Supreme Court E-Library

There is no doubt that the charge of illegal possession of *shabu* in Criminal Case No. 1238 was proved beyond reasonable doubt since ABDUL knowingly carried with him at the time he was caught 226.67 grams of *shabu* without legal authority. There being no modifying circumstance proven, the proper penalty pursuant to Article 63(2) of the Revised Penal Code is *reclusion perpetua*. The penalty imposed by the trial court, including the fine, is, therefore, in order.

WHEREFORE, the appealed decision of the Regional Trial Court of San Pedro, Laguna, in Criminal Case No. 1238 convicting appellant ABDUL MACALABA *y* DIGAYON of the violation of Section 16 of Article III of the Dangerous Drugs Act of 1972 (R.A. No. 6425), as amended, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱500,000 and the costs of the suit, is hereby affirmed *in toto*.

Costs *de oficio*.

SO ORDERED.

Vitug, Ynares-Santiago, Carpio, and *Azcuna, JJ.*, concur.

EN BANC

[G.R. No. 146458. January 20, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CAPT. MARCIAL LLANTO *Y* LEUTERIO,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty of qualified rape committed against the niece of his wife. He was sentenced to death and, hence, this appeal.

Supreme Court E-Library

While the Court affirmed the conviction of appellant, it modified the decision by holding that appellant is guilty only of simple rape, punishable by *reclusion perpetua*. The allegation that the accused is the uncle of the victim and the latter is his niece is not specific enough to satisfy the special qualifying circumstance of relationship. *It must be alleged in the Information that he is a relative by consanguinity or affinity within the third civil degree.* At any rate, the prosecution was not able to prove beyond reasonable doubt the kinship between the accused and the victim. While defense witnesses admitted that appellant's wife is the sister of the victim's father, this cannot be used to benefit the prosecution to the disadvantage of the accused.

SYLLABUS

1. **CRIMINAL LAW; RAPE; NOT NEGATED BY THE FACT THAT VICTIM'S HYMEN REMAINED INTACT.** — That Cristy was allegedly raped by the accused in many instances other than on November 12, 1999 and her hymen remained intact do not lend support to the cause of the accused. It is possible for the victim's hymen to remain intact despite repeated sexual intercourse because it was thick and distensible or elastic. We stated in *People v. Aguinaldo* that the strength and dilability of the hymen varies from one woman to another such that it may be so elastic as to stretch without laceration during intercourse, or on the other hand, may be so resistant that its surgical removal is necessary before intercourse can ensue. In some cases even, the hymen is still intact even after the woman has given birth.

2. **ID.; ID.; VIOLENCE OR INTIMIDATION; PRESENT WHEN ACCUSED TIED HIS VICTIM AND THREATENED HER WITH A KNIFE.** — The accused argues that even assuming he had sexual intercourse with Cristy, it was not shown that he had his way with her through violence or intimidation. Quite the contrary, Cristy's testimony shows that she was intimidated. She was afraid and not able to fight and resist the accused's advances because he held a knife and tied her hands. Physical resistance need not be proved in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety. It suffices that the intimidation produces

Supreme Court E-Library

fear in the mind of the victim that if she did not submit to the bestial demands of the accused, something far worse would befall her at the time she was being molested. As held by the Court, "(i)f resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary." We have ruled in several rape cases that threatening the victim with bodily injury while holding a knife or a *bolo* constitutes intimidation sufficient to bring a woman to submission to the lustful desires of the molester.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UPHELD FOR BEING CLEAR AND STRAIGHTFORWARD. — The testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court. Neither does the self-serving evidence of the accused convince us that Cristy was merely instigated by her mother to file the rape complaint to extort his ₱500,000.00 retirement benefits. Nor does the imputation of Cristy's bad character affect her credibility as the victim's character is immaterial in a rape case. Further, we have consistently taken judicial notice of the fact that no woman, especially one so young like Cristy, would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience and trauma of a public trial if she were not motivated by the desire to have the culprit apprehended and punished.

4. ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF ACCUSED. — Anent the accused's alibi, suffice it to say that the defense of alibi is inherently weak and easily fabricated. This cannot prevail over Cristy's positive identification, unless buttressed by strong evidence of non-culpability.

5. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS; RELATIONSHIP; WHERE THE OFFENDER IS A RELATIVE WITHIN THE THIRD CIVIL DEGREE, THE SAME MUST BE COMPLETELY ALLEGED AND PROVEN BEYOND REASONABLE DOUBT. — In a catena of cases, we have ruled that the allegation that the accused is the "uncle" of the victim and the latter is his "niece" is not specific enough to satisfy the special qualifying circumstance of relationship under Art. 266-B. In *People vs. Lachica*, we held: "If the offender is merely

Supreme Court E-Library

a relation — not a parent, ascendant, step-parent, or guardian or common law spouse of the mother of the victim — *it must be alleged in the Information that he is 'a relative by consanguinity or affinity [as the case may be] within the third civil degree.'*" Moreover, even if the relationship by consanguinity or affinity is alleged in the Information, It is still necessary to allege further that such relationship is within the third civil degree. . ." At any rate, the prosecution was not able to prove beyond reasonable doubt the kinship between the accused and the victim. We ruled in *People v. Capili, viz*: x x x *the prosecution should present corroborative evidence*, x x x testimonial or documentary evidence not bare statement in passing to clearly establish relationship. Well-settled is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances, thus the testimonies of the defense witnesses that accused's wife is the sister of the victim's father cannot be used to benefit the prosecution, to the disadvantage of the accused.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Sisenando R. Villaluz, Jr. for accused-appellant.

