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This case is *REMANDED* to the Labor Arbiter for the computation, within thirty (30) days from receipt of this Decision, of the backwages, inclusive of allowances and other benefits, due to Potenciano L. Galanida for the time his dismissal was ineffectual from 1 September 1994 until 4 October 1994.

Labor Arbiter Dominador A. Almirante and Atty. Loreto M. Durano are *ADMONISHED* to be more careful in citing the decisions of the Supreme Court in the future.

SO ORDERED.

Davide, Jr., C.J. (Chairman), *Panganiban, Ynares-Santiago,* and *Azcuna, JJ.*, concur.

FIRST DIVISION

[G.R. No. 148401. November 18, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REGINALD M. GUILLERMO *alias* "REGIE,"** *appellant.*

SYNOPSIS

While the trial court found appellant guilty of rape, the Court ruled otherwise.

On the allegation that complainant, who was 11 years old at the time she took the witness stand, cannot be considered a credible witness because of her immaturity and mental deficiency, making her incapable of perceiving facts for which she was being examined and making known her perception to others truthfully, the Court ruled that a mentally retarded person is not for this reason alone disqualified from being a witness. Nevertheless, the prosecution failed to positively and properly identify appellant as the perpetrator of the crime. The question asked by the prosecution was if complainant knew appellant.

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Being a neighbor for a long time, complainant naturally nodded her head and even went down the witness stand to touch appellant. The judgment of the trial court was reversed and set aside, and *the appellant was acquitted.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.** – The disposition of rape cases is governed by the following guidelines: (1) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the person accused although innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense.

2. **REMEDIAL LAW; EVIDENCE; WITNESSES; TESTIMONY OF A MENTAL RETARDATE; ACCEPTANCE THEREOF DEPENDS ON THE QUALITY OF THE PERSON'S PERCEPTIONS AND MANNER TO MAKE THEM KNOWN TO THE COURT.** – On several instances, we have ruled that a mentally retarded person is not for this reason alone disqualified from being a witness. In *People v. Munar*, although the complainant therein was a 19-year old female, with a mental age of a 5-year old, we still held that she was a competent witness. We therein relied on the findings of the trial court that complainant's answer were intelligible enough to be understood. The complainant therein could convey her thoughts by words and signs. Furthermore, an examining physician from the National Mental Hospital was presented in that case who testified that the mental deficiency of the witness did not prevent her from recalling painful experiences. In *People v. Gerones,* we found, upon close examination of the records, that the victim managed to communicate her ordeal to the court clearly and consistently. The trial court found the victim therein to have the mental capacity of a ten-year old. Hence, we declared that we were convinced that a ten-year old girl could adequately narrate facts which show that she had been raped. The acceptance of a mental retardate's testimony therefore, as in the case of other witnesses, must still depend on its nature and credibility

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or, otherwise put, the quality of the person's perceptions and the manner he can make them known to the court.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT GENERALLY RESPECTED.** – To warrant conviction in a case of rape, the victim's testimony must be clear and free from contradictions for the reason that in prosecuting offenses of this nature, conviction or acquittal virtually depends entirely on the credibility of the complainant's narration since usually, only the participants can testify to this occurrence. When the credibility of the witnesses is in issue, the trial court's assessment is accorded great weight for it has the unique advantage of monitoring and observing at close range the demeanor, deportment, and conduct of the witnesses as they regale the trial with their testimonies. In the case at bar, however, we find cogent reason to depart from this rule.

4. **ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; NOT PRESENT WHERE IDENTITY OF ACCUSED AS PERPETRATOR OF THE CRIME NOT ESTABLISHED.** – We have previously held that there is no law stating that a police line-up is essential to proper identification. What is important is the positive identification of the accused as the perpetrator of the crime by the witness in open court. However, in the case at bar, the complainant was not able positively to identify appellant in her testimony as the person who committed the crime against her. The question asked by the prosecution was if she knew "Egie," appellant. Appellant Guillermo and the complainant have been neighbors for a long time, their houses several meters apart from each other. In answer to the prosecution's question, complainant naturally nodded her head and even went down the witness stand to touch appellant. Although appellant presents a weak defense in this case, denial and alibi, the fact remains that no positive and proper identification has been made by the prosecution witnesses. The prosecution has the *onus probandi* in establishing the guilt of the accused. Conviction should always rest on the strength of the prosecution's evidence never on the weakness of that of the defense. We find that the evidence presented by the prosecution herein is not sufficient to overcome the presumption of innocence in favor of the accused.

