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part of the administration of justice because they are called upon to serve court writs, execute all the processes, and carry into effect the orders of the court. As such, they should discharge their duties faithfully and with due care and with utmost diligence.[46]

WHEREFORE, respondent Sheriff IV Winston T. Eguia is hereby *SUSPENDED* for Two (2) Months without pay. He is likewise *STERNLY WARNED* that a repetition of similar infractions will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and *Azcuna, JJ.,* concur.

EN BANC

[G.R. No. 135559. September 18, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MORENO OCUMEN** *y* **MENDOZA** ***alias*** **MORING,** *appellant.*

SYNOPSIS

Appellant herein was charged with the crime of rape, qualified by minority of the victim and her relationship with the accused. Upon arraignment, he pleaded not guilty to the charge. Appellant denied raping Russel, whom he admitted to be his own niece, she being the daughter of his sister Salvacion. He claimed that

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[46] *Benitez v. Acosta*, A.M. No. P-01-1473, 27 March 2001, 355 SCRA 380, 389; *Sibulo v. Ramirez*, A.M. No. R-494-P, 17 September 1997, 154 SCRA 101; *Patangan v. Concha*, A.M. No. R-699-P, 7 August 1987, 153 SCRA 30; *Bareno v. Cabauatan*, A.M. No. R-251-P, 30 June 1987, 151 SCRA 293; *Smith Bell & Co. v. Saur*, A.M. No. P-1142, 31 March 1980, 96 SCRA 667 [1980].

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Russel's father, who felt slighted after he warned him not to manhandle his wife Salvacion every time they quarrel, instigated the filing of the rape charge against him. The trial court found appellant guilty of the crime charged and sentenced him to death. Thus, this automatic review before the Supreme Court.

After reviewing the records of the case, the Supreme Court found no cogent reason to disturb the findings and conclusions of the trial court. The trial court had not overlooked substantial facts which could alter the result of the case. Its findings of fact were supported by evidence. Russel's narration had clearly established the charged that appellant sexually ravished her. The qualifying circumstances of minority and relationship had been alleged in the information and sufficiently established during trial. Thus, the Court was constrained to affirm the death penalty imposed upon him by the trial court. The Supreme Court affirmed the decision of the trial court.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE REVIEWING COURT WILL NOT ORDINARILY DISTURB OR SET ASIDE THE FINDINGS OF THE TRIAL COURT THEREON; RATIONALE.** — Our consistent pronouncement is that where, as here, the issue involves the assessment of credibility of witnesses, the reviewing court will not ordinarily disturb or set aside the findings of the trial court which gave due weight and credence to their testimonies. This is so because the trial court is in a better position to decide such issue, having personally heard the witnesses and observed their deportment and manner of testifying. Such findings are accorded finality, unless the trial court has overlooked certain substantial and valuable facts appearing in the record which, if considered, might alter the result of the case.

2. **ID.; ID.; ID.; WHEN A WITNESS' TESTIMONY IS GIVEN FULL FAITH AND CREDIT; CASE AT BAR.** — Well-settled is the rule that when a witness' testimony is straightforward, candid and unflawed by inconsistencies or contradictions in material points, as in this case, the same must be given full faith and credit. As to Russel's declarations, it is inconceivable that she would publicly disclose the harrowing and humiliating sexual

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indignity she experienced in the hands of appellant if it really did not happen.

3. **ID.; ID.; ID.; THERE IS NO STANDARD FORM OF BEHAVIOR WHEN ONE IS CONFRONTED WITH A STRANGE, STARTLING OR FRIGHTFUL EXPERIENCE.**— Behavioral psychology teaches that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted with a strange, startling or frightful experience. The workings of the human mind under such a situation is unpredictable. Similarly, not every rape victim can be expected to act conformably to the usual expectations of every one – some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. Thus, it is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected from mature persons under similar circumstances. Indeed, we have not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted by any modicum of doubt.

4. **ID.; ID.; DENIAL; AN INTRINSICALLY WEAK DEFENSE WHICH MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY IN ORDER TO MERIT CREDIBILITY; RATIONALE.** — An intrinsically weak defense, denial must be buttressed by strong evidence of non-culpability in order to merit credibility. It is a negative self-serving assertion that deserves no weight in law if unsubstantiated by clear and convincing evidence. Here, such defense cannot stand against the positive testimonies by both Russel and Juan Flores that appellant defiled her womanhood.