D E C I S I O N

PUNO, *J.*:

The one battle the accused Capt. Marcial Llanto lost was fought against himself. He utterly failed to measure up to the yardstick of an officer and a gentleman when he was subdued by the beast in him and he committed lechery upon his minor kin.

On February 29, 2000, an information for rape was filed against the accused Llanto, *viz:*

"That on or about (the) twelfth day of November, 1999 at Pasay City and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, with use of a knife, through force, violence and intimidation, and by taking advantage of his moral ascendancy over his twelve (12) year old minor niece MARIA CRISTY T. BALISI, did then and there willfully, unlawfully and feloniously

Supreme Court E-Library

have carnal knowledge of Ma. Cristy T. Balisi against her will and consent, to her damage and prejudice in whatever amounts may be awarded to her under provisions of the Civil Code.

CONTRARY TO LAW."[1]

The accused pleaded not guilty. Trial ensued.

The records show that Ma. Cristy Balisi was born to Gertrudes Balisi and Raul Balisi on December 20, 1986. Her parents separated when she was six months old and from then on her maternal grandmother took care of her until she was eight years old. Her mother lives with her (Cristy's) uncle in Litex, Quezon City while her father lives with his common law wife in Calamba, Laguna.

In 1995, Cristy was entrusted to the care of the accused and his wife, Felicitas Balisi Llanto, the sister of Cristy's father. The accused is a member of the Philippine Air Force. They lived in Clark Airbase, then moved to Mactan Airbase, Lapu-Lapu City, Cebu, and in 1999, transferred to a house in Villamor Airbase in Pasay City.

On November 12, 1999, only Cristy and the accused were home. The accused's wife was then in Tuguegarao, Cagayan, while one of their two sons was in Laguna and the other was in Cebu. At about 9:00 p.m., while Cristy was studying downstairs, the accused told her that it was already time to go to bed. The accused pulled her to his room upstairs, removed her shirt, bra and panty. Cristy cried. He tied her hands, mashed her breasts, kissed her private part, and, inserted his two fingers into her vagina, causing her pain. He inserted his organ into her private part. The whole time, she could not fight the accused as he tied her hands and held a knife. After satiating his lust, he threatened her not to tell on him, then untied her hands. That was not the first time the accused ravished her. When they lived in Cebu, the accused violated her about three times a week when only the two of them were left in the house.

The next day, November 13, 1999, Cristy told the accused that she would go to school, but instead proceeded to her aunt,

[1] Original Records, p. 2.

Supreme Court E-Library

Dolores Balisi, the sister of the accused's wife. She divulged to Dolores her ordeal in the hands of the accused. Dolores brought her to the National Bureau of Investigation (NBI) where Cristy executed a sworn statement[2] and filled out a complaint sheet.[3] Dr. Annabelle Soliman examined her and made a medico-genital report.

Cristy denied the claims of the accused's family that they scolded her for repeatedly stealing money from them. She also explained that she did not include in her sworn statement that the accused tied her hands when he committed the lechery on her because she was not asked what the accused did first before consummating coitus with her.[4]

Dr. Annabelle Soliman, medico-legal officer of the NBI, testified that she examined Cristy Balisi on November 17, 1999 upon her complaint that the accused had been raping her since 1996, the last of which was on November 12, 1999. Cristy was twelve years old at the time of the examination. The findings showed that the victim's hymen was tall, thick, intact, and distensible or elastic and there was no sign of extra-genital injury. During the examination on Cristy, a tube 2.5 centimeters in diameter was inserted into her hymenal opening without any injury. Her hymenal opening is wide at 2.5 centimeters in diameter so as to allow complete penetration by an average-sized adult Filipino male organ in full erection, about 2.5 centimeters, without producing genital/hymenal injury.[5] Dr. Soliman opined that it is possible for the hymen to remain intact even if it had been penetrated several times as the rupture of the hymen depends on the manner of insertion and the opening of the orifice. If the insertion is gentle, it might not break the hymen. If a woman is struggling when being raped, the penis might not fully penetrate the hymen, thus leaving it intact.[6]

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[2] Exhibit B; Original Records, pp. 96-98.

[3] Exhibit A; *Id.*, p. 95.

[4] TSN, Cristy Balisi, April 11, 2000, pp. 3-22.

[5] Exhibit C; Exhibit E, Original Records, pp. 99-100.