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APPEARANCES OF COUNSEL

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

D E C I S I O N

AZCUNA, *J.*:

Reginald M. Guillermo appeals the April 18, 2001 Decision[1] of the Regional Trial Court of Aparri, Cagayan, Branch 8, in Criminal Case No. 08-1087. The court *a quo's* decision found him guilty beyond reasonable doubt of rape, as follows:

WHEREFORE, the Court finds accused, Reginald M. Guillermo, guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay Renalyn Guartico and/or her parents the amount of Seventy Five Thousand Pesos *(₱75,000.00) as moral damages; Fifty Thousand Pesos (₱50,000.00)* as civil indemnity and Twenty Thousand Pesos (₱20,000.00) as and by way of Attorney's fees.

SO ORDERED.[2]

The Information,[3] dated March 20, 1998, charged appellant in these words:

That on or about October 9, 1997, in the municipality of Gonzaga, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by the use of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of the offended party, a woman under twelve years of age, deprived of reason and/or demented, all against her will and consent.[4]

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[1] *Rollo*, pp. 18-32.

[2] *Id.*, p. 32.

[3] *Id.*, p. 8. The Information was signed by 1st Assistant Provincial Prosecutor Romeo B. Saquing.

[4] *Ibid.*

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During his arraignment on August 5, 1998, appellant, with the assistance of his counsel,[5] pleaded not guilty to the charge.[6] After trial on the merits, appellant was found guilty as aforementioned.

The prosecution presented witnesses whose testimonies are as follows:

Dr. Mila Maranta, the Municipal Health Officer of Gonzaga, Cagayan, who testified that she examined the complainant on October 10, 1997, approximately two hours after the alleged sexual assault. The examination revealed that complainant sustained full thickness lacerations with bleeding which appeared to have been caused by forceful penetration of a hard object, possibly a penis, indicating that complainant is a possible victim of sexual abuse. It was noted therein that there was still fresh blood and profuse bleeding during the examination. [7] Her report reads thus:

#mentally retarded

Genital Examination: Positive active bleeding at the hymen; full thickness laceration with bleeding noted at 12, 01, 3, 5, 7, 9, and 11 o'clock positions.[8]

Carmencita Omotoy Guartico, 50 years old and a resident of Barangay Amunitan, Sta. Ana, Cagayan, testified that she is the mother of complainant. At around 4:00 p.m. of October 9, 1997, she was sitting at the terrace of their house together with her husband, Renato Guartico, and her sister-in-law, Josefina Omotoy. She noticed her daughter, complainant Renalyn, running after their dog outside their fence. Thirty minutes later, she again saw Renalyn in front of their gate, stooping and asking for her father. She asked her daughter where she had been, and Renalyn answered that she had been raped. This information

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[5] Accused was assisted by Atty. Romeo S. Garcia.

[6] See Order dated August 5, 1998; records, Vol. I, p. 43.

[7] TSN, September 8, 1998, pp. 11-13.

[8] Exhibit A-2; Records, p. 18.

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was conveyed to her by her daughter by the latter holding her buttocks and making a pumping motion backward and forward. Carmencita then pulled down Renalyn's shorts and saw blood on the genital area and buttocks. Renalyn pointed to the direction of the house of the Guillermos, which was forty meters away. She motioned to her mother that someone covered her mouth, made a slashing gesture across her throat, and inserted his hands under her shorts.

Upon seeing her child in this condition, Carmencita ran towards the road to see if her husband had already arrived. She found her husband and told him that something happened to their daughter. Her husband followed her back to their house and likewise pulled down the shorts of Renalyn to see where the blood was coming from. Then, her husband put the child's shorts back on and carried her daughter to the house of the Guillermos. Upon reaching the said house, they saw a person asleep with his head on the table in front of the house. They did not recognize the person, so they asked Emelita Guillermo, the accused's mother, who this person was. They were told that the person's name is Joey Villegas and that he was dead drunk. Her husband then carried their daughter upstairs to where she was pointing. Carmencita testified that she remained downstairs and waited for her husband and daughter.