5. **ID.; ID.; ALIBI AS A DEFENSE; THE ACCUSED MUST ESTABLISH THE PHYSICAL IMPOSSIBILITY OF HIS PRESENCE AT THE SCENE OF THE CRIME DURING THE INCIDENT.** — Deeply imbedded in our jurisprudence is the rule that an accused who raises the defense of alibi must not only prove his presence at another place at the time of commission of the crime, he must also establish that it would be *physically impossible* for him to be at the scene of the crime during the

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incident. It bears stressing that both Barangays Don Benito and Malokiat *adjoin each other* and are *located within the municipality of Pozorrubio.* Clearly, it was not physically impossible for appellant to be at the scene of the crime at that time.

6. **CRIMINAL LAW; QUALIFIED RAPE; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; DEATH PENALTY PROPER IN CASE AT BAR.** — Pursuant to Article 266-B, the qualifying, circumstances of *minority* and *relationship* must concur. As these circumstances, if proven, raise the penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically *alleged* in the Information and *duly proved* during the trial with equal certainty as the crime itself. Indeed, Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, as amended, specifically require both qualifying and aggravating circumstances to be alleged in the Information. Here, the minority of the victim — that she was 9 years old when she was raped on February 23, 1998 – and her relationship with appellant — that she is his niece or relative within the third civil degree — have been alleged in the Information and sufficiently established during the trial. The prosecution has proven that Russel was born on July 29, 1989 as shown by the certified true copy of her Certificate of Live Birth. It has likewise established that she is the niece of appellant, he being the brother of her mother Salvacion. It bears stressing that Salvacion also admitted that appellant is her brother. Thus, we are constrained to affirm the death penalty imposed upon him by the trial court.

7. **ID.; MOTIVE; NEVER AN ESSENTIAL ELEMENT OF A CRIME.** -- In any case, motive is never an essential element of a crime. It becomes inconsequential in a case where, as here, there are affirmative, nay, categorical declarations toward the appellant's culpability for the felony.

APPEARANCES OF COUNSEL

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

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DECISION

***PER CURIAM*:**

For automatic review is the Decision[1] dated July 31, 1998 of the Regional Trial Court, Branch 46, Urdaneta, Pangasinan in Criminal Case No. U-9590, convicting Moreno Ocumen *y* Mendoza (*alias* Moring), appellant, of qualified rape and sentencing him to suffer the supreme penalty of death. He was further ordered to pay the victim, Russel Ocumen Rubio, the sum of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages.

The accusatory portion of the Information filed against appellant reads:

"That on February 23, 1998, at Barangay Malokiat, Pozorrubio, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Russel Rubio *y* Ocumen, a minor 9 years old, and accused's own niece, or relative within the third civil degree, against her will and without her consent, to her damage and prejudice.

"CONTRARY to Article 335 of the Revised Penal Code, as amended by R.A. 7659."[2]

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the charge. Trial ensued thereafter.

The evidence for the prosecution shows that Russel Ocumen Rubio was born on July 29, 1989 to spouses Rodolfo Rubio and Salvacion Ocumen as shown by the certified true copy of her Certificate of Live Birth.[3] They live in Barangay Malokiat, Pozorrubio, Pangasinan.

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[1] Penned by Judge Modesto C. Juanson.

[2] *Rollo* at 10.

[3] Exhibits "F" and "F-1", RTC Records at 7; Transcript of Stenographic Notes (TSN), June 23, 1998 at 4; June 24, 1998 at 4-5.