[6] TSN, Dr. Annabelle Soliman, April 13, 2000, pp. 2-13.

Supreme Court E-Library

Rosalina Chiong, NBI agent, corroborated Cristy's testimony that she filled out a complaint sheet [7] Chiong prepared a request for medico-legal examination[8] then took the victim's sworn statement.[9] She also received a copy of the examination results.[10] During her testimony, Chiong presented a photocopy of a certification from the Office of the Civil Registrar indicating that Cristy was born to Gertrudes Tullawan and Raul Balisi on December 20, 1986.[11]

The accused took the witness stand. He is a captain of the Philippine Air Force assigned as officer-in-charge at the Air Force Holding Center of Villamor Air Base. Previously, he was assigned at Camp Lapu-Lapu, Laoag, Cebu City. He is married and has two children, Jessel aged 25 and Jonnel, 24.

He narrated that Cristy started to live with his family in 1994 when she was eight years old. Although she is only his niece, her father being the younger brother of his wife, he and his wife treated Cristy like a real daughter. They cared for her, supported her schooling and provided her food, clothing and other needs. Cristy loved him and his wife and had been like a good daughter to them.

When the accused was assigned at Villamor Air Base in Pasay, Cristy stayed with the accused's wife at Clark Air Base. In 1996, when the accused was transferred to the Visayas Command, the accused's family, along with Cristy, moved to Cebu. The accused stayed in the Bachelor Officers Quarters in Camp Lapu-Lapu, Cebu while Cristy resided with the accused's wife at the Junior Officers Quarters at Mactan Air Base, Lapu-Lapu, Cebu, an hour's drive from where the accused was staying. He rarely went home to Mactan Air Base because of his hectic schedule.

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[7] Exhibit A; Original Records, p. 95.

[8] Exhibit G; Original Records, p. 101.

[9] Exhibit B; Original Records, pp. 96-98.

[10] Exhibit C; Original Records, p. 99; TSN, Rosalina Chiong, April 13, 2000, pp. 16-19.

[11] Exhibit I; Original Records, p. 102.

Supreme Court E-Library

In June 1999, the accused was re-assigned to Manila. The accused, his wife Felicitas and Cristy transferred to San Pedro, Laguna and stayed with Felicitas' sister, Elizabeth Balisi. From there, they transferred to the Airmen's Village on July 16, 1999.

On November 12, 1999, the alleged date of the rape, the accused was with his elder son, Jessel, at Mahada Alpha, Barangay Mayapa, Calamba, Laguna. He left Villamor Air Base at 2:00 p.m. and arrived at Mahada Alpha at 5:00 p.m. At past 5:00 p.m., he met his son Jessel outside the factory of Yukusha, Philippines where the latter worked. He informed Jessel that his younger brother Jonnel called up to ask about his petition papers for Canada. After they talked, Jessel borrowed the accused's car and had a joy ride with his co-workers while the accused proceeded to the house Jessel rented. The accused talked with Alma Sabèrola, the daughter of Jessel's landlord. When Jessel arrived at about 7:30 p.m., he told the accused that the car's headlights were not functioning. The accused checked the headlights and tried to fix them in vain. So, he decided to spend the night in Jessel's place as it was difficult to drive in the dark. He left Calamba the following morning at 7:00 a.m.

Cristy repeatedly stole money from the accused and his wife, but asked for forgiveness. At first, the accused forgave her, but the last straw came on November 13, 1999 when he came home from Calamba. He found out that the one thousand pesos in the pocket of his pants hanging on the wall was missing. When Cristy arrived, he confronted her about it. The accused and his wife severely scolded her and even threatened her with a hammer to reform her, but she did not say a word and just went out of the room. The accused followed her and she returned five hundred pesos as she had already spent the other five hundred. Later that day, he brought Cristy to Calamba to tell Jessel that he was fed up with her, then the two went back home to Villamor Air Base. He decided to stop financing her schooling and to return her to her parents. At 8:00 p.m., the accused went to his office and spent the night there. The following day, the accused found out that Cristy ran away from home. He asked her whereabouts from her relatives and classmates and learned that Cristy did not go to school nor was she with

Supreme Court E-Library

her Aunt Dolores or her father. He did not report the matter to the *barangay* and police authorities, nor did he make it known at the Villamor Air Base. He suggests that she ran away because of his decision to stop supporting her schooling.

The accused claims that Cristy filed charges of rape against him upon instigation of her mother, Gertrudes Tullawan, and a certain Silverio Escobar to extort his ₱500,000.00 retirement benefits. Escobar, an NBI agent who was his wife's *kababayan*, called him up one time and told him that a complaint was filed against him, then asked for ₱500,000.00. The accused did not give Escobar the money as his conscience was clear. Besides, he did not have any money. The following day, the accused received a subpoena. It was then that he learned that Cristy, accompanied by her mother, filed a complaint against him.

