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SECOND DIVISION

[G.R. Nos. 140034-35. August 14, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff and appellee, vs.* **RODOLFO ZABALA** *y* **BACORRO**, *accused-appellant.*

SYNOPSIS

Appellant was convicted of two (2) counts of rape committed against Joenalyn. The first rape was committed while the victim was six (6) years old and the second was committed while she was seven (7) years old. Appellant's vile acts were discovered a year after when Joenalyn's father saw appellant drag Joenalyn down the stairs and touched her vagina. This prompted Joenalyn's mother to ask Joenalyn if appellant did anything else to her and it was then that Joenalyn narrated her ordeals in the hands of appellant.

On appeal, appellant assailed the credibility of Joenalyn's testimony.

The Supreme Court affirmed appellant's conviction on appeal, ruling: that the testimony of child-victims of rape is given full weight and credence; that appellant's mere denial is insufficient proof that no rape was committed, especially in the light of the victim's straightforward and consistent testimony; that proof of hymenal lacerations is not an element of rape; that the delay in the report of the crime was sufficiently explained when the victim said that she was afraid the appellant would box her; and that neither crampness of the room, the presence of other people nor the high risk of being caught has been held sufficient and effective obstacles to deter the commission of rape.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF CHILD-VICTIMS OF RAPE IS GIVEN FULL WEIGHT AND CREDENCE; CASE AT BAR. — Testimony of child-victims of rape is given full weight and credence. Our courts usually give great weight to the testimony of the victim of sexual assault, especially where the victim, is a minor. Here,

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the victim vividly recalled details that a child her age, only 9 at the time of the trial, could not have possibly concocted. The victim positively identified appellant in court as the one who raped her. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape, if what she claims is untrue.

2. **ID.; ID.; ID.; NOT AFFECTED BY DELAY IN REPORTING THE CRIME WHEN SUFFICIENTLY EXPLAINED; CASE AT BAR.** — The delay in reporting the crime which was over one (1) year was sufficiently explained in court when she said that she was afraid the appellant would box her. We take judicial notice that it is not uncommon for young girls to conceal for some time the assault on their virtue because of the rapist's threat on their lives. To the mind of a child of tender years, threats of physical harm would instill in her an overwhelming fear and force her to keep her silence.

3. **ID.; ID.; ID.; NEITHER CRAMPNESS OF ROOM, PRESENCE OF OTHER PEOPLE NOR HIGH RISK OF BEING CAUGHT HAS BEEN HELD SUFFICIENT OBSTACLES TO DETER COMMISSION OF RAPE; CASE AT BAR.** — We likewise reject the contention of the appellant that it was impossible for him to have committed the crime because, as the victim herself testified, she was always accompanied by members of her family. It is well-nigh impossible for her to be accompanied by some other person every single second of her life. Besides, it is a truism that lust has no regard for time and place. Neither the crampness of the room, nor the presence of other people there, nor the high risk of being caught has been held sufficient and effective obstacles to deter the commission of rape.

4. **ID.; ID.; ID.; CLEAR AND STRAIGHTFORWARD TESTIMONY PREVAILS OVER MERE DENIAL; CASE AT BAR.** — Appellant's mere denial is insufficient proof that no rape was committed, especially in the light of the victim's straightforward testimony which was consistent on material points. We have held that mere denial, which is unsubstantiated and uncorroborated by clear and convincing evidence, is self-serving and has no weight in law.

5. **ID.; ID.; ID.; ABSENCE OF FRESH INJURIES IN VICTIM'S PRIVATE PARTS DOES NOT NEGATE RAPE; CASE AT BAR.**

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– On the findings of the medico-legal officer, Dra. Estela Guerrero-Manalo, we hold that they do not negate rape. Absence of fresh injuries in complainant's private parts would not negate rape since proof of hymenal lacerations is not an element of rape. The presence of healed scars is also not an essential element. Introduction of the male organ within the *labia majora* of the *pudendum* of the female organ is enough to constitute the offense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the decision[1] dated September 8, 1999 of the Regional Trial Court of Makati City, Branch 62, convicting accused-appellant Rodolfo Zabala *y* Bacorro of two counts of rape in Criminal Case Nos. 99-377 and 99-378. The decision sentenced the appellant, in each of the cases, to suffer the penalty of *reclusion perpetua* and to pay complainant Joenalyn Borigas *y* Cases the sum of ₱50,000.00 as moral damages.