Thereafter, they brought their daughter to the Don Alfonso Ponce Enrile Memorial District Hospital in Gonzaga, Cagayan where she was examined. They arrived in the hospital before 6 p.m. After their daughter was examined, they proceeded to the Gonzaga Police Station and reported that their daughter was raped. They returned home at around 7:00 p.m., accompanied by two policemen, and immediately went straight to the house of the Guillermos and asked Mr. and Mrs. Guillermo if the person named Joey Villegas was still there. The spouses Guillermo replied that Joey Villegas had already left at around 6:30 p.m. The two policemen then told the spouses Guillermo that they were inviting all those who were in the house during the alleged incident to the police station the next day.

In the afternoon of October 10, 1997, Feliciano Guillermo, Reginald Guillermo, the *barangay* captain of Amunitan, Abraham

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Gallardo, Joey Villegas, and Nanding Taguba went to the police station in Gonzaga. Carmencita testified that she was also there together with her husband and daughter, Renalyn. Her daughter was then asked in Ilocano by the Chief of Police to point to the person who allegedly raped her. Carmencita saw her daughter approach the accused and hold his hand. Then, her daughter pointed to the accused and said in Ilocano that he was the one who raped her.

Again, on October 11, 1997, another confrontation was held at the police station. Reginald Guillermo, Abraham Gallardo, Onioc Palor, Joey Villegas, Feliciano Guillermo, Randy Castillo, and two other persons who were allegedly at the house of the Guillermos on the day of the alleged incident were made to appear at the police station where the Chief of Police again asked the complainant to point to the person who raped her. According to Carmencita, her daughter once again pointed to Reginald Guillermo and allegedly even touched the latter.[9]

Complainant *Renalyn Guartico* was 11 years old when she took the witness stand. The prosecution manifested before complainant was called to the witness stand that she will try her best to testify orally. Although, she will mostly testify through sign language. Complainant was first asked if she knew 'Egie,' the appellant. Complainant answered by uttering, "Oh." She was then asked to step down from the witness stand and touch the accused, which she did. Upon being asked what the accused did to her, complainant caressed her legs and said, "*Daya*." The prosecution counsel then made some gestures indicating having sex and asked complainant if accused did that to her. Complainant responded by making a circle with her thumb and forefinger, then inserted her other forefinger into it. She then pushed and pulled the forefinger in and out of the circle. Then, prosecution counsel brought his forefinger at his neck, making a slashing motion, and asked complainant if the accused did that to her. Complainant nodded her head and imitated the prosecution counsel's gestures. The latter then put his forefinger

[9] TSN, March 18, 1999, pp. 5-47; TSN, April 20, 1999, pp. 3-24.

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on his lips and asked if the accused asked her to keep silent. Complainant nodded her head in answer. Finally, prosecution counsel held his hands behind him in a cross position and asked complainant if accused held her hands that way. Complainant again nodded her head in response to the question.[10]

For its part, the defense presented the following witnesses, who testified, thus:

Emelita Guillermo, 38 years old and a housewife, testified that she is the mother of appellant. On October 9, 1997, she arrived at her house in Amunitan, Gonzaga at around 10:00 a.m. together with her children Reylife, Reygil, Reynold, and Reycis, having came from a wake. Her other son, Reginald, the accused in this case, was not with them. He was allegedly out fishing. Although appellant was enrolled for that school year, he did not go to school that day because he did not have any money for transportation going to school.

When Emelita and her children got home from the wake of a certain Andres Manuel, they saw some men drinking gin in front of their house. They were Randy Castillo, Ernesto Palor, Jr., Joey Villegas, and Rodel Manuel. These men also came from the wake. They stayed in the house of the Guillermos until 4:00 p.m. After the men had left, Emelita testified that Carmencita and Renato Guartico went to their house together with their daughter Renalyn. They started asking about the whereabouts of her son, Reginald. She told them that her son was not at home. Thereafter, Renato Guartico asked permission to go up the stairs of their house. She went upstairs with them and there, she saw Renato Guartico ask his daughter where she was molested. Renalyn responded by just waving her hand. Afterwards, they all proceeded downstairs and encountered a person sleeping in their yard. Carmencita and Renato asked the witness who that person was. She answered that the person was Joey Villegas. The couple and their daughter thereafter left.

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[10] TSN, January 26, 2000, pp. 4-14.

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At around 6:00 p.m., appellant arrived home. She asked him where he came from. He answered that he had just come from fishing. She then told him that Carmencita and Renato Guartico had been looking for him earlier that day. He asked her why and she responded that the spouses Guartico claimed that he raped their daughter, Renalyn. Allegedly, her son responded, "Oh, I [should] be ashame[d]."

