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FIRST DIVISION

[G.R. Nos. 66387-88. February 28, 1985]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* ANTONIO ALCID, *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CONVICTION OR ACQUITTAL IN CRIMES AGAINST CHASTITY DEPENDS ALMOST ENTIRELY ON CREDIBILITY OF COMPLAINANT'S TESTIMONY.— It is a rule well-settled that in crimes against chastity, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony since by the intrinsic nature of these crimes, they usually involve two persons — the complainant and the accused, (People *v.* Manzano, 118 SCRA 705) and that the uncorroborated testimony of the offended party, if credible and positive, and satisfies the court beyond reasonable doubt, is sufficient to justify conviction (People *v.* Galicia, 123 SCRA 550).

2. ID.; ID.; ID.; FINDINGS OF TRIAL COURT GENERALLY NOT DISTURBED ON APPEAL.— We have carefully reviewed the records of the case and we find no reason to depart from the established rule that appellate courts will not generally disturb the findings of fact of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the same (People *v.* Marzan, 128 SCRA 203).

3. ID.; ID.; ID.; CREDIBILITY OF WITNESSES; WEAK DENIALS CANNOT PREVAIL OVER CLEAR AND POSITIVE TESTIMONY OF COMPLAINANT.— The weak denials of the defendant-appellant cannot prevail over the clear and positive testimony of Eliza Ordon. Going over the positive and clear testimony of the complainant, we hold that the defendant-appellant indeed had carnal knowledge with her through force and intimidation sometime during the month of October, 1981.

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4. **ID.; ID.; ID.; MORAL ASCENDANCY AND INFLUENCE SUFFICIENT TO INTIMIDATE COMPLAINANT IN RAPE.**— There can be no doubt that the defendant-appellant had a moral ascendancy and influence over Eliza such that he could easily intimidate her and force her to submit to his lustful desires considering that she was only twelve years old at that time and that the defendant-appellant is her godfather.

5. **ID.; ID.; ID.; CREDIBILITY OF WITNESSES; DELAY IN REPORTING COMMISSION OF RAPE GENERALLY TRACED TO THREATS; CASE AT BAR.**— Anent the defendant-appellant's argument that Eliza waited until the fourth rape before she divulged the incident to her mother, it is sufficient to state that it is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists' threat on their lives (People *v.* Oydoc, 125 SCRA 250).

6. **ID.; ID.; ID.; ID.; MOTIVE OF COMPLAINANT IN FILING RAPE CHARGE.**— Apart from the respect given the lower court's factual findings, we agree with the Solicitor General that when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape has been committed. (People *v.* Royeras, 55 SCRA 666) and that a twelve-year old girl would not tell a story of defloration and send her own "Ninong" to jail, if she was not motivated by an honest motive to have a crime against her punished. (See People *v.* Selfaison, 1 SCRA 235)

7. **ID.; CRIMINAL PROCEDURE; COMPLAINTS FOR RAPE COMMITTED ON TWO SEPARATE DATES, TO BE CONSIDERED SEPARATE AND DISTINCT FROM EACH OTHER.**— However, the lower court erred when it considered the two criminal complaints for rape filed by the complainant against the defendant-appellant as only one case. It should be noted that the first criminal complaint, dated April 23, 1982, alleged that sometime during the month of *October*, 1981 the defendant-appellant had carnal knowledge with the complainant through force and intimidation, and the second criminal complaint, also dated April 23, 1982, alleged that sometime during the month of *December*, 1981 the same defendant-appellant had carnal knowledge with Eliza through force and intimidation. The trial court should have considered these two criminal complaints for rape as separate and distinct from each other.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Reynold S. Fajardo for defendant-appellant.

D E C I S I O N

GUTIERREZ, JR., *J.:*

This is an appeal from the decision of the Regional Trial Court of Pasay, Branch CX convicting defendant-appellant Antonio Alcid of the crime of rape. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds herein accused Antonio Alcid GUILTY beyond reasonable doubt of the crime of 'Rape' as charged and hereby sentenced (sic) him to suffer imprisonment of *reclusion perpetua* and to indemnify complainant Eliza Ordon in the amount of P12,000.00, and to pay the costs."