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On February 23, 1998, at about 8:00 o'clock in the morning, Russel, then nine (9) years old and a Grade III pupil, attended classes at the Don Benito Elementary School in Pozorrubio, Pangasinan. On her way home at 11:00 o'clock that same morning, she met appellant whom she identified in court as her uncle, he being the brother of her mother. Suddenly, he pulled her towards a forested area. There, he removed her shortpants and panty, after which he likewise removed his longpants and shorts. Then he made her lay on the ground and inserted his penis into her vagina. At that moment she felt pain and cried. Thereafter, she wore her shorts.[4]

At about the same time, Juan Flores, appellant's nephew, was walking towards the spring located at the *adjoining Barangay of Malokiat*, Pozzorubio to take a bath. While passing by the forested area, he saw from a distance of about 10 to 15 meters, the appellant on top of Russel. Flores observed that both were naked and that appellant was having sexual intercourse with her.[5]

After the incident, Russel went home and met her grandmother Dominga Rubio, the mother of her father. When Dominga asked Russel where she came from, the latter revealed to her that she was sexually abused (*iniyot*) by appellant in a forested place near the road.[6] Immediately, Dominga brought her to their *barangay* captain and reported the matter. They likewise sought assistance from the Police Station at Pozorrubio where they executed their respective sworn statements[7] on the incident.

More than a week thereafter, or on March 6, 1998, Russel was physically examined by Dr. Francisco L. Llamas, chief of the Pozorrubio Community Hospital. He issued a Medical Certificate[8] with the following findings:

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[4] TSN, June 15, 1998 at 3-6; June 17, 1998 at 3.

[5] TSN, May 25, 1998 at 4-6, 8.

[6] TSN, May 20, 1998 at 6-7.

[7] Exhibits "B" & "E", RTC Records at 10, 13.

[8] Exhibit "A", *id.* at 6.

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"1. Victim is conscious, coherent, cooperative;

2. No physical findings in other parts of the body;

3. There is an *old (healed) laceration at 3 o'clock position of the hymen*;

4. Unable to insert even the lubricated little finger of the examiner. Victim can't bear the pain when the examiner tried to push the tip of the lubricated little finger further deeper;

5. Smear for spermatozoa was not performed for the alleged incident happened more than one week ago." (Italics supplied)

Dr. Llamas explained that the laceration of Russel's hymen was *more than a week old.* When he interviewed her, she disclosed that she was sexually molested by appellant, her own uncle.[9]

Appellant denied having raped Russel, whom he admitted is his own niece, she being the daughter of his sister Salvacion. He declared that on February 23, 1998, he was at home in Don Benito, Pozorrubio with his father, brothers and nephews, making some handicrafts. He claimed that the filing of the rape charge against him was instigated by Rodolfo, Russel's father, who felt slighted after he warned him not to manhandle his wife Salvacion every time they quarrel.[10]

Salvacion, Russel's mother, testified for the defense. She declared that appellant is her full-blood brother. She observed nothing unusual with her daughter when she came home from school at around 11:45 in the morning of February 23, 1998. In fact, she went back to school after taking her lunch. Salvacion believed it was Dominga, her mother-in-law, who instigated the filing of the rape charge against appellant.[11]

Segundo Ocumen and Jocelyn Ocumen, appellant's father and sister, respectively, corroborated appellant's claim that on

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[9] TSN, May 18, 1998 at 6.

[10] TSN, July 13, 1998 at 8, 12-14.

[11] TSN, July 7, 1998 at 3-6.

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the day in question they were all together in their house making handicrafts.[12]

Alfredo Tabor, a resident of Barangay Malokiat, Pozorrubio, Pangasinan, testified that in the morning of February 23, 1998, he was fishing in a spring at Barangay Malokiat, Pozorrubio. There, he saw Julia Rolio, who was then washing clothes, and Juan Flores (a witness for the prosecution) about to take a bath. Between 11:00 and 12:00 o'clock noon that same day, he saw Russel Rubio and a classmate passed by. Appellant was not around nor was there an unusual incident that happened.[13]

The trial court, in its Decision dated July 31, 1998, found appellant guilty of the crime charged and sentenced him to death, thus:

"WHEREFORE, JUDGMENT of *CONVICTION* beyond reasonable doubt is hereby rendered against MORENO OCUMEN in CRIM. CASE NO. U-9590 of the crime of RAPE aggravated by relationship (between uncle and niece within the 3rd degree of consanguinity), and the Court hereby sentences MORENO OCUMEN to suffer the penalty of DEATH to be implemented in the manner as provided for by law. The accused is hereby ordered to pay Russel Rubio the sum of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages.

x x x x x x x x x

"SO ORDERED."[14]

Appellant, in his brief, ascribes to the trial court the following errors:

"I

THE TRIAL COURT ERRED IN FINDING THE APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

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[12] TSN, July 6, 1998 at 3-4; July 20, 1998 at 3-6.