The next morning, Reginald went to school. On that day, Carmencita Guartico again came to their house and said that they want to take appellant to the town proper. Emelita answered that they could not take appellant with them because he was in school. Eventually, her husband fetched their son from his school and brought him to the police station as requested by the Guarticos.

Finally, Emelita testified that her family and the Guarticos used to be in good terms with each other until the Guarticos started claiming that they own the land on which the Guillermos' house stands. According to Emelita, they were asked by the Guarticos to vacate the land, but her family refused. The land is allegedly the property of a certain Barangay Captain Bumanglag, from whom the Guillermos sought the permission to build their house on the said land.[11]

The second witness for the defense was *Reginald M. Guillermo* himself. Appellant was 18 years old, single, and a student when he testified. He alleged that on October 9, 1997, at 10:00 a.m., he was fishing for freshwater fish at the ricefield of one Berto Julian. He was with his friend, Michael Esteban. Although it was a school day and he was enrolled for that school year, he did not attend his classes that day since he did not have any money for transportation going to school.

According to appellant, the ricefield was only three to four kilometers from their house. After fishing, he helped the mother of Michael Esteban with the threshing of the *palay*. He did not return to their house until 6:00 p.m. From 10:00 a.m. to 6:00 p.m., he never left the ricefield of Berto Julian. When he arrived

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[11] TSN, March 7, 2000, pp. 2-27.

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at his house, he saw his parents and some visitors. One of these visitors is Joey Villegas. He was told by his parents that something happened to the daughter of their neighbor, Carmencita. He was likewise told by his parents that the Guarticos were accusing him of raping their daughter. He told his parents that he did not do it.

The next day, he went to school. After his classes, as he was on his way home, he was met by his father who told him that he must go to the police station since he was needed there to answer some questions. Hence, he proceeded to the police station accompanied by his father and two other men, including one Nanding Taguba. Upon their arrival there, he saw the other men who were at their house the previous day. These men were Randy Castillo, Rodel Manuel, Ernesto Palor, Jr., and Joey Villegas. He also saw there Renato Guartico, Carmencita Guartico, and their daughter, Renalyn. The policemen first asked him and the other men to sit on a bench. Then, Renato Guartico asked his daughter, both orally and in sign language, who among them raped her. According to appellant, the complainant first pointed to the Chief of Police. Then, complainant pointed to the other policemen in the room. Renato Guartico then repeated his question. This time, complainant pointed to him. Thereafter, Renato Guartico said, "See, he is really the molester." Upon hearing these words, appellant cried and answered that he does not know anything about the rape of his daughter. He denied ever raping complainant Renalyn.[12]

Michael Esteban, 22 years old, single, and a resident of Amunitan, Gonzaga, Cagayan, testified that he and appellant Reginald Guillermo were together on October 9, 1997. He arrived at the ricefield of Berto Julian on that day at 10:00 a.m. to help his parents, Marcelino and Vina Esteban, thresh *palay*. When he got there, he saw appellant already fishing. Appellant and the witness know each other since they were classmates during their first year in high school. Michael then joined appellant in fishing while his parents started threshing the *palay*. The witness

[12] TSN, March 7, 2000, pp. 28-39.

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testified that appellant left at around 6:00 p.m. Before appellant left, however, he first helped Marcelino and Vina Esteban in threshing the *palay*. The witness allegedly did not leave the ricefield before 6:00 p.m. Neither did he see appellant leave the ricefield before the latter left for home.[13]

Joey Villegas, 28 years old, married, and a farmer residing in Amunitan, Gonzaga, Cagayan, testified that he was one of the men having a drinking spree in the house of appellant on October 9, 1997. He knows appellant and his family since they live in the same *barangay*. The witness testified that he arrived at the house of Feliciano Guillermo on the day of the alleged incident at around 10:00 a.m. He was with several other companions and they had come from the wake of his uncle, Andres Manuel. They brought with them one bottle of gin. They usually go to the house of Feliciano Guillermo to drink. According to him, Feliciano Guillermo just took one shot of gin with them and thereafter left their group. The witness also saw Carmencita Guillermo there at the house since they met her in the yard when they arrived. He and the other men who were with him drinking left the house of the Guillermos at around 6:00 p.m.