On April 23, 1982, complainant Eliza Ordon assisted by her mother filed two criminal complaints for rape against the defendant-appellant. The two criminal complaints (bearing the approval of Assistant City Fiscal Arturo B. Cruz) alleged that:

"That on or about and sometime during the month of October, 1981, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Antonio Alcid, by means of force, threats and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned, a twelve years old minor, against her will and consent.

"That on or about and sometime during the month of December, 1981, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Antonio Alcid, by means of force, threats and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned, a twelve years old minor against her will and consent."

The facts established by the prosecution and accepted by the trial court as basis for the judgment of conviction are summarized by the court as follows:

"Prosecution evidence shows that herein complainant Eliza Ordon was born on July 16, 1969 (Certificate of Live Birth, Exhibit B)

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being the daughter of Eladio Ordon now deceased and Nilda Gapo. It is established that during the months of October to December, 1981, the accused who is a next-door neighbor to the complainant had sexual intercourse with the latter. When the first incident took place on one evening in the month of October, 1981, herein accused, godfather of complainant, requested complainant to buy viand for him for his supper. When complainant arrived with the purchased viand, the accused invited her to join him and his son for supper which she did. After supper, the accused sent his 5-year old son out of the house to watch television in the neighborhood thus leaving accused alone with complainant. Without much ado and under threats of death the accused had sexual intercourse with complainant. Complainant herein claims that her genitals bled at that time, thus indicating that before the intercourse she was a virgin and that it was the accused who deflowered her. Similar incidents took place in the months of October and December, 1981 on 3 separate occasions. It was sometime in December when the accused harmed herein complainant striking her on the head that she reported the previous four (4) circumstances of sexual abuse that she had suffered with the accused to her mother Nilda G. Ordon who took complainant to the Pasay City Police Station to complain about the incident. x x x"

On April 19, 1982, Dr. Orlando V. Salvador, a Medico-Legal Officer of the National Bureau of Investigation examined Eliza Ordon. The Living Case Report submitted by Dr. Salvador contained the following findings:

"GENERAL PHYSICAL EXAMINATION:

Height: 138.8 cm.

Fairly developed, fairly nourished, conscious, coherent, cooperative and ambulatory subject.

Breasts, developing, small and conical. Areolae, 2.0 cm. in diameter, brown. Nipples, 0.6 cm. in diameter, brown, slightly protruding.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hairs, no growth. Labia majora and minora, both coaptated. Fourchette, tense. Vestibular mucose, pinkish. Hymen, moderately

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tall, thick and flabby with an old healed deep lacerations at 9:00 o'clock and 3:00 o'clock positions edges rounded and non-coaptable. Vaginal orifice, originally annular admits tube of 2.8 cm. with moderate resistance. Vaginal walls, moderately tight. Rugosities, prominent. Uterus, small and firm.

CONCLUSIONS:

Genital findings present compatible with sexual intercourse with man on or about the alleged dates of commission."

The defendant-appellant on the other hand admitted having asked the complainant to buy viand one night in October 1981 and having eaten with her and his son but denied that he had sexual intercourse with her that night or at any other time. Antonio Alcid testified that:

"Q Are you aware of the fact that you are now charged of rape on two counts?

"A Yes, sir.

"Q What can you say about these two charges against you?

"A I don't know anything about that.

"Q Do you want to tell the Court that the charges levelled against you are false or not true?

"A That is not true.

"Q What is now the truth?

"A I did not do that."

(T.S.N., June 16, 1983, p. 8)

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"Q Are you aware of the fact that.... I withdraw that. According to Eliza Ordon, you raped her four (4) times. The first time was sometime in October, 1980, and one week thereafter, another rape; two weeks thereafter, another rape and third week, another rape. What do you say about that?

"A That is not true.

"COURT:

Why, how many times did you rape her? Not four times but three times or two?

"A I did not do that.

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"COURT:

Not even once?

"A No. sir.

(T.S.N., June 16, 1983, pp. 15-16)

xxx xxx xxx

"Q Miss Ordon testified also that before the alleged rape, you did some malicious acts on her, what do you say about that?

"A That is not true.

"Q What is the truth?

"COURT:

But your goddaughter, you used to kiss her?

"A No, sir.