The information in Criminal Case No. 99-377 against appellant Rodolfo Zabala *y* Bacorro alleges:

That in or about and sometime during the school year 1996-1997, in the City of Makati, Philippines 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 carnal knowledge with complainant JOENALYN BORIGAS *Y* CASES, a grade one pupil, who is six (6) years old, against her will and consent.

CONTRARY TO LAW.[2]

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[1] Records. pp. 184-190.

[2] *Rollo*, p. 6.

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In Criminal Case No. 99-378, the information reads as follows:

That in or about and sometime during the School year 1997-1998, in the City of Makati, Philippines 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 carnal knowledge with complainant JOENALYN BORIGAS *Y* CASES, a grade two (II) pupil, who is seven (7) years old, against her will and consent.

CONTRARY TO LAW.[3]

Upon arraignment, appellant pleaded not guilty to both charges. Trial on the merits ensued.

The State presented five witnesses, namely, SPO4 Lilia Hogar, Mrs. Charina[4] Cases Borigas, complainant Joenalyn C. Borigas, Charlie Macawili and Dra. Estela Guerrero-Manalo. From the testimonies of the five prosecution witnesses in both cases, it appears that the first rape happened at the second floor of appellant Rodolfo Zabala's house sometime during the school year 1996-1997, when complainant Joenalyn was in Grade I. Allegedly, Rodolfo carried Joenalyn and there pulled down her shorts and underwear. He removed his brief, placed himself on top of Joenalyn, and then forced his penis into the innocent child's vagina. She felt pain. A few minutes later, Rodolfo pulled it out of Joenalyn and she saw something white come out of his penis. Rodolfo then directed Joenalyn to dress herself up and threatened her that if she told anybody of what he did to her, he would give her a blow.[5]

The second time was about a year after, during the school year 1997-1998. This time, Joenalyn was already in Grade II.[6] Rodolfo, again impelled by his overwhelming desire to satisfy sexual urges, took Joenalyn and managed to carry her to the second floor of his house. In the same manner, Rodolfo raped the young child again. She was then only seven years old.[7]

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[3] *Id.* at 7.

[4] Sometimes spelled as "Carina" in other parts of the Records.

[5] TSN. 5 April 1999. pp. 6-10.

[6] *Id.* at 8.

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

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Appellant's vile acts were discovered when he decided to satisfy his lustful desires again on January 24, 1999, at around 7:15 in the evening. Appellant approached Joenalyn and told her that they will go to the house of a certain "*Tiyong* Indo" because nobody was there. She refused because she was frightened Rodolfo might give her a blow. Instinctively, she tried to run upstairs to her house. Rodolfo, however, managed to grab Joenalyn's right foot and drag her down.[8] He then touched the frightened child's vagina.[9] Rodolfo immediately desisted when complainant's father rebuked him upon seeing what was happening.[10] The incident prompted Joenalyn's mother, Charina Borigas, to ask her if appellant did anything else to her. It was then that she narrated to her mother the harrowing ordeal that she experienced in the hands of appellant Rodolfo Zabala.[11]

Appellant, in his defense, denied the charges of rape. He stated that no rape ever happened, and that the charges were a ruse concocted by the victim's mother to vent anger and exact revenge on appellant against whom she has a long-running grudge. As to the charge that he was caught pulling the right foot of the victim and touching her private parts, appellant also vehemently denied those acts. He adamantly claimed he was just assisting Joenalyn because she was going to fall from the stairs which led to her house.[12]

On September 8, 1999, the trial court rendered its decision,[13] convicting herein appellant. It decreed as follows:

WHEREFORE, in Criminal Case No. 99-377 and Crim. Case No. 99-378, Accused Rodolfo Zabala *y* Bacorro, is found guilty beyond reasonable doubt of the crime of Rape as defined and penalized in Article 266-A and penalized under Article 266-B respectively, of the Revised Penal Code, he is hereby sentenced in each of the cases to

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[8] *Id.* at 3-6.

[9] TSN, 29 March 1999, p. 12.

[10] *Id.* at 13.

[11] *Id.* at 14; *supra*, note 5 at 6, 9.

[12] TSN, 19 July 1999, pp. 5-7.

[13] Records, pp. 184-190.