It appears that Cristy filed another complaint for rape against the accused and the case is pending at the Regional Trial Court of Cebu.[12]

The son of the accused, Jessel Llanto, corroborated his father's testimony that he was with him on November 12, 1999. His father visited him in Calamba, Laguna to ask if the petition papers for Canada had already been sent by his aunt, his father's sister. They met at about 5:30 at the factory where Jessel worked. They then proceeded to Jessel's place at about 6:00 p.m. and there talked about the petition papers. Alma Saberola and the other children of Jessel's landlord and some of Jessel's friends were there. After about an hour, Jessel borrowed the accused's car and with a friend named Jonathan and another companion, went to a friend's place at Palo Alto, Calamba, Laguna. On their way home, they passed a very big hump, but they were not able to slow down, causing the front of the car to jerk and destroy the headlights. When they reached home, Jessel told his father that the headlights were not working. As it was dangerous to drive in the dark, his father decided to spend the night there and left the following morning for Villamor Air Base.

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[12] TSN, Capt. Marcial Llanto, June 15, 2000, pp. 3-20; Affidavit of Capt. Marcial Llanto, Jr.; Exhibit 1; Original Records, pp. 174-176.

Supreme Court E-Library

Later that day, at around 6:00 p.m., his father returned to Calamba with Cristy and told Jessel that he would return Cristy to her parents as he was fed up with her stealing. Jessel treated Cristy like his younger sister and begged his father to give her another chance.[13]

Alma Saberola, Jessel's landlady and sister of Jessel's co-worker, corroborated the accused's testimony. She met the accused when he visited Jessel in her house on November 12, 1999. The accused arrived in her house at about 5:30 p.m. while Jessel was out for a joy ride using the accused's car. When Jessel brought the car home, its headlights no longer functioned. The accused thus decided to spend the night at Jessel's place and left at about 7:00 a.m. the following day.[14]

Felicitas Balisi, wife of the accused, testified for the defense. She is the older sister of Raul, Cristy's father. She has two children with the accused. In 1993, when Cristy was only seven years old, she started living with her and her family. Felicitas was not particularly delighted with Cristy as she was hard-headed and not nice. She repeatedly stole money from them from the time she started living with them. She and her husband brought Cristy with them wherever he was assigned, first at Clark Air Base, then at Mactan Air Base in Cebu City. In June 1999, Felicitas' family stayed with her sister, Elizabeth Balisi, in San Pedro, Laguna as the accused was assigned at Villamor Air Base in Pasay. The following month, Cristy no longer lived with Felicitas' family. Felicitas rented a house for Cristy and her mother, Gertrudes Tullawan. They were later joined by Cristy's brother, Teodoro, who used to live with Felicitas' sister, Dolores Balisi, as the latter supported his studies.

In November 1999, the accused confided to her that he had a problem with a certain Silverio Escobar who was asking for half a million pesos from him. Escobar was a neighbor of the Balisis in Ogak, Norte, Tuguegarao and he used to play with

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[13] TSN, Jessel Llanto, June 20, 2000, pp. 2-9; Affidavit of Jessel Llanto; Exhibit 3; Original Records, pp. 177-179.

[14] TSN, Alma Gonzales Saberola, June 19, 2000, pp. 2-6.

Supreme Court E-Library

Felicitas in the Balisi residence in their childhood days. Escobar also asked money from Felicitas in October 1999 when she was in Tuguegarao. He threatened her that if she did not give the amount, he would kill her husband. Escobar represented to her that he was an NBI agent, but Felicitas learned from the Chief of the Operation Unit of the NBI that he was not. She saw Escobar talk with Cristy's mother several times from September to November 1999. In the year 2000, he reiterated his demand for money, but this time in whatever amount she could afford. He told Felicitas that the accused raped Cristy. She was shocked and refused to believe him, and told him that she had no money at that time. But as he was insistent, she gave him ₱1,000.00, in addition to the ₱5,000.00 she gave him in October. Felicitas contradicted herself in another part of her testimony and stated that she learned of the rape charges filed by Cristy against her husband in 1999, but could not remember the exact date as her memory was dulled by an operation for myoma she underwent.[15]

Dolores Balisi, elder sister of Cristy's father, sided with the accused. She refuted Cristy's testimony that right after the accused raped her, Cristy reported to her and she accompanied Cristy to the NBI, then the latter stayed with her. Dolores went to the accused's house on November 1, 1999 and observed that the relationship between Cristy and the accused seemed normal; Cristy did not reveal to her anything unusual about their relationship. Even the accused and his wife spoke highly of Cristy as a very good and obedient girl. After Dolores saw Cristy and her mother on the last week of November 1999, she never saw Cristy again. Cristy's mother, Gertrudes Tullawan, informed her that she was already in the custody of the DSWD.

According to Dolores, a certain Silverio Escobar often goes to her house and talks to Tullawan who lived with Dolores for about a year, from July 1999 to March 25, 2000. Escobar introduced himself as an NBI agent, but Dolores learned from

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[15] TSN, Felicitas Balisi, June 23, 2000, pp. 7-21; Exhibit 8; Original Records, pp. 195-198.

