annular, admits a tube 2.0 cms in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

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[3] TSN, January 29, 1997 at 4-5.

[4] TSN, March 12, 1997 at 3-4.

[5] TSN, February 19, 1997 at 5-6.

[6] Records at 73.

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"CONCLUSIONS:

1. No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.

2. Hymen, intact and its orifice small (2.0 cms in diameter) as to preclude complete penetration by an average sized adult Filipino male organ in full erection without producing any genital injury."

For his part, appellant strongly denied the charges, contending that it was impossible for him to commit the crimes considering that during the incidents, his wife and her two sons were also inside the house.[7] Moreover, the charge of rape is totally belied by the finding of the NBI Medico-Legal Officer that Michelle's hymen has remained intact with no sign of extra-genital or genital injuries.

After trial, the lower court rendered a Joint Decision dated June 19, 1998, the dispositive portion of which reads:

"In view of all the foregoing and by proof beyond reasonable doubt, the Court hereby renders judgment as follows:

1. With respect to Criminal Case No. 837-M-96, the Court finds the accused guilty beyond reasonable doubt of the crime charged and hereby sentences accused MANOLITO PANCHO to suffer the penalty of *RECLUSION PERPETUA*.

2. With respect to Criminal Case No. 838-M-96, the Court finds the accused guilty beyond reasonable doubt of the crime of Attempted Rape, and hereby sentences accused MANOLITO PANCHO to suffer an imprisonment of TEN (10) YEARS and ONE (1) DAY to TWELVE (12) YEARS.

3. To indemnify the victim Michelle dela Torre the amount of ₱20,000.00 — each case.

"The period of the accused's detention is credited in his favor.

"SO ORDERED."

In this appeal, appellant ascribes to the trial court the following errors:

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[7] TSN, October 28, 1997 at 5-6.

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"I

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF RAPE AND ATTEMPTED RAPE, DESPITE INSUFFICIENCY OF EVIDENCE.

"II

THE LOWER COURT ERRED IN DISREGARDING THE DEFENSE PUT UP BY ACCUSED-APPELLANT."

As alleged in the Informations, the crimes charged were committed sometime in August, 1994 and December, 1995. Thus, the governing law is Article 335[8] of the Revised Penal Code which, as amended by Republic Act No. 7659 (The Death Penalty Law),[9] provides:

"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.*

x x x x x x x x x

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

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the parent of the victim.

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[8] Anti-Rape Law of 1997, which took effect on October 22, 1997, providing that rape is a crime against persons (Articles 266-A, 266-B, 266-C, and 266-D, RPC).

[9] Which took effect on December 31, 1993, *People vs. Simon*, 234 SCRA 555, 569.

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2. x x x."

A. — *G.R. No. 136592 for rape*:

Rape under the above provisions is either simple or qualified. It is qualified when the age of the victim (below 18) and her relationship with the appellant are both alleged in the Information and proved.[10] In this case, the prosecution failed to allege in the Information the qualifying circumstance that appellant is the victim's step-parent. Thus, he may only be convicted of simple rape.

Simple rape is committed 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 (statutory rape) or is demented.

In the Information, appellant is being charged of statutory rape considering that Michelle was then below 12 years old.

The gravamen of the offense of statutory rape is carnal knowledge of a woman below twelve (12) years old.[11] In statutory rape, force, intimidation or physical evidence of injury is immaterial.[12] Where the girl is below 12 years of age, violence or intimidation is not required, and the only subject of inquiry is whether carnal knowledge took place.[13]

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[10] *People vs. Bartolome*, G.R. No. 133987, January 28, 2000, 323 SCRA 836.

[11] *People vs. Dalisay*, G.R. No. 133926, August 6, 2003, citing *People vs. Libeta*, G.R. No. 139231, April 12, 2002, 381 SCRA 21; *People vs. Rullepa*, G.R. No. 131516, March 5, 2003.

[12] *People vs. Ligotan*, G.R. No. 119219, September 30, 1996, 262 SCRA 602, citing *People vs. Palicte*, G.R. No. 101088, January 27, 1994, 229 SCRA 543.

[13] *People vs. Lerio*, G.R. No. 116729, January 31, 2000, 324 SCRA 76.