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suffer the penalty of *reclusion perpetua* and to pay Complainant Joenalyn Borigas *Y* Cases, the sum of ₱50,000.00 as moral damages.

Aggrieved with the decision, appellant interposed the instant appeal where he raises the lone assignment of error that:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[14]

Appellant argues that the testimony of the victim, Joenalyn Borigas, is undeserving of belief for being inconsistent with human nature and the normal course of things. He stresses that according to the victim's testimony, appellant pulled down the victim's panty to just above her knees and then inserted his penis into her. Since her panty would restrain her and not allow her legs to open, appellant argues that it is thus improbable that the victim's knees were spread enough to allow the appellant to insert his penis.[15] Appellant further contends that it was impossible for him to have carried the victim to his house without being noticed when, according to the victim herself, she was always with a member of her family and was never left alone.[16] This is aside from the fact that the victim reported the rape a year after it supposedly happened. Finally, appellant submits that the medical findings show no visible signs of injury despite the fact that she was of a very tender age at the time of the alleged rape.[17]

We find the appeal to be without merit.

Testimony of child-victims of rape is given full weight and credence.[18] Our courts usually give great weight to the testimony of the victim of sexual assault, especially where the victim, is a minor. Here, the victim vividly recalled details that a child her age, only 9 at the time of the trial, could not have possibly

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[14] *Rollo*, p. 55.

[15] *Id.* at 63-64.

[16] *Id.* at 64.

[17] *Id.* at 116.

[18] *People v. Lachica*, G.R. No. 143677, 9 May 2002, p. 15.

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concocted. The victim positively identified appellant in court as the one who raped her.[19] It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape, if what she claims is untrue.

Where the testimony of the victim meets the test of credibility, we have consistently held that a woman who says she has been raped in effect says all that is necessary to show that rape has been inflicted on her.[20] This is especially true for minors because no woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and be subjected to public trial and humiliation if her claim is not true.[21] In this case, no motive has been shown on the part of the victim why she would falsely charge her neighbor of the crimes of repeated rape.

The delay in reporting the crime which was over one (1) year was sufficiently explained in court when she said that she was afraid the appellant would box her.[22] We take judicial notice that it is not uncommon for young girls to conceal for some time the assault on their virtue because of the rapist's threat on their lives. To the mind of a child of tender years, threats of physical harm would instill in her an overwhelming fear and force her to keep her silence.

We likewise reject the contention of the appellant that it was impossible for him to have committed the crime because, as the victim herself testified, she was always accompanied by members of her family. It is well-nigh impossible for her to be accompanied by some other person every single second of her life. Besides, it is a truism that lust has no regard for time

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[19] TSN, 5 April 1999, p. 11.

[20] *People v. Villaruel*, G.R. No. 135401, 6 March 2002, p. 10 citing *People v. Ambray*, G.R. No. 127177, 25 February 1999, 303 SCRA 697, 704–705.

[21] *Id.* at 10 citing *People v. Oliver*, G.R. No. 123099, 11 February 1999, 303 SCRA 72, 81–82.

[22] TSN, 5 April 1999, p. 10.

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and place.[23] Neither the crampness of the room, nor the presence of other people there, nor the high risk of being caught has been held sufficient and effective obstacles to deter the commission of rape.[24] Appellant's mere denial is insufficient proof that no rape was committed, especially in the light of the victim's straightforward testimony which was consistent on material points. We have held that mere denial, which is unsubstantiated and uncorroborated by clear and convincing evidence, is self-serving and has no weight in law.[25]

On the findings of the medico-legal officer, Dra. Estela Guerrero-Manalo, we hold that they do not negate rape. Absence of fresh injuries in complainant's private parts would not negate rape since proof of hymenal lacerations is not an element of rape.[26] The presence of healed scars is also not an essential element. Introduction of the male organ within the *labia majora* of the *pudendum* of the female organ is enough[27] to constitute the offense.

Appellant reiterates a point he raised during trial, insisting that the charges are borne by the desire of complainant's mother to exact revenge upon him because he allegedly hammered three nails into the post of her house. He contends that this caused the deep-seated grudge of complainant's mother.

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[23] *People v. Mauricio*, G.R. No. 133695, 28 February 2001, 353 SCRA 114, 122.

[24] *People v. Hinto*, G.R. Nos. 138146–91, 28 February 2001, 353 SCRA 215, 223.