Supreme Court E-Library

her friends that he was lying. Cristy's brother also lived with Dolores for four years.[16]

The defense also offered the testimony of Arsenio C. Pascual, surgeon and lawyer, and Dr. Marilyn Ricardo, gynecologist, for them to give their expert opinion regarding the medical certificate Dr. Soliman issued. They were supposed to testify that although the finding that the hymen is intact is dispensable in rape cases in general, it negates the charge of rape in Cristy's case as she claimed to have been raped at least three times. But the trial court did not allow the presentation of these two witnesses as according to it, this Court has ruled that a medical certificate is not even necessary in rape cases. The prosecution likewise pointed out that their testimonies were not necessary as the Court has ruled that there could be sexual intercourse without laceration of the hymen and they never examined the victim.[17]

The trial court upheld the version of the prosecution and sentenced the accused to the supreme penalty of death, *viz*:

"WHEREFORE, in view of the foregoing, the Court finds the accused Capt. Marcial Llanto *y* Leuterio guilty beyond reasonable doubt of RAPE and is hereby sentence (sic) to DEATH and ordered to pay the victim civil indemnity in the amount of Php 75,000.00 and moral damages in the amount of Php 50,000.00."[18]

Hence, the case is before us on automatic review. The defense assails the decision on the ground that the trial court misappreciated the facts and misapplied the law, and gravely abused its discretion in not admitting the testimonies of their medico-legal experts.

The appeal is partially meritorious.

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[16] TSN, Dolores Balisi, June 22, 2000, pp. 2-23; Affidavit of Dolores Balisi; Exhibit 5; Original Records, pp. 182-184.

[17] TSN, June 23, 2000, pp. 2-5.

[18] Original Records, p. 301.

Supreme Court E-Library

The accused avers that the trial court erred in believing Cristy's testimony that he raped her in Cebu thrice a week because the accused stayed at the Bachelor Officers Quarters, an hour's drive away from where the complainant and the accused's family stayed. That she was not raped on November 12, 1999 in Pasay City nor thrice a week in Cebu is confirmed by the gynecological examination conducted upon her, which showed that her hymen was intact and there was no injury to her external genitalia. The trial court gravely abused its discretion, according to the defense, when it refused to admit the testimonies of their medical experts who would have given their expert opinion that it was improbable for the victim to have been raped three times a week and her hymen to have remained intact.[19]

That Cristy was allegedly raped by the accused in many instances other than on November 12, 1999 and her hymen remained intact do not lend support to the cause of the accused. In *People v. Caballes*,[20] the fourteen year-old victim was raped nine times by her father in a span of four months. The first time she was raped, her father poked a knife at her, similar to the instant case. He had his way with her daughter without the latter struggling as she was afraid. She felt pain in her organ. In the other eight rape instances, the victim also acceded to her father's advances as he threatened her. A medical examination upon the victim showed that the victim's hymen was thick and very elastic. It had no lacerations and remained intact. The examining physician presented by the prosecution opined that it is possible for a woman's hymen to remain intact even after having been raped if it is lax, thick and elastic. She testified, *viz*:

"Q– Is it possible for a woman to be raped 9 times and still would not sustain any injury or laceration in her hymen?

A– As I said depending on the degree of penetration and the force of the penetration. And also depending on the kind of hymen a woman has.

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[19] *Rollo*, pp. 52-53.

[20] 199 SCRA 152 (1991).

Supreme Court E-Library

Q– Can you explain a little more on that?

A– As I said if the woman has a thick, elastic or lax hymen and just a very slight degree of penetration like 1/8, 1/4 fractions proportion, then the hymen may not break . . . "[21]

The trial court convicted the accused of all nine counts of rape. On appeal to this Court, among the accused's assignment of errors was that the victim's intact hymen was inconsistent with her charges of rape. This Court upheld the conviction as jurisprudence is replete with rulings that mere entry of the male organ into the lips of the female organ, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction.

In *People v. Santos*,[22] the accused was charged of raping the helpless eight-year old complainant. He assailed the credibility of the victim as according to him it was impossible for her to have been raped up to twenty times, but her hymen remained intact. The Court found no merit in the accused's contention, *viz*:

"We find no merit in the contention of accused-appellant. Dr. Cenido thoroughly discussed these intriguing hymenal qualities, but the accused-appellant would, understandably so, pretend to find the whole concept as obscure. He said that, as a general rule, a hymen that is intact would negate prior sexual intercourse but that the rule was not absolute as *penetration can happen with or without rupturing the hymen.* He confirmed that there were women whose hymens remained intact even after giving birth owing to the fact that their hymens must be very elastic . . .

The doctor's conclusions do not establish a novice medical nor legal theory. Our jurisprudence is replete with cases which would easily lay waste any attempt by accused-appellant to dent the credibility of the victim. The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate the commission of rape. Rape can be consummated even with the slightest penetration. It is enough that there is proof of entrance of the male organ into the labia or pudendum of the female organ

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[21] *People v. Caballes, supra*, pp. 165–166.

[22] 343 SCRA 503 (2000).

Supreme Court E-Library

(footnotes omitted), or a penetration, however slight of the external genitalia (footnotes omitted)."[23] (*italics supplied*)

Applying these rulings to the case at bar, it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. Dr. Soliman testified that during the examination on Cristy, a tube 2.5 centimeters in diameter was inserted into her hymenal opening without any injury. Her hymenal opening is wide at 2.5 centimeters in diameter so as to allow complete penetration by an average-sized adult Filipino male organ in full erection, about 2.5 centimeters, without producing genital/hymenal injury.[24] Likewise, whether the accused's penis fully or only partially penetrated the victim's genitalia, it is still possible that her hymen would remain intact because it was thick and distensible or elastic. We stated in *People v. Aguinaldo*[25] that the strength and dilability of the hymen varies from one woman to another such that it may be so elastic as to stretch without laceration during intercourse, or on the other hand, may be so resistant that its surgical removal is necessary before intercourse can ensue.[26] In some cases even, the hymen is still intact even after the woman has given birth.[27]

In view of Dr. Soliman's medical examination and opinion and the foregoing rulings of this Court that support the finding that a thick and elastic hymen can remain intact despite several instances of sexual intercourse, we find that the trial court was not in error in not admitting the expert testimonies of the defense witnesses who did not examine Cristy.

Alternatively, the accused argues that even assuming he had sexual intercourse with Cristy, it was not shown that he had

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[23] *Id.*, pp. 507-508.

[24] Exhibit C; Exhibit E, Original Records, pp. 99-100.

[25] 316 SCRA 819 (1999).

[26] *Id.*, p. 833, citing 1 TEDESCHI ECKERT TEDECHI, *FORENSIC MEDICINE, A STUDY IN TRAUMA AND ENVIRONMENTAL HAZARDS* 245 (1977 ed.).

[27] *People v. Almaden*, 305 SCRA 157 (1999).

Supreme Court E-Library

his way with her through violence or intimidation.[28] Quite the contrary, Cristy's testimony shows that she was intimidated. She was afraid and not able to fight and resist the accused's advances because he held a knife and tied her hands, *viz*:

"Q: What did you do when he removed your T-shirt, shorts, bra and panty?
A: I just keep (*sic*) on crying. I was crying.

Q: Did you not fight back when he removed your T-shirt, shorts, bra and panty?
A: No. sir.

Q: Why?
A: Because I was afraid of him.

Q: Why were you afraid of him?
A: I was afraid because he was holding a knife.

Q: And after removing your T-shirt, shorts, bra and panty and you felt afraid because he was holding a knife, what happened next?
A: He tied my both hands.

Q: Will you demonstrate how the accused tied your both hands? Witness demonstrating by raising her two hands and putting them at the back of her head. After the accused Marcial Llanto tied your hands at your back, what happened?
A: He started touching me by mashing my breasts.

Q: Besides mashing or touching your breast, what else did he do?
A: He kissed my vagina.

Q: What else happened?

Witness: He inserted his two fingers inside my vagina.

Fiscal Barrera: And what did you feel when he inserted his two fingers inside your vagina?
A: I felt pain. It is (*sic*) painful.

Q: During the time he fondle (*sic*) your breasts and put his two fingers inside your vagina, did you fight back?

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[28] *Rollo*, pp. 51-52.

Supreme Court E-Library

A: No, sir.

Q: Why?
A: Because my hands were tied. I could not fight as my two hands were tied and he was holding a knife and I was afraid.

Q: After he mashed your breast and inserted his two fingers inside your vagina while your two hands were tied, what happened next?
A: He inserted his penis inside my vagina.

Q: What did you feel when he inserted his penis inside your vagina?
A: I felt pain.

Q: What happened after he inserted his penis inside your vagina?
A: He threatened me not to tell anyone about what happened.

Q: What happened next after he threatened you?
A: He untied me. He removed the tie on my hands."[29]

Cristy's affidavit also shows that she was threatened with a knife every time the accused raped her, so she did not fight the accused, *viz*:

"6. *T: Ano ang ginawa ng Tito MARCIAL mo at inirereklamo mo siya ngayon?*
S: Ni-rape po niya ako.

7. *T: Kailan ka ni-rape ng Tito MARCIAL mo?*
S: December 1, 1996.

8. *T: Ilang beses kang ni-rape ng Tito MARCIAL mo?*
S: Maraming beses na po.

9. *T: Natatandaan mo pa ba ang mga petsa?*
S: Hindi po.

10. *T: Kailan yung huling insidente?*
S: November 12, 1999.

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18. *T: Papaano ka nire-rape ng Tito MARCIAL mo?*

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[29] TSN, Cristy Balisi, April 11, 2000, pp. 9-10.

Supreme Court E-Library

S: *Pinapahiga ako sa kama. Hinuhubaran ako, pinapatungan ako tapos ay ipinapasok niya yung ari niya sa ari ko.*

19. *T:* *Bakit hindi ka humihingi ng tulong tuwing nire-rape ka ng Tito MARCIAL mo?*
S: *Natatakot po ako dahil palagi siyang may hawak ng (sic) kutsilyo na may tela sa tuwing nire-rape niya ako.*

20. *T:* *Para saan yung tela?*
S: *Iyon po ang ipinanghahawak niya sa kutsilyo.*"[30]

Physical resistance need not be proved in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety.[31] It suffices that the intimidation produces fear in the mind of the victim that if she did not submit to the bestial demands of the accused, something far worse would befall her at the time she was being molested. As held by the Court, "(i)f resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary."[32] We have ruled in several rape cases that threatening the victim with bodily injury while holding a knife or a *bolo* constitutes intimidation sufficient to bring a woman to submission to the lustful desires of the molester.[33]

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[30] Exhibit B; Original Records, pp. 96-97.

[31] *People v. Prades*, 293 SCRA 411 (1998), citing *People v. Rabosa*, 273 SCRA 142 (1997); *People v. Quiamco, et al.*, 268 SCRA 516 (1997); *People v. Salazar*, 258 SCRA 55 (1996).

[32] *People v. Agbayani*, 284 SCRA 315 (1998), citing *People v. Grefiel*, 215 SCRA 596, 608, 630 (1992); *People v. Matrimonio*, 215 SCRA 613, 630 (1992); *People v. Pamor*, 237 SCRA 462, 472 (1994).

[33] *People v. Reynaldo*, 291 SCRA 701 (1998), citing *People v. Roll*, 200 Phil. 665 (1982); *People v. Espinoza*, 317 Phil. 79 (1995), citing *People v. Adlawan, Jr.*, 217 SCRA 489 (1993). See also *People v. Ulzoron*, 286 SCRA 741 (1998), citing *People v. Bantisil*, 249 SCRA 367, 377 (1995).

Supreme Court E-Library

The accused stresses that rape is hard to prove, but harder for him to disprove, though innocent. Especially when the allegation of rape is based solely on the testimony of the complaining witness, the latter's story should be carefully examined and the accused should not be convicted unless the testimony is impeccable. In assessing Cristy's credibility, the accused implores the Court to consider her bad character, shown by her frequently going out with male companions and coming home late[34] and her penchant for lying such as her alleged report of the rape to Dolores Balisi which the latter denied. Likewise, the accused faults the trial court for discarding Dolores' testimony because blood is thicker than water, so Dolores was expected to side with the accused. Following this reasoning of the trial court, the accused argues that there was more reason for Dolores to come to Cristy's aid because she is a relative by blood, being the daughter of Dolores' brother, while the accused is only a relative by affinity.[35] The accused suggests that Cristy merely fabricated the rape charges to extort his ₱500,000.00 retirement benefits and to retaliate against him because he scolded her for stealing money from him and his wife, neglecting her duties at home, and frequently watching television and gossiping with their neighbors. It was simply inconceivable for the accused to rape Cristy whom he treated like a family member.

The accused cannot fault the trial court for relying on Cristy's sole eyewitness account in convicting him. This Court has long held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court.[36] Neither does the self-serving evidence of the accused convince us that Cristy was merely instigated by her mother to file the rape complaint to extort his ₱500,000.00 retirement benefits. Nor does the

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[34] *Rollo*, pp. 50-51.

[35] *Ibid.*

[36] *People v. Quillosa*, 325 SCRA 747 (2000), citing *People v. Lotoc*, 307 SCRA 471 (1999); *People v. Platilla*, 304 SCRA 339 (1999).

Supreme Court E-Library

imputation of Cristy's bad character affect her credibility as the victim's character is immaterial in a rape case.[37] Likewise, the testimonies of the defense witnesses on her alleged stealing are inconsistent and not worthy of credence. The accused testified that Cristy repeatedly stole money from him and his wife, but at the same time said that she was like a good daughter to them. His wife Felicitas, on the other hand, testified that Cristy was hard-headed and not nice and repeatedly stole money from her and her husband since she started living with them in 1993. Felicitas' sister, Dolores, stated that the accused and Felicitas spoke highly of Cristy as a good and obedient girl. Considering these inconsistent testimonies, we are not convinced with the accused's allegation that Cristy filed the rape charges in retaliation to his scolding her for stealing money and deciding to stop financing her schooling.

On the contrary, we have consistently taken judicial notice of the fact that no woman, especially one so young like Cristy, would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience and trauma of a public trial if she were not motivated by the desire to have the culprit apprehended and punished.[38] Cristy's testimony deserves credence over the testimonies of the accused and the trial court correctly held, *viz*:

"In this particular case, the minor complainant has been under the care of the accused Marcial Llanto and Felicitas Balisi Llanto for a period of four years providing for her sustenance, support and education and it would be unbelievable that a child of such tender age, not exposed to the ways of the world would impute a crime so serious as rape to the person who took care of her, supported her and sent her to school if it is not true and she is motivated by the desire to have the accused apprehended and punished to vindicate her honor."[39]

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[37] *People v. Quezada*, G.R. Nos. 135557-58, January 30, 2002.

[38] *People v. Gonzales*, G.R. No. 140676, July 31, 2002.

[39] Decision, p. 11; Original Records, p. 3000.

Supreme Court E-Library

Anent the accused's alibi, suffice it to say that the defense of alibi is inherently weak and easily fabricated.[40] This cannot prevail over Cristy's positive identification, unless buttressed by strong evidence of non-culpability.[41]

The trial court erred, however, when it meted out to the accused the supreme penalty of death under Article 266-B of the Revised Penal Code which provides that the death penalty shall be imposed when "the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."[42] The information reads, *viz*:

"That on or about (the) twelfth day of November, 1999 at Pasay City and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, with use of a knife, through force, violence and intimidation, and by taking advantage of his moral ascendancy over his twelve (12) year old minor niece MARIA CRISTY T. BALISI, did then and there willfully, unlawfully and feloniously have carnal knowledge of Ma. Cristy T. Balisi against her will and consent, to her damage and prejudice in whatever amounts may be awarded to her under provisions of the Civil Code."[43]

The Revised Rules of Criminal Procedure, which took effect on December 1, 2000, require both qualifying and aggravating circumstances to be alleged in the information, *viz*:

"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 . . .

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[40] *People v. Dionision*, G.R. No. 137676, September 27, 2001, citing *People v. Andales*, 312 SCRA 738 (1999) and *People v. Enoja*, 321 SCRA 7 (1999).

[41] *People v. Arlee*, 323 SCRA 201 (2000).

[42] Previously Art. 335 of the Revised Penal Code as amended by Rep. Act 7659 which is cited by the trial court; Decision, pp. 32-33.

[43] Original Records, p. 2.

Supreme Court E-Library

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 statute 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."

While the rape in the case at bar was committed on November 12, 1999, we shall give retroactive application to Secs. 8 and 9, *supra*, as they are favorable to the accused.

In a catena of cases, we have ruled that the allegation that the accused is the "uncle" of the victim and the latter is his "niece" is not specific enough to satisfy the special qualifying circumstance of relationship under Art. 266-B, *supra*. In *People v. Lachica*,[44] we held:

"If the offender is merely a relation — not a parent, ascendant step-parent, or guardian or common law spouse of the mother of the victim — *it must be alleged in the Information that he is 'a relative by consanguinity or affinity [as the case may be] within the third civil degree.'*" (*People v. Libo-on*, G.R. No. 136737, May 23, 2001, per Gonzaga-Reyes, *J.; People v. Banihit*, 339 SCRA 86, 96, August 25, 2000, per Ynares-Santiago, *J.* — both citing *People v. Ferolino*, 329 SCRA 719, 735, April 5, 2000, per Davide, *CJ.*) Moreover, even if the relationship by consanguinity or affinity is alleged in the Information, it is still necessary to allege further that such relationship is within the third civil degree. . ."[45] (*italics supplied*)

Consequently, because of the defect in the information, the accused can only be held liable for simple rape.

At any rate, the prosecution was not able to prove beyond reasonable doubt the kinship between the accused and the victim. We ruled in *People v. Capili*,[46] *viz*:

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[44] G.R. No. 143677, May 9, 2002.

[45] *People v. Lachica, supra*; See also *People v. Velasquez*, G.R. Nos. 142561-62, February 15, 2002, citing *People v. Libo-on*, G.R. No. 136737, May 23, 2001.

[46] G.R. No. 142747, March 12, 2002.

Supreme Court E-Library

"In *People v. Liban* (345 SCRA 453 [2000]), where the age of the victim was at issue, the Court ruled that the testimony of the victim was insufficient to establish her minority, but that, further thereto, *the prosecution should present corroborative evidence.* In the instant case, the bare statement in passing of Melissa that appellant "is an uncle," without any corroborating testimonial or documentary evidence to clearly establish that relationship, would be insufficient to pass the test set in *Liban.*"[47] (*italics supplied*)

In the case at bar, the prosecution failed to corroborate Cristy's testimony that the accused is her uncle, being the husband of her father's sister. The accused himself admitted that his wife, Felicitas, is the sister of Cristy's father, Raul. Felicitas and her sister, Dolores, confirmed the accused's testimony. However, we cannot consider their testimonies corroborative of Cristy's testimony. Well-settled is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances, thus the testimonies of the defense witnesses cannot be used to benefit the prosecution, to the disadvantage of the accused.[48]

IN VIEW OF THE FOREGOING, we *AFFIRM* the decision of the trial court with the *MODIFICATION* that the accused-appellant is found guilty of the crime of simple rape and sentenced to suffer the penalty of imprisonment of *reclusion perpetua* with all its accessory penalties and to pay the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Costs against the accused-appellant.

SO ORDERED.

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

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[47] *People v. Capili, supra*, p. 10.

[48] See *People v. Tabanggay*, 334 SCRA 575 (2000); *People v. Asuncion*, G.R. No. 136779, September 7, 2001.