The witness added that he did not see appellant in the house on the day of the alleged incident. He also did not see complainant Renalyn in the house of the Guillermos on that day. In fact, he claimed that he was not acquainted with complainant Renalyn until the next day, or on October 10, 1997, when he and the other men who were at the drinking spree were invited by a *barangay* councilman, at the request of Carmencita Guartico, to appear at the police station. At the station, a child was asked to point who among them raped her. The witness claimed that he later learned that this child was complainant Renalyn. The complainant, upon being asked that question, allegedly pointed to him. Then, she pointed to the Chief of Police and the other policemen standing in the room. Finally, she pointed to appellant Reginald Guillermo.[14]

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[13] TSN, April 12, 2000, pp. 23-39.

[14] TSN, July 24, 2000, pp. 2-25.

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SPO3 Rolly M. Torres, 40 years old, married, and a policeman of Gonzaga, Cagayan, testified that at around 6:00 p.m., in the evening, Carmencita Guartico came and reported that her daughter, complainant Renalyn, was raped by a certain Joey Villegas. He immediately accompanied Carmencita Guartico, along with another policeman, to the house of the Guillermos where the alleged incident occurred. When they got there, they asked for Joey Villegas and the people who were drinking with him. They were told, however, that Joey Villegas and the other men had already left. The witness claimed that he did not see appellant Reginald Guillermo around the house when they came that day.

The next morning, the witness further said, he endorsed the case to another policeman, Wilfredo Cortez, who in turn, invited appellant, Joey Villegas, and the other men to appear at the police station. They also invited Carmencita Guartico together with her daughter so that the latter may identify the person responsible for the alleged rape. Thus, on that day, October 10, 1997, in the police station, they asked complainant Renalyn who among the men present committed the alleged rape. Complainant Renalyn touched all the men present in the room, including appellant and all the policemen watching the procedure. They again asked the same men to appear at the police station the next day, or on October 11, 1997. The same thing happened during the second confrontation. Complainant Renalyn was again asked who among the men present raped her. Again, the complainant went up to the men and touched them one by one, including appellant.[15]

In its decision finding appellant guilty of rape, the court *a quo* heavily relied on the testimony of complainant Renalyn. It noted that although complainant communicated to the court mostly in sign language, deciphered and put into words by the court interpreter, the testimony of complainant was candid and straightforward, albeit a little playful. The trial court further held that appellant's alibi that he was not at the scene of the

[15] TSN, November 22, 2000, pp. 2-12.

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alleged crime on that day cannot hold true over the positive identification of him by the complainant.

Hence, this appeal on the following assignment of errors:

I

The lower court erred in giving credence to the incredible and inconsistent testimony of Renalyn Guartico who is mentally retarded.

II

The lower court erred in convicting the accused-appellant of the crime of rape considering that the prosecution failed to establish the identity of the perpetrator beyond reasonable doubt.

III

The lower court erred in convicting the accused-appellant of the crime of rape when the latter's guilt was not proven beyond reasonable doubt.[16]

The disposition of rape cases is governed by the following guidelines: (1) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the person accused, although innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense.[17]

We proceed to apply these principles.

Appellant's counsel points out that the complainant Renalyn cannot be considered a credible witness on the ground that her immaturity and mental deficiency make her incapable of perceiving facts for which she was being examined and making known her perception to others truthfully.

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[16] Appellant's Brief, p. 1; *Rollo*, p. 44.

[17] *People v. Aguinaldo*, 316 SCRA 819, 829 (1999).

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On several instances, we have ruled that a mentally retarded person is not for this reason alone disqualified from being a witness. In *People v. Munar*,[18] although the complainant therein was a 19-year old female, with a mental age of a 5-year old, we still held that she was a competent witness. We therein relied on the findings of the trial court that complainant's answers were intelligible enough to be understood. The complainant therein could convey her thoughts by words and signs. Furthermore, an examining physician from the National Mental Hospital was presented in that case who testified that the mental deficiency of the witness did not prevent her from recalling painful experiences. In *People v. Gerones*,[19] we found, upon close examination of the records, that the victim managed to communicate her ordeal to the court clearly and consistently. The trial court found the victim therein to have the mental capacity of a ten-year old. Hence, we declared that we were convinced that a ten-year old girl could adequately narrate facts which show that she had been raped. The acceptance of a mental retardate's testimony, therefore, as in the case of other witnesses, must still depend on its nature and credibility or, otherwise put, the quality of the person's perceptions and the manner he can make them known to the court.[20]

To warrant conviction in a case of rape, the victim's testimony must be clear and free from contradictions for the reason that in prosecuting offenses of this nature, conviction or acquittal virtually depends entirely on the credibility of the complainant's narration since usually, only the participants can testify to this occurrence.[21] When the credibility of the witnesses is in issue, the trial court's assessment is accorded great weight for it has the unique advantage of monitoring and observing at close range the demeanor, deportment, and conduct of the witnesses as

[18] 131 SCRA 44, 46 (1984).