[13] TSN, July 1, 1998 at 4-6.

[14] *Rollo* at 36.

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"II

THE TRIAL COURT ERRED IN ORDERING THE APPELLANT TO PAY PRIVATE COMPLAINANT THE SUM OF ₱50,000.00 AS MORAL DAMAGES AND ₱20,000.00 AS EXEMPLARY DAMAGES."

Appellant contends that the prosecution's version of the incident is unworthy of belief. He argues that Salvacion's testimony that her daughter Russel had not shown any strange behavior upon coming home from school that day and that she even returned to school after taking her lunch, has effectively discredited the evidence for the prosecution. That Russel was not also crying, when she revealed the incident to her grandmother Dominga that day, likewise indicates that she was lying.

We are not impressed.

Our consistent pronouncement is that where, as here, the issue involves the assessment of credibility of witnesses, the reviewing court will not ordinarily disturb or set aside the findings of the trial court which gave due weight and credence to their testimonies. This is so because the trial court is in a better position to decide such issue, having personally heard the witnesses and observed their deportment and manner of testifying. Such findings are accorded finality, unless the trial court has overlooked certain substantial and valuable facts appearing in the record which, if considered, might alter the result of the case.[15]

After carefully reviewing the records, we find no cogent reason to disturb the findings and conclusions of the court below: In giving full credence to Russel's declaration, it held:

"The testimony of Russel is not rehearsed or directed. On the contrary, Russel testified in a manner reflective of a 9-year old child.

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[15] *People vs. Quezada*, G.R. Nos. 135557-58, January 30, 2002, 375 SCRA 248; *People vs. Dy*, G.R. Nos. 115236-37, January 29, 2002, 375 SCRA 15; *People vs. Abacia*, G.R. Nos. 135552-53, June 21, 2001, 359 SCRA 342; *People vs. Belga*, G.R. No. 129769, January 19, 2001, 349 SCRA 678; *People vs. Viñas*, G.R. Nos. 91363-73, October 15, 1991, 202 SCRA 720; *People vs. Tismo*, G.R. No. 44773, December 4, 1991, 204 SCRA 535.

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She is positive and categorical, unswerving and sure of what she told the Court that her Uncle Moreno Ocumen pulled her to a forested area and afterwards, Ocumen removed her shortpant and panty. She further testified that Ocumen also removed his long pants and short, thereafter, Ocumen went on top of her. A portion of the penis of Ocumen was inserted to her vagina. The mere knocking at the door of the pudenda is sufficient to consummate the crime of rape (*People vs. Abella*, 228 SCRA 662 [1993]; *People vs. Tismo*, 204 SCRA 535 [1991]). It is likewise held that the briefest contact of the penis to the labia is enough to sustain conviction of a consummated rape (*People vs. Evangelista*, 282 SCRA 37 [1997]).

x x x x x x x x x

"When Russel went home accompanied by Ocumen, she emphatically and immediately reported the matter to her grandmother, Dominga Rubio, that she was '*iniyot*' (sexually abused) by Ocumen. Together with her grandmother (Dominga), they went to the *Brgy.* Captain and thereafter, to the PNP Pozorrubio where the statements of Russel (Exhibit 'E') and Dominga (Exhibit 'B') were taken."

The trial court has not overlooked substantial facts which could alter the result of the case. Its findings of fact are supported by evidence. Russel's narration has clearly established the charge that she was sexually ravished by appellant, thus:

"PROS. DUMLAO:

x x x x x x x x x

Q When you were returning home coming from the school at 11:00 o'clock in the morning of February 23, 1998, what happened?

A My uncle met me, sir.

Q What is the name of your uncle?

A Moreno Ocumen, sir.

Q You were met by your uncle Moreno Ocumen, will you please stand up and point to your uncle Moreno Ocumen?

COURT INTERPRETER: Witness stood up and pointed to a person seated inside the courtroom and, when asked his name, answered, 'Moreno Ocumen.'