[25] See *People v. Samson*, G.R. No. 124666, 15 February, 2002, p. 10.

[26] *People v. Vidal*, G.R. No. 137946, 28 February 2001, 353 SCRA 194, 203 citing *People v. Dizon*, G.R. Nos. 126044-45, 2 July 1999, 309 SCRA 669, 685; See also *People v. Tabarangao*, G.R. Nos. 116535-36, 25 February 1999, 303 SCRA 623, 632–633.

[27] *Supra*, note 20 at 12 citing *People v. De la Cuesta*, G.R. No. 126134, 2 March 1999, 304 SCRA 83, 94; *People v. Serrano*, G.R. No. 137480, 28 February 2001, 353 SCRA 161, 176; *People v. Tabarangao, supra*, note 25 at 630.

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Not a few accused in rape cases have attributed similar motives to those who brought the charges against them.[28] However, courts are seldom, if ever, persuaded that a mother would stoop so low as to subject her daughter to physical hardship and shame concomitant to a rape prosecution just to assuage her own hurt feelings.[29] Indeed, it is highly inconceivable that a mother would willfully and deliberately corrupt the innocent mind of her nine-year old daughter and put into her lips the lewd description of a carnal act just to satisfy a personal grudge or anger against the appellant.

The trial court applied par. 1 of Art. 266-B of the Revised Penal Code, instead of par. 5 thereof[30] in sentencing appellant to *reclusion perpetua* for each count of rape. While the information in Criminal Case No. 99-377 alleged that Rodolfo "had carnal knowledge with complainant, JOENALYN BORIGAS *Y* CASES, a Grade I pupil who is six (6) years old x x x," no specific date has been established when the rape was committed in the school year 1996-1997. Thus, complainant's age could not be determined precisely whether she was six or seven years old at the time of the rape. Complainant was born on March 15, 1990[31] while school year 1996-1997 ended with no exact date given in March 1997. For lack of certainty, par. 5 of Art. 266-B of the Revised Penal Code, which imposes the death penalty when the victim is below seven years old, should

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[28] *People v. Aquino*, 17 April 2002, p. 19 citing *People v. Marcelo*, G.R. No. 126714, 22 March 1999, 305 SCRA 105, 115 and *People v. Gagto*, G.R. No. 113345, 9 February 1996, 253 SCRA 455, 467.

[29] *Ibid*, citing *People v. Batoon*, G.R. No. 134194, 26 October 1999, 317 SCRA 545, 554 and *People v. Marcelo, supra.*

[30] Art. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

xxx xxx xxx

5) When the victim is a child below seven (7) years old.

xxx xxx xxx

[31] Records, p. 58, Exhibit "D-1"; TSN 5 April 1999, p. 3; TSN, 29 March 1999, p. 12.

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not be applied. In Criminal Case No. 99-378, however, there is no dispute that complainant was above seven years old during the school year 1997-1998. In either case, we agree that the imposable penalty should be that provided in par. 1 of Art. 266-B, namely, *reclusion perpetua.*

As to damages, the trial court awarded moral damages but failed to award civil indemnity. Moral damages are separate and distinct from civil indemnity awarded to rape victims. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[32] Thus, civil indemnity in the amount of ₱50,000.00 should be awarded here for each count of rape, in line with recent case law,[33] together with another sum of ₱50,000.00 as moral damages, without need for pleading or proof of the basis thereof.[34]

WHEREFORE, the appealed decision of the Regional Trial Court of Makati, Branch 62, in Criminal Case No. 99-377 and Criminal Case No. 99-378, convicting appellant *RODOLFO ZABALA y BACORRO* of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count of rape, is *AFFIRMED* with *MODIFICATION* as to the award of damages. Appellant is *ORDERED* to pay the victim, Joenalyn Borigas *y* Cases, ₱50,000.00 as indemnity *ex delicto* and ₱50,000.00 as moral damages for each count of rape. *Costs de oficio.*

SO ORDERED.

Bellosillo, Austria-Martinez, and *Tinga, JJ.*, concur.

Callejo, Sr., J., on leave.

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[32] *People v. De los Santos,* G.R. No. 120235, 30 September 1999, 315 SCRA 579, 586.

[33] *People v. Lima*, G.R. No. 128289, 23 April 23 2002, p. 22.

[34] *Supra*, note 28 at 20.