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As shown by her Certificate of Live Birth,[14] Michelle was born on April 2, 1984. Thus, on August 1, 1994 when the incident took place, she was only 10 years and 3 months old.

Michelle identified appellant in open court as the culprit who raped her. She testified as follows:

"FISCAL:

Q: Ms. Witness, you claim in your testimony that you were raped by your step father Manolito Pancho last August 1, 1994, will you please tell this Honorable Court how Manolito Pancho raped you?
A: About 6:00 o'clock in the morning I went home, sir.

Q: And where is your home located?
A: I went home at Look First, Malolos, Bulacan.

Q: And what happened when you went home at Look, Malolos, Bulacan?
A: Manolito Pancho dragged me and forced me to lie on the floor.

Q: And what happened when after Manolito Pancho lay you on the floor?
A: He took off all my clothes.

Q: And what clothes you are wearing at that time, Ms. witness?
A: I was wearing a t-shirt and short, sir.

Q: What else Manolito Pancho removed?
A: My clothes, short and panty, sir.

Q. And what was your appearance after these clothes were removed by Manolito Pancho?
A: I was naked, sir.

Q: How about Manolito Pancho, what did he do after he removed your dress?
A: He also took-off his clothes, sir.

Q: What clothes did he remove?
A: His t-shirt, short and brief, sir.

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[14] *Supra*; TSN, January 29, 1997 at 3-4; TSN, February 19, 1997 at 2-3; TSN, September 9, 1997 at 8.

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Q: After Manolito removed all these: his short, brief and t-shirt, what did he do?
A: He placed himself on top of me.

Q: And what happened after he placed himself on top of you?
A: He inserted his penis on my vagina.

Q: Were you able to see his organ when he inserted it on your vagina?
A: Yes, sir.

Q: What happened when he inserted his organ on your vagina?
A: He was kissing me and touching my body, sir.

Q: What particular parts of your body did Manolito Pancho kiss and touch, Ms. witness?
A: My both breasts, sir.

Q: And what did you feel when Manolito Pancho inserted his organ on your vagina?
A: It hurts, sir.

Q: What motion did he do if you can still remember when Manolito Pancho was on top of you?
A: He was kissing me, touching me and then I tried to struggle against him but he was holding my both hands so that I could not struggle.

Q: And what happened to your vagina after he inserted his penis?
A: It bled, sir.

Q: How long did Manolito Pancho stay on top of you?
A: Four (4) minutes, sir.

Q: And after four (4) minutes, what did Manolito Pancho do?
A: I already dressed up because he already dressed-up, sir.

Q: And what did Manolito Pancho tell you, if any?
A: He said, do not complain because if you do so, I am going to kill you.

Q: How are you related with Manolito Pancho, Ms. witness?
A: My step father, sir.

Q: At the time you claimed that you were raped by Manolito Pancho, will you please tell this Honorable Court, how young were you then?
A: Ten (10) years old, sir.

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Q: Do you have evidence to show Ms. witness that you are ten (10) years old at that time?
A: My birth certificate, sir.

Q: Do you have with you your birth certificate?
A: Yes, sir. (The grandmother is producing the Live Birth Certificate of the complainant Michelle dela Torre.)

Q: Will you please tell this Honorable Court what is your date of birth, Ms. witness?
A: April 2, 1984.

Q: And you claimed that you were 10 years old when you were raped by Manolito Pancho?
A: Yes, sir.

x x x x x x x x x."[15]

Michelle's testimony is straightforward, unflawed by significant inconsistency, and unshaken by rigid cross-examination. It deserves full faith and credence. In rape cases, the accused may be convicted solely on the testimony of the rape victim if her testimony is credible, natural, and convincing.[16]

When a woman says she was raped, she says in effect all that is necessary to show that rape had been committed, and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[17] It bears stressing that Michelle, a girl of tender years, innocent and guileless, cannot be expected to brazenly impute a crime so serious as rape to her step-father if it were not true.

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[15] TSN, January 29, 1997 at 1-3.

[16] *People vs. Sale*, G.R. Nos. 137978-79, November 22, 2000, 345 SCRA 490; *People vs. Alicante*, G.R. Nos. 127026-27, May 31, 2000, 332 SCRA 440.