(T.S.N., June 16, 1983, p. 17)

When arraigned, the defendant-appellant pleaded not guilty. The lower court considered both complaints as one case as the acts averred therein were prompted by one and the same criminal intent on the same victim, and rendered the judgment of conviction above-mentioned.

The appellant raises the following assignments of errors in his brief:

I

THAT THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE SEXUAL INTERCOURSE BETWEEN THE ACCUSED AND THE PRIVATE COMPLAINANT WAS VOLUNTARY.

II

THAT THE COURT *A QUO* GRAVELY ERRED IN FAILING TO FIND THAT THE PROSECUTION WAS NOT ABLE TO SUSTAIN A JUDGMENT OF CONVICTION.

The defendant-appellant begged leave to jointly discuss the two assigned errors considering that they are closely related to each other.

It is a rule well-settled that in crimes against chastity, conviction or acquittal depends almost entirely on the credibility

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of the complainant's testimony since by the intrinsic nature of these crimes, they usually involve two persons — the complainant and the accused, (People *v.* Manzano, 118 SCRA 705) and that the uncorroborated testimony of the offended party, if credible and positive, and satisfies the court beyond reasonable doubt, is sufficient to justify conviction (People *v.* Galicia, 123 SCRA 550).

We have carefully reviewed the records of the case and we find no reason to depart from the established rule that appellate courts will not generally disturb the findings of fact of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observe their deportment and manner of testifying during the trial, unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the same (People *v.* Marzan, 128 SCRA 203).

The weak denials of the defendant-appellant cannot prevail over the clear and positive testimony of Eliza Ordon. With respect to the October 1981 rape, the complainant testified that:

"q How many times did the accused have carnal knowledge with you?

"a 4 times, Your Honor.

"q When was the first time that the accused abused you?

"a October, 1981, sir. (T.S.N., August 17, 1982, p. 3).

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"q Are you ready to narrate before this Court as briefly and clearly the manner in which the accused abused you the first time in October, 1981?

"q Where were you at that time?

"a I was near the house, Ma'am.

ATTY. SALCEDO:

"q You were near your house, what were you doing?

"a I was playing near our house.

"q What happened after that while you were playing?

"a Antonio Alcid called me and told me to buy 'ulam'.

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"q So, when Antonio Alcid told you to buy 'ulam', what did you do?

"a I bought viand and brought it to the house of Antonio Alcid.

"q What happened next when you brought the viand to the house of Antonio Alcid?

"a I set the table and I prepared the plates and he told me too that we eat together."
(T.S.N., August 17, 1982, pp. 3-4)

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"q You said 'we', when you say 'we', to whom do you refer to?

"a Antonio Alcid, his son Nelson and myself.

"q After you have finished eating what happened next, Eliza?

"a I washed the dishes. Antonio Alcid told his son to go out first and play outside."
(T.S.N., August 17, 1982, p. 4)

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"q So when Antonio Alcid sent his son to play outside, what did he do next?

"a He locked the door of the house.

"q After locking the door of the house, do you remember what happened next?

"a He put out the light near the kitchen.

"q What kind of light was there in the kitchen?

"a Candle light.

COURT:

"Q By the way, what time was it?

"a Around 7:00 in the evening, sir

COURT:

Proceed."
(T.S.N., August 17, 1982, p. 5)

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"q What happened after he shut off the light in the kitchen?

"a He pulled me to the room.

"q And what happened after he pulled you to the room?

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"a He removed my panty and shorts."
(T.S.N., August 17, 1982, p. 6)

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"q After he removed your panty and shorts, what happened next?

"a He told me to lie down on the floor.

"q Did he ask you to lie down on the floor or did he force you to lie down on the floor?

"a He forced me to lie down, Ma'am.

"q When he forced you what happened next?

"a He opened the buttons of his shorts."
(T.S.N., August 17, 1982, p. 6)

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"q After unbuttoning his shorts, what did he do?

"a He pulled down the shorts.

"q After pulling down the shorts, what else did you do?

"a He went on top of me and put his private part into my private part."
(T.S.N., August 17, 1982, p. 7)

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"q Would you please state before this Honorable Court whether the accused Antonio Alcid inserted his private part into your private part?

"a Yes, Ma'am.

"q After he inserted his private part into your private property, was he saying or doing anything else?

"a Yes, Ma'am, he was saying something.

"q What did he say?