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COURT:

Q Why is he your uncle?

WITNESS:

A He is the brother of my mother, sir.

Q You said, you are 9 yrs. old, when were you born?
A July 23.

COURT INTERPRETER: She does not know the year.

COURT:

Q Do you have a birth certificate?

WITNESS:

A I do not know, sir.

PROS. DUMLAO: May we manifest that the Birth Certificate[16] of the witness is now attached to the records, your Honor.

x x x x x x x x x

Q You said your uncle Moreno Ocumen met you, what did he do?

WITNESS:

A He pulled me to the forested place, sir.

Q And upon arrival at the forested place, what happened or what did Moreno Ocumen do if he did anything?
A He undressed me, sir.

Q When Moreno Ocumen undressed you, what did Moreno Ocumen do if he did anything?
A He also undressed himself, sir.

COURT:

Q When you said you were undressed, did he remove your clothes on your body?

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[16] The *certified true copy* of Russel Ocumen Rubio's Certificate of Live Birth shows that she was born on *July 29, 1989* (Exhibit "F-1", RTC Records at 7). It was offered in evidence and marked as Exhibit "F" *without objection from the defense* (TSN, June 24, 1998 at 4-5).

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WITNESS:

A Yes, sir.

Q What were removed?
A Shortpants and the panty, sir.

Q About your upper clothes?
A Not removed, sir.

Q About Moreno Ocumen, you said he also undressed, what was removed?
A The longpants and the shorts, sir.

COURT: Go ahead.

PROS. DUMLAO:

Q When Moreno Ocumen removed his shortpants and longpants, what did he do afterwards?

WITNESS:

A I was made to lay down, sir.

Q And what did he do after you were told to lay down?
A He inserted his penis to my vagina, sir.

Q After he inserted his penis to your vagina, what did he do?
A He just inserted his penis, sir.

COURT:

Q Where did he insert?

WITNESS:

A In my vagina, sir.

x x x x x x x x x

Q When Moreno Ocumen inserted his penis to your vagina, what happened to your vagina, did you feel pain?
A Yes, sir.

x x x x x x x x x

Q About his penis, what happened to his penis while inside your vagina?
A What I know is that my vagina is painful, sir."[17]

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[17] TSN, June 15, 1998 at 2-6.

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Upon cross-examination, Russel remained steadfast in her story, thus:

"ATTY. FLORENDO:

Q You stated that on February 23, at around 11:00 in the morning, you were on your way home, am I correct?
A Yes, sir.

Q And your uncle Moreno Ocumen met you on your way?
A Yes, sir.

Q And you stated also that he had sexual intercourse with you, am I correct?
A Yes, sir, he inserted his penis to my vagina.

Q And when he inserted his penis to your vagina, he inserted it all, am I correct?
A No, sir.

Q But when he inserted his penis to your vagina, you cried because of pain, am I correct?
A Yes sir."[18]

In fact, no less than Juan Flores, appellant's nephew, testified categorically that he saw appellant having sexual intercourse with Russel on the day in question, thus:

"PROS. DUMLAO: (DIRECT EXAMINATION)

Q You said Mr. Witness that you are from Brgy. Don Benito, do you know Barangay Malokiat, Pozorrubio, Pangasinan?

WITNESS:

A Yes, sir.

Q Do you know the boundary between Don Benito and Brgy. Malokiat?
A Yes, sir, it is a bridge.

Q Mr. Witness, do you know the victim Russel Rubio of Brgy. Malokiat, Pozorrubio, Pangasinan?
A I know her, sir.

x x x x x x x x x

[18] *Id.* at 3.

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Q x x x what is your relationship (with Moreno Ocumen)?
A The father of Moreno Ocumen and my father are (second) cousins, sir.

Q So he must be your uncle?
A Yes, sir.

x x x x x x x x x

Q At 11:00 o'clock in the morning of February 23, 1998, do you remember where you were Mr. witness?
A x x x I went to the spring to take a bath, sir.

Q Where is this spring you are referring to?
A At Malokiat, Pozorrubio, Pangasinan, sir.

x x x x x x x x x

Q So on your way, was there unusual incident that transpired?
A There was, sir.