[17] *People vs. Bation*, G.R. No. 123160, March 25, 1999, 305 SCRA 253; *People vs. Ayo, supra; People vs. Balmoria*, G.R. Nos. 120620-21, March 20, 1998, 287 SCRA 687. See *People vs. Penaso*, G.R. No. 121980, February 23, 2000, 326 SCRA 311; *People vs. Loriega*, G.R. Nos. 116009-10, February 29, 2000, 326 SCRA 675.

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Appellant vigorously denied the charge, contending that per the Medical Report of Dr. Ida Daniel, Michelle's hymen has remained intact.[18]

We are not persuaded.

Appellant heavily relies on the *virgo intacta theory*.[19] He disregards Dr. Daniel's testimony that there are two types of hymen: (1) one that remains intact even though there is penetration; (2) the other is lacerated after penetration.[20] We have ruled that in rape cases the absence of fresh lacerations does not preclude the finding of rape,[21] especially when the victim is of tender age.[22] Moreover, laceration of the hymen is not an element of the crime of rape.[23] Hymenal rupture or any indication of vaginal laceration or genital injury is not necessary for the consummation of rape.[24] Its absence does not negate a finding of forced sexual coitus.[25] For the rule is well settled that rape is consummated by the slightest penile penetration of

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[18] *Rollo* at 57-58.

[19] See *People vs. Sampior*, G.R. No. 117691, March 1, 2000, 327 SCRA 31.

[20] *Rollo* at 21, 95; Decision at 4; TSN, September 9, 1997 at 4-5.

[21] *People vs. Pruna*, G.R. No. 138471, October 10, 2002, citing *People vs. Geraban*, G.R. No. 137048, May 24, 2001, 358 SCRA 213.

[22] *People vs. Pruna, supra*, citing *People vs. Ayo*, G.R. No. 123540, March 30, 1999, 305 SCRA 543 and *People vs. Bation*, G.R. No. 123160, March 25, 1999, 305 SCRA 253. See *People vs. Lomibao*, G.R. No. 135855, August 3, 2000, 337 SCRA 211.

[23] *People vs. Esteves*, G.R. No. 140392, September 27, 2002, citing *People vs. Llamo*, G.R. No. 132138, January 28, 2000, 323 SCRA 791; *People vs. Sapinoso*, G.R. No. 122540, March 22, 2000, 328 SCRA 649.

[24] *People vs. Deauna*, G.R. Nos. 143200-01, August 1, 2002, citing *People vs. Lerio, supra*.

[25] *Id.*, citing *People vs. Almacin*, G.R. No. 113253, February 19, 1999, 303 SCRA 399.

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the *labia majora* or *pudendum* of the female organ.[26] Indeed, the evidentiary weight of the medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element for conviction for rape.[27]

Appellant's denial is an inherently weak defense. It has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted.[28] Inherently weak, denial as a defense crumbles in the light of positive identification of the accused, as in this case. The defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt.[29] Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters.[30]

B. — *G.R. No. 136593 for attempted rape*:

Appellant also contends that his conviction of attempted rape in Criminal Case No. 838-M-96 is not supported by evidence.

Michelle testified that when appellant "was coming near me, I hit him and I saw that our door was opened. I tried to jump and that was the time he dragged and he held my feet."[31] Appellant

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[26] *People vs. Pruna, supra*, citing *People vs. Rafales*, G.R. No. 133477, January 21, 2000, 323 SCRA 13. See *People vs. Briones*, G.R. No. 140640, October 15, 2002, citing *People vs. Barredo*, 329 SCRA 120 (2000); *People vs. Balgos*, G.R. No. 126115, January 26, 2000, 323 SCRA 372.

[27] *People vs. Lerio, supra; People vs. Baltazar*, 329 SCRA 378 (2000). See *People vs. Auxtero*, G.R. No. 118314, April 15, 1998, 289 SCRA 75; *People vs. Venerable*, G.R. No. 110110, May 13, 1998, 290 SCRA 15.

[28] *People vs. Watiwat*, G.R. No. 139400, September 3, 2003.

[29] *People vs. Colisao*, G.R. No. 134526, December 11, 2001, 372 SCRA 20.

[30] *People vs. Musa*, G.R. No. 143703, November 29, 2001, 371 SCRA 234.

[31] TSN, January 29, 1997 at 4-5.