[19] 193 SCRA 263, 267 (1991).

[20] *People v. Salomon*, 229 SCRA 403, 409 (1994).

[21] *People v. Castillon*, 217 SCRA 76 (1993).

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they regale the trial with their testimonies.[22] In the case at bar, however, we find cogent reason to depart from this rule.

It is clear in this case that the witness' testimony was not positive, clear, plain, coherent, and credible. Complainant's testimony, which consisted mostly of gestures and incomprehensible sounds, is as follows:

xxx xxx xxx

COURT:

> That rule refers [sic] by defense counsel . . . If you follow that theory apply [sic] to the victim to testify on her behalf, *how can we prove the case for the victim herself? So let us* try and see, oral or sign.

ORDER . . .

> Considering the mental capacity of the victim, the Court *allows direct questions to be asked. You may proceed.*

ATTY. ANTONIO:

Q Do you know Egie?

A The witness uttered the word, "OH . . ."

Q Will you go down and touch Egie?

COURT:

> Make on record that there are only two (2) male persons among *in the group of the ladies seated in the bench which* [sic] is wearing white T-shirt and one (1) yellow jacket.

ATTY. ANTONIO:

Q. Will you point [to] Egie?

COURT:

> The witness went down from the witness stand and points to one of the two (2) male persons wearing yellow jacket and [who] gave his name as Reginald Guillermo *alias* Regie.

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[22] *People v. Madronio*, G.R. Nos. 137587 & 138329, July 29, 2003 citing *People v. Ramos*, G.R. No. 142577, December 27, 2002.

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ATTY. ANTONIO:

Q. What did Egie do to you?

A *The witness caress[ed] her two (2) legs saying "daya."*

Q What else did Egie do to you, will you demonstrate?

A The witness is pointing to the same person she pointed at a while ago.

Q. Did Egie do like this to you?

(Atty. Antonio made a sign by making sex)

INTERPRETER:

As demonstrated by the witness, she made a circle with her thumb and right finger and with her forefinger inserted to that circle and made [a] push and pull motion.

ATTY. ANTONIO:

Q. Did Egie make like this to you?

(We go on record that counsel placed his forefinger at his neck like a slashing motion)

A. Witness nodded her head and made at the same time at her neck a slashing motion.

Q. Did Egie make a like this to you?

(Counsel made his forefinger on his lips as if to keep silent)

A. Witness nodded signifying her answer "yes."

Q. *Did Egie hold your hands like this?*

(Counsel made a demonstration as if her hands placed at his back in a cross position)

A. Witness nodded her head signifying her answer "yes."

Q. When Egie did this to you, did you say "a *manong*"? (Counsel made a push and pull motion)

A. Witness demonstrated by imitating the motion making her thumb by inserting the finger making a push and pull motion [and] witness answered by nodding her head.

ATTY. ANTONIO:

No further questions, your Honor.

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xxx xxx xxx.[23]

Clearly, the details of how the rape was committed were supplied by the prosecution counsel in the form of questions propounded to the complainant. In response, complainant simply nodded her head and imitated the prosecution counsel's gestures. However, upon cross-examination, it was shown that complainant answered all questions asked to her by either nodding her head, uttering "oh," or imitating the other persons gestures. At one point during the cross-examination, the defense counsel asked complainant if she knew what was candy and whether she liked it or not. The complainant simply nodded her head. Then, defense counsel held up a pen and asked if what he was holding was candy. The complainant again nodded her head. Later, defense counsel pointed to the public prosecutor who was seated in the courtroom and asked complainant if that was her father. In response, complainant uttered "oh" and again nodded her head.[24]

The complainant's testimony upon cross-examination is as follows:

COURT:

Cross-examination?

ATTY. PASCUAL:

With leave of Court:

COURT:

Proceed.

ATTY. PASCUAL:

Q. Do you know what [this is]? (Counsel showed the witness a ballpen)

A. Witness answered by nodding her head, no.

Q. Is this candy?

A. Witness answered by nodding her head.

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[23] TSN, January 26, 2000, pp. 7-10.