Q What is that unusual incident?
A I saw Moreno Ocumen, sir.

x x x x x x x x x

Q If that Moreno Ocumen is inside the courtroom, will you point to him?
A Witness pointed to a person seated inside the courtroom and, when asked to stand and state his name, answered, 'Moreno Ocumen.'

Q When you saw Moreno Ocumen in that morning of February 23, 1998, what was he doing at that precise time and date?
A He was making push and pull movement, sir.

Q To whom did the accused making such push and pull movement?
A To Russel Rubio, sir.

Q What was the physical condition of Moreno Ocumen at the time he was making push and pull movement?
A He was naked, sir.

Q How about Russel Rubio?
A She was also naked, sir.

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Q How far were you from Moreno Ocumen at the time he was making push and pull movement?
A From the witness to the door of the court estimated to be 10 to 15 meters.

Q When he was making push and pull movement, could you tell how long was that, Mr. witness?
A About one minute because when I saw, I left.

x x x x x x x x x

COURT:

Q What was your impression why Moreno Ocumen was making push and pull movement?

WITNESS:

A I am afraid to tell x x x.

COURT:

Q Let the witness answer that question. You go to the other room together with the Public Prosecutor and the counsel.

WITNESS:

A He was making sexual intercourse, sir."[19]

The foregoing testimonies are manifestly credible. They are marked by spontaneity, honesty and sincerity. Well-settled is the rule that when a witness' testimony is straightforward, candid and unflawed by inconsistencies or contradictions in material points, as in this case, the same must be given full faith and credit.[20] As to Russel's declarations, it is inconceivable that she would publicly disclose the harrowing and humiliating sexual indignity she experienced in the hands of appellant if it really did not happen.[21]

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[19] TSN, May 25, 1998 at 3-6.

[20] *People vs. Caratay*, G.R. Nos. 119418, 119436-37, October 5, 1999, 316 SCRA 251.

[21] *People vs. Callos*, G.R. No. 133478, January 16, 2002; *People vs. Dacara*, G.R. No. 135822, October 25, 2001.

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That Russel, upon arriving home after the incident, was acting normally and was not crying do not necessarily render her testimony unworthy of belief. Behavioral psychology teaches that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted with a strange, startling or frightful experience. The workings of the human mind under such a situation is unpredictable. Similarly, not every rape victim can be expected to act conformably to the usual expectations of every one — some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion.[22] Thus, it is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected from mature persons under similar circumstances. Indeed, we have not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted by any modicum of doubt.[23]

What is certain, though, is that Russel's testimony is not contrived, for it has been bolstered by Juan Flores' account of how appellant's lustful bestiality was forced on his helpless 9-year old niece. That her femininity was indeed shattered by appellant is consistent with the medical findings of Dr. Llamas that her hymen has an *old-healed laceration* at 3:00 o'clock position.

Appellant could not even explain why the prosecution witnesses testified against him. In any case, motive is never an essential element of a crime. It becomes inconsequential in a case where, as here, there are affirmative, nay, categorical declarations toward the appellant's culpability for the felony.[24]

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[22] *People vs. Dy, supra*, citing *People vs. Buenviaje*, G.R. No. 130949, April 4, 2001, 356 SCRA 238.

[23] *Id.*, citing *People vs. Akhtar*, G.R. No. 130640, June 21, 1999, 308 SCRA 725; *People vs. Quezada, supra.*

[24] *People vs. Optana*, G.R. No. 133922, February 12, 2001, 351 SCRA 485, cited in *People vs. Dy, supra.*

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In stark contrast to Russel's convincing recital of facts is appellant's hackneyed defense of denial and alibi. An intrinsically weak defense, denial must be buttressed by strong evidence of non-culpability in order to merit credibility. It is a negative self-serving assertion that deserves no weight in law if unsubstantiated by clear and convincing evidence.[25] Here, such defense cannot stand against the positive testimonies by both Russel and Juan Flores that appellant defiled her womanhood.