"a He told me not to shout and not to tell anybody, otherwise, he will kill me.

"q When Antonio Alcid inserted his private property into your private property and told you not to shout and not to tell anybody otherwise he will kill you, what else did he do?

"a He held my face and sucked my mouth."
(T.S.N., August 17, 1983, p. 7)

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"q After this incident wherein the accused Antonio Alcid abused you did you tell anyone at home about what he did?

"a None.

"q Did you not tell your mother about what he did to you?

"a I did not tell my mother.

"q Would you please tell us why you did not tell your mother or anyone?

"a Because I was afraid to tell anybody.

"q Now, after you were abused for the first time, did you observe in your body anything that would catch your attention, anything unusual?

"a There was, Ma'am.

"q Tell us what it was!

"a I saw blood in my panty.
(T.S.N., August 17, 1982, p. 8)

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"q And when you noticed that your panty had blood stains in it what else did you notice if any aside from the blood in your panty?

"a After seeing blood stains in my panty and when I urinated I felt pain 'hapdi'.

"q You stated a while ago that the accused abused you 4 times, do you remember the interval period, the first, and the second time that he abused you?

"a Yes, Ma'am.

"q Would you please tell us at least the number of weeks between the first and the second, the 3rd and the 4th?

"a Between one week. The second time was after a week. The third after three days and the 4th after 4 days.
(T.S.N., August 17, 1982, pp. 8-9)

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"q After you were abused for 4 times, was there any ...
After the 4th time, do you remember whether you told anybody about what Antonio Alcid did to you?

"a Yes, Ma'am.

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COURT:

"q To whom?

"a To my mother, sir.

COURT:

Proceed.

ATTY. SALCEDO:

"q Would you please tell us what brought about in telling it to your mother?

"a I was selling in front of my house and Antonio Alcid passed by and he bumped a watermelon in my head, then after that I was constrained to tell to my mother about what happened to me. (T.S.N., August 17, 1983, pp. 8-9)

Going over the positive and clear testimony of the complainant, we hold that the defendant-appellant indeed had carnal knowledge with her through force and intimidation sometime during the month of October, 1981.

The defendant-appellant interposes the alternative defense of voluntariness and argues that Eliza gave her consent to the sexual advances of the defendant-appellant, if there was any. He argues that — (1) there is a procedure followed by the defendant-appellant in all the four occasions wherein he allegedly raped her; (2) she waited to be raped for four times before she divulged the incident to her mother; (3) she still went to the house of the defendant-appellant after the first rape; and (4) one hour is too long for a woman of tender age to be sexually abused.

The defendant-appellant's arguments have no merit. There can be no doubt that the defendant-appellant had a moral ascendancy and influence over Eliza such that he could easily intimidate her and force her to submit to his lustful desires considering that she was only twelve years old at that time and that the defendant-appellant is her godfather. In *People v. Alamo* (130 SCRA 46), we held that:

"Considering the tender age of the complainant who was then only 12 years old at the time of the commission of the offense, We hold that the force employed by the accused-appellant as narrated

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in her testimony abovequoted was sufficient to instill fear in her, compelling her to go with him to the swamp and there submit to the lustful desires of the accused after she failed in her struggle to free and remove herself from him who held her at the waist, causing her to fall to the ground whereupon he was able to insert his penis in her private parts, thus consummating the sexual act with her. This Court's ruling, applied in many cases of rape, that 'it is not necessary that the force employed against the complaining woman in rape be as great or of such character as will not be resisted. It is sufficient that the force used is sufficient to consummate the culprit's purpose of copulating with the offended woman' (People *v.* Savellano, 57 SCRA 320, citing U.S. *v.* Villarosa, 4 Phil. 434, 437 cited in 52 C.J. 1018, note 7; Decision of Supreme Court of Spain dated May 14, 1878, 3 Viada, Codigo Penal 452; II Hidalgo Codigo Penal 302). The force or violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other (7 C.J.S. 475), is specifically applicable in the case at bar." x x x.

We agree with the observation of the Solicitor General that complainant's tender age, appellant's moral ascendancy and influence over her, being her godfather (confirmation) and appellant's threat of bodily harm pervading and ever present in complainant's young mind, had practically rendered complainant meek and subservient to the appellant's needs and desires, thus becoming an easy prey to the appellant's lustful advances.