[24] TSN, January 26, 2000, pp. 11-14.

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Q. Egie used his left thumb and inserted the same to your fingers? (Counsel demonstrating to witness that his left thumb inserted to the fingers of the victim)

A. The witness answered the question by nodding.

Q. He did not use his penis but his fingers, is that correct?

ATTY. ANTONIO:

Your Honor, I believe the mental capacity of witness should be [understood] and I think she cannot understand the question.

ATTY. PASCUAL:

The witness is presented to . . .

COURT:

Ask another question.

ATTY. PASCUAL:

Q. Do you know what is a penis?

A. The witness answered the question by placing her forefinger vertical her nose.

Q. *Do you know an ant?*

A. Yes, sir. Witness answer by nodding.

Q. An ant is a big as this (referring to the forefinger).

A. The witness imitated the defense counsel by raising her forefinger.

Q. If an ant would bite you, will you say *aray*?

A. Witness answered by nodding.

Q. When Egie put your hands at your back, [did] you say "*aray*"?

A. Witness answered by nodding and she [imitated] by placing her right leg and upper right leg and upper right arm on the chin and touch one after the other.

Q. Egie only held your legs, am I right?

A. The witness touched her legs one after the other.

Q. He did not insert his [penis] into your vagina?

A. Witness did not answer the question.

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Q. Do you know what a [penis] looks like?

A. The witness answer[ed] the question propounded by defense counsel by placing her forefinger vertical her nose.

Q. Do you know what is a vagina?

A. Witness pointed with her finger the location of her vagina.

Q. Egie inserted his fingers into your vagina?

A. Witness answer[ed] the question by placing her forefinger vertical her nose.

Q. Is he your father? (Counsel pointing to Fiscal Cortes)

A. Witness answered by nodding her head.

Q. And he is Egie (Counsel is referring to Atty. Frederick Aquino).

A. The witness uttered the words "OH" and placed her forefinger again vertically to her nose.

ATTY. PASCUAL:

I believe that will be all for the witness, your Honor.

With respect to the second issue, we agree with the defense that the prosecution failed to establish the identity of the perpetrator beyond reasonable doubt. We have previously held that there is no law stating that a police line-up is essential to proper identification.[25] What is important is the positive identification of the accused as the perpetrator of the crime by the witness in open court.

However, in the case at bar, the complainant was not able positively to identify appellant in her testimony as the person who committed the crime against her. The question asked by the prosecution was if she knew "Egie," appellant. Appellant Guillermo and the complainant have been neighbors for a long time, their houses several meters apart from each other. In answer to the prosecutions question, complainant naturally nodded her head and even went down the witness stand to touch appellant.

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[25] *People v. Lubong*, 332 SCRA 672, 682 (2000) citing *People v. Salguero*, 198 SCRA 357 (1991).

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In *People v. Rondina*,[26] the complainant, a mentally-retarded woman, pointed to her attackers no less than *four* times. First, the complainant therein identified the said men at the police station; second, during the preliminary investigation conducted by the municipal judge; third, during the reinvestigation conducted by the provincial fiscal; and fourth, at the trial itself, while clearing a third person she was also asked to identify. Moreover, in the case therein, another prosecution witness testified that on that fateful evening, he passed by complainant who was with three men, two of whom were later identified by the complainant as her attackers.

Although appellant presents a weak defense in this case, denial and alibi, the fact remains that no positive and proper identification has been made by the prosecution witnesses. The prosecution has the *onus probandi* in establishing the guilt of the accused.[27] Conviction should always rest on the strength of the prosecution's evidence, never on the weakness of that of the defense.[28] We find that the evidence presented by the prosecution herein is not sufficient to overcome the presumption of innocence in favor of the accused.

WHEREFORE, the assailed judgment of the Regional Trial Court of Aparri, Cagayan, Branch 8, is hereby *REVERSED* and *SET ASIDE*. Appellant Reginald M. Guillermo is hereby *ACQUITTED* on the ground of reasonable doubt, and his *IMMEDIATE RELEASE* from prison is hereby *ORDERED*, unless he is otherwise detained for any other lawful or valid cause.

No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Ynares-Santiago, and *Carpio, JJ.*, concur.

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26 149 SCRA 128, 137 (1987).

27 *People v. Mansueto*, 336 SCRA 715, 724 (2000).

28 *People v. Ratunil*, 334 SCRA 721, 723 (2000).