Appellant's claim that he was at home in Barangay Don Benito, Pozorrubio the whole day of February 23, 1998 making some handicrafts does not persuade us. Deeply imbedded in our jurisprudence is the rule that an accused who raises the defense of alibi must not only prove his presence at another place at the time of commission of the crime, he must also establish that it would be *physically impossible* for him to be at the scene of the crime during the incident. It bears stressing that both Barangays Don Benito and Malokiat *adjoin each other* and are *located within the municipality of Pozorrubio*. Clearly, it was not physically impossible for appellant to be at the scene of the crime at that time.

We thus hold that appellant is guilty beyond reasonable doubt of rape. As the crime was committed on February 23, 1998, the law applicable is Republic Act No. 8353[26] (incorporated in the Revised Penal Code as Articles 266-A and 266-B) which took effect on October 22, 1997. The law partly provides:

"Article 266-A. *Rape; When and How Committed. — Rape is committed:*

1) *By a man who shall have carnal knowledge of a woman* under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

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[25] *People vs. No*, 368 Phil. 676 (1999).

[26] The Anti-Rape Act of 1997.

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c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

"Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article 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 of rape is committed with *any* of the following aggravating/*qualifying circumstances:*

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

x x x x x x x x x"

(Italics supplied)

Pursuant to Article 266-B, the qualifying circumstances of *minority* and *relationship* must concur. As these circumstances, if proven, raise the penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically *alleged* in the Information and *duly proved* during the trial with equal certainty as the crime itself.[27] Indeed, Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, as amended, specifically require both qualifying and aggravating circumstances to be alleged in the Information.[28]

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[27] *People vs. Padilla*, G.R. No. 137648, March 30, 2001, 355 SCRA 741.

[28] "SEC. 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

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Here, the minority of the victim — that she was 9 years old when she was raped on February 23, 1998 — and her relationship with appellant — that she is his niece or relative within the third civil degree — have been alleged in the Information and sufficiently established during the trial. The prosecution has proven that Russel was born on July 29, 1989 as shown by the certified true copy of her Certificate of Live Birth. It has likewise established that she is the niece of appellant, he being the brother of her mother Salvacion. It bears stressing that Salvacion also admitted that, appellant is her brother. Thus, we are constrained to affirm the death penalty imposed upon him by the trial court.

Finally, as regards appellant's liability for damages, we observed that the trial court failed to award the victim indemnity *ex delicto*. We have held that upon finding of the fact of rape, such award of indemnity is mandatory.[29] Pursuant to current jurisprudence, the victim should be awarded indemnity *ex delicto* in the amount of ₱75,000.00 since appellant is found guilty of qualified rape under the applicable amendatory law which authorizes the imposition of the death penalty.[30]

The award of moral damages should be increased to ₱75,000.00 considering that appellant is guilty of qualified rape.[31]

"SEC. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statue but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment."

[29] *People vs. Armando Tagud, Sr.*, G.R. No. 140733, January 30, 2002, citing *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.

[30] *People vs. Escano*, G.R. No. 140218-23, February 13, 2002; *People vs. Arizapa*, G.R. No. 131814, March 15, 2000, 328 SCRA 214.

[31] *People vs. Soriano*, G.R. No. 142779, August 29, 2002; *People vs. Sambrano*, G.R. No. 143708, February 24, 2003.

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Also, we have to increase the exemplary damages to ₱25,000.00 to deter other individuals with perverse tendencies and aberrant sexual behavior.[32]

Three members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray* that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, the Decision of the Regional Trial Court, Branch 46, Urdaneta, Pangasinan, in Criminal Case No. U-9590, convicting appellant Moreno Ocumen *y* Mendoza *alias* Moring of *qualified rape* and sentencing him to suffer the *penalty of death*, is hereby *AFFIRMED* with the *modification* that he is ordered to pay the victim, Russel Ocumen Rubio, ₱75,000.00 as indemnity *ex delicto*; ₱75,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

In consonance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this Decision, let the records of this case be forwarded to the Office of the President for the possible exercise of her pardoning power.

Costs *de oficio*.

SO ORDERED.

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

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[32] *People vs. Montemayor*, G.R. No. 124474 and Nos. 139972-78, January 28, 2003; *Belonghilot vs. RTC of Zamboanga City*, G.R. No. 128512, April 30, 2003; *People vs. Docena*, 379 Phil. 903(2000).