Anent the defendant-appellant's argument that Eliza waited until the fourth rape before she divulged the incident to her mother, it is sufficient to state that it is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists' threat on their lives (People *v.* Oydoc, 125 SCRA 250).

The defendant-appellant also questions the credibility of Eliza Ordon by pointing out that during the June 17, 1982 hearing, she did not hint that the accused threatened her if she resisted, or that the sexual intercourse was against her will, nor did she mention that she offered resistance to the advances of the accused when in fact she had the opportunity to do so, and it was only at the August 17, 1982 hearing that she testified on being threatened to be killed if she shouted for help or would tell anybody regarding the incident.

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The defendant-appellant's contention is without merit. The records clearly show that on the June 17, 1982 hearing, the complainant indeed testified as to the force and intimidation employed against her:

"q Now, how were you raped by Mr. Alcid?

"a He pulled me inside his room and removed my panty, sir. (T.S.N., June 17, 1982, p. 4)

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"q Now, after you were pulled and before your panty was removed would you tell this Honorable Court what Antonio Alcid do?

"a He kiss me in the mouth and covered my mouth, sir.

COURT:

"q With what?

"a With his hand, sir.

"COURT:

Proceed.

FISCAL:

"q How, what did Antonio Alcid do after he kissed you and put his hands on your mouth and after your panty was removed?

"a He went on top of me, sir.

COURT:

"q Why, were you lying then?

"a Yes, Your Honor.

"q Who made you lie down?

"a He forced me to lie down, sir.

"COURT:

Proceed.

FISCAL:

"q How, how were you forced by Antonio Alcid to lie down?

"a He pushed me, sir.

"q Then after you were pushed what did he do?

'a He went on top of me and he raped me, sir.

(T.S.N., June 17, 1982, pp. 5-6)

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FISCAL:

"q How were you raped?

"a He inserted his private property into my private part, sir. (T.S.N., June 17, 1982, p. 6)

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"q While his private part was inserted to your private part, what did he do or what was he doing?

"a He forced it very well, sir.

"q When he was forcing it, what did you feel, if you felt anything?

"a I felt pain, sir.

"q And when you felt pain what did you do?

"a I cried, sir.

COURT:

"q Did you not shout?

"a No, Your Honor.

COURT:

Proceed.

FISCAL:

"Q Why did you not shout?

"a He sucked my mouth, sir (sinipsip niya and bunganga ko, sir.

"q Now, what happened after he forced his private part to yours, what happened next while he was sucking your lips, according to you?

"a I felt pain." (T.S.N., June 17, 1982, pp. 8-9)

Apart from the respect given the lower court's factual findings, we agree with the Solicitor General that when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape has been committed. (People *v.* Royeras, 55 SCRA 666) and that a twelve-year old girl would not tell a story of defloration and send her own "Ninong" to jail, if she was not motivated by an honest motive to have a crime against her punished. (See People *v.* Selfaison, 1 SCRA 235)

However, the lower court erred when it considered the two criminal complaints for rape filed by the complainant against

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the defendant-appellant as only one case. It should be noted that the first criminal complaint, dated April 23, 1982, alleged that sometime during the month of *October*, 1981 the defendant-appellant had carnal knowledge with the complainant through force and intimidation, and the second criminal complaint, also dated April 23, 1982, alleged that sometime during the month of *December*, 1981 the same defendant-appellant had carnal knowledge with Eliza through force and intimidation. The trial court should have considered these two criminal complaints for rape as separate and distinct from each other.

We have painstakingly reviewed the records of the case and we hold that the defendant-appellant's commission of the crime of rape as charged was proven beyond reasonable doubt.

WHEREFORE, the DECISION appealed from is AFFIRMED, with MODIFICATION that the indemnity of TWELVE THOUSAND PESOS (P12,000.00) is increased to TWENTY THOUSAND PESOS (P20,000.00).

SO ORDERED.

Melencio-Herrera, Plana, Relova, de la Fuente, and *Alampay, JJ.*, concur.

Teehankee (Chairman), J., in the result.

SECOND DIVISION

[G.R. No. 66970. February 28, 1985]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* RODELIO GOZUM (GUZOM), *accused-appellant.*