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to be at the scene of the crime considering the proximity of the Zapote cockpit to the house of the accused-appellant, where the rape took place. Accused-appellant is alleged to be a cockfighting *aficionado*. Being so, he must have many friends and fellow *aficionados* who must have been with him that day, if he indeed went to the cockpit. But accused presented no one to substantiate his claim of alibi.

Lastly, the complainant, a 13 year old *barrio* girl would not point an accusing finger at accused-appellant, 64 years old and a grandfather, if she in fact was not raped by him.

WHEREFORE, with the modification that the civil indemnity is raised to ₱30,000.00, the decision appealed from should be, as it is hereby AFFIRMED.

SO ORDERED.

Abad Santos, Escolin, Cuevas, and *Alampay, JJ.*, concur.

SECOND DIVISION

(G.R. No. 42256. December 19, 1985)

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DEMETRIO PIELAGO and GAUDENCIO TABAYAG ,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MEDICAL EXAMINATION OF RAPE VICTIM NOT AN INDISPENSABLE ELEMENT IN THE PROSECUTION FOR RAPE.— The medical examination of a rape victim is not an indispensable element in the prosecution for rape since it all depends upon the evidence offered, and if such evidence convinces the court, a conviction

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thereof is proper. In the instant case, the rape victim, Felicidad Manzano, categorically declared that after getting the money, the robbers dragged her into a room and helped one another in abusing her sexually. Darwin Veloso was the first to go on top of her while she was being held by Antonio Vasquez and Gaudencio Tabayag, but before Darwin Veloso inserted his penis into her vagina, he had been fondling her private parts. After Darwin Veloso, Gaudencio Tabayag had carnal knowledge or her, and because she was already weak, she was not able to stop Gaudencio Tabayag. Then, Antonio Vasquez followed Tayabag in having sexual intercourse with her. She recognized their faces when they pulled their masks and learned of their names after their capture.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY CONTRADICTIONS AND INCONSISTENCIES IN MINOR MATTERS.**— The appellant calls the Court's attention to some contradictions or inconsistencies in the testimonies of Felicidad Manzano and her husband Jose Quino. But these contradictions only refer to minor matters and do not detract from the probative value of their testimonies as a whole. These minor discrepancies would rather show the sincerity of the witnesses and the absence of connivance between them to make their testimonies tally in every respect.

3. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.**— Appellant's testimony that he was in Ligao, Albay in uncorroborated and hence, cannot prevail over his positive identification by Jose Quino and Felicidad Manzano. Jose Quino categorically declared that he saw Demetrio Pielago standing as look-out outside the house near the door while the offense was committed and Felicidad Manzano stated that Pielago was armed with a bolo. Jose Quino is the cousin of Demetrio Pielago and no motive whatsoever was presented to show why Jose Quino would implicate him in the commission of so grave an offense as robbery with rape and testify falsely against him. Besides, the distance of one kilometers between the place where this appellant claimed to be and where the crime was committed is such that it does not rule out the possibility of the appellant being at the place of the crime when it was committed. It is not enough for the accused to prove that he was somewhere else when the crime was committed, but must demonstrate that it was physically

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impossible for him to be at the scene of the crime at the time it was committed.

4. CIVIL LAW; DAMAGES; INDEMNITY FOR RAPE VICTIM RAISED TO P30,000.— The indemnity to be paid of the rape victim is increased to ₱30,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Salvador A. Princesa for appellant D. Pielago.

D E C I S I O N

CONCEPCION JR., *J.*:

Appeal of Demetrio Pielago and Gaudencio Tabayag from the decision of the then Court of First Instance of Albay finding them and one Darwin Veloso guilty of the crime of Robbery with Rape and sentencing them to suffer the penalty of *reclusion perpetua*; to indemnify, jointly and severally, the offended parties Jose Quino and Felicidad Manzano in the amounts of ₱2,285.00 and ₱10,000.00, respectively; and to pay the costs.[1]

The People's version of the facts of the case, as contained in the Brief of the Solicitor General, are as follows:

"At about 7:00 o'clock in the evening of September 18, 1964, while Jose Quino, his wife Felicidad Manzano, his mother Timotea Pielago, and their three children, were taking their supper at their home at San Jose, Oas, Albay, a man suddenly appeared from their kitchen, followed by others, among whom was Darwin Veloso who was carrying a carbine, Gaudencio Tabayag who was carrying a revolver, while Demetrio Pielago remained outside the house as guard and was also armed with a bolo (*pp. 11-14, 20-21, t.s.n., Jan. 13, 1967; p. 260, t.s.n., May 17, 1968*).