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and Michelle were in this snap situation when his Tito Onio arrived.[32] Her testimony regarding this incident is quoted as follows:

"FISCAL:

x x x x x x x x x

Q: And what happened in that place at Bayugo, Meycauayan, Bulacan?
A: When the door opened I thought it was my mother and when I saw him I was scared, sir.

Q: And what happened when you saw Manolito Pancho?
A: I closed the door, sir.

Q: Thereafter, what happened?
A: When he was coming near me, I hit him and I saw that our door was opened. I tried to jump and that was the time he dragged and he held my feet.

Q: And what happened after Manolito Pancho held your feet?
A: When he was holding my feet I was not able to jump from the window and that's the time the door opened and then I saw my uncle that is why the rape was not committed.

x x x x x x x x x."[33]

Under Art. 6, in relation to Art. 335, of the Revised Penal Code, rape is attempted when the offender commences the commission of rape directly by overt acts, but does not perform all the acts of execution which should produce the crime of rape by reason of some cause or accident other than his own spontaneous desistance.[34]

In this second case, the prosecution failed to prove that appellant started to rape the victim and had commenced the

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[32] *Id.*; Tito Onio is the brother of her mother. See TSN, February 19, 1997 at 3.

[33] TSN, January 29, 1997 at 4-5.

[34] *People vs. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 270.

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performance of acts of carnal knowledge. He did not force her to lie down or remove her garment. In short, there was no showing that he did commence at all the performance of any act indicative of an intent or attempt to rape the victim. What he did was to "drag" her and hold her feet. At this juncture, we can not safely conclude that he was attempting to rape her.

In *People vs. Campuhan*,[35] we held that the thin line that separates attempted rape from consummated rape is the entrance of the male organ into the labial threshold of the female genitalia. In that case, the accused was caught by the mother of the victim kneeling on top of her. The victim testified that the accused's organ *merely touched but did not penetrate* her vagina. We held that he could not be convicted of statutory rape but only attempted rape.

In the instant case, appellant was merely holding complainant's feet when her Tito Onio arrived at the alleged *locus criminis*. Thus, it would be stretching to the extreme our credulity if we were to conclude that mere holding of the feet is attempted rape.

Anent the award of damages in G.R. No. 136592, we observed that the trial court only awarded the victim civil indemnity in the amount of ₱20,000.00. This must be corrected. We have consistently ruled that upon a finding of the fact of rape, the award of civil indemnity is mandatory. If the death penalty is imposed, the indemnity *ex delicto* should be ₱75,000.00. Where, as here, the death penalty is not decreed, the victim should be entitled to ₱50,000.00 only.[36]

In line with current jurisprudence, we also award the victim moral damages in the amount of ₱50,000.00 without need of

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[35] *Id.*

[36] *People vs. Dalisay, supra*, citing *People vs. Armando Tagud, Sr.*, G.R. No. 140733, January 30, 2002; *People vs. Poñado*, 370 Phil. 558 (1999); *People vs. Maglente*, 366 Phil. 221 (1999); *People vs. Olarte*, G.R. Nos. 129530-31, September 24, 2001, 365 SCRA 635; *People vs. Elpedes*, G.R. Nos. 137106-07, January 31, 2001, 350 SCRA 716.

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pleading or proof of the basis thereof.[37] The anguish and pain she has endured are evident.

WHEREFORE, the Decision dated June 19, 1998 of the Regional Trial Court, Branch 15, Malolos, Bulacan, in *Criminal Case No. 837-M-96*, convicting appellant Manolito Pancho of rape and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED*, with the *MODIFICATION* that he is ordered to pay the victim, Michelle dela Torre, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.

In *Criminal Case No. 838-M-96,* the trial court's judgment convicting the appellant of attempted rape is *REVERSED AND SET ASIDE* and a new one is entered *ACQUITTING* him of the crime charged.

Costs *de oficio*.

SO ORDERED.

Vitug (Chairman), Corona and *Carpio Morales, JJ.*, concur.

THIRD DIVISION

[G.R. No. 137366. November 27, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROMEO MOLE** *y* **SANTOS,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing Emerita Reyes. He was sentenced

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[37] *Id.*, citing *People vs. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 193; *People vs. Agustin,* G.R. Nos. 132524-25, September 24, 2001, 365 SCRA 667.