[1] Their co-accused, Darwin Veloso, did not appeal from the decision. Salvador Mijares, upon the other hand, was acquitted for insufficiency of evidence against him, while the case against Salvador Quilonio was earlier dismissed by the court upon motion of his counsel with the conformity of the private prosecutor. (See Original Record, p. 327).

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Darwin Veloso tied Jose Quino while Gaudencio Tabayag tied his wife Felicidad Manzano and his mother (*pp. 26-27, t.s.n., Jan. 13, 1967*). Jose Quino was asked where his gun was and because he denied having one, Darwin Veloso gave him a blow, and the robbers went looking for the gun until they found it behind the *aparador*, Darwin Veloso slapped him again for having lied (*pp. 28-29, t.s.n., Jan. 13, 1967*). The robbers searched the house and found ₱70.00 in the trunk and ₱2,015.00 in the ceiling. They got all these, together with the Avegon radio worth ₱150.00 and the shotgun worth ₱200.00 (*pp. 28-29, 30-34, 42, t.s.n., Jan. 13, 1967*). They also dragged Felicidad Manzano Quino inside the room and raped him even as she was scratching, beating and kicking them. Her panty was torn. She recognized Demetrio Pielago because he is the nephew of her mother-in-law, or the cousin of Jose Quino, her husband (*p. 5, t.s.n., Jan. 13, 1967; p. 261, t.s.n., May 17, 1968*). Darwin Veloso raped her first as she was being held by Gaudencio Tabayag. Then Tabayag followed in raping her. She recognized Darwin and Gaudencio because their handkerchiefs covering their faces were pulled down after entering the house (*pp. 272-286, t.s.n., May 19, 1968*)."

The appellants Gaudencio Tabayag and Demetrio Pielago, however, denied participation in the commission of the crime complained of. Both interposed the defense of alibi. The appellant, Gaudencio Tabayag, claimed that he was confined at the Baao, Camarines Sur jail when the offense was committed on September 18, 1964, having been arrested at about 6:30 o'clock in the evening of that day and was released in the morning of the following day. The appellant, Demetrio Pielago, for his part, stated that he was in his house at Paulba, Ligao, Albay, about 1 kilometer from Barrio San Jose, Oas, Albay, the whole evening of September 18, 1964. He also claimed that he knew his co-accused Darwin Veloso and Gaudencio Tabayag only when they were confined at the Provincial Jail of Albay. He further stated that he was forced to sign a sworn statement admitting participation in the commission of the offense charged. Their version is corroborated by their co-accused Darwin Veloso who claimed that his companions in the commission of the crime were Carlito Frias and one Tabayag, a friend of Frias, whose name he could not remember. The trial court, however, rejected their defense since they were positively identified not only by

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the witnesses of the prosecution but also by their co-accused Salvador Mijares and Salvador Quilonio.

The appellant, Gaudencio Tabayag, impute to the trial court, as first error, its having found him guilty of the crime of rape although the *corpus delicti* of rape does not exist since there had been no physical examination of the victim's vagina to show the presence of spermatozoa.

The argument is untenable. The medical examination of a rape victim is not an indispensable element in the prosecution of rape since it all depends upon the evidence offered, and if such evidence convinces the court, a conviction thereof is proper.[2] In the instant case, the rape victim, Felicidad Manzano, categorically declared that after getting the money, the robbers dragged her into a room and helped one another in abusing her sexually. Darwin Veloso was the first to go on top of her while she was being held by Antonio Vasquez and Gaudencio Tabayag, but before Darwin Veloso inserted his penis into her vagina, he had been fondling her private parts. After Darwin Veloso, Gaudencio Tabayag had carnal knowledge of her, and because she was already weak, she was not able to stop Gaudencio Tabayag. Then, Antonio Vasquez followed Tabayag in having sexual intercourse with her. She recognized their faces when they pulled their masks and learned of their names after their capture.

The appellant calls the Court's attention to some contradictions or inconsistencies in the testimonies of Felicidad Manzano and her husband Jose Quino, But these contradictions only refer to minor matters and do not detract from the probative value of their testimonies as a whole. These minor discrepancies would rather show the sincerity of the witnesses and the absence of connivance between them to make their testimonies tally in every respect.

The alibi set by the appellant Gaudencio Tabayag is not convincing. While he told the court that he was confined at the

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[2] *People vs. Orteza*, 116 Phil. 424 and cases cited therein.

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Baao municipal jail at the time the crime was committed, he, however, failed to present credible and tangible evidence that it was physically impossible for him to be at Barrio San Jose Oas, Albay at that time. The testimony of Pat. Avelino Busadre to the effect that he arrested Gaudencio Tabayag for drunkenness at about 6:30 o'clock in the evening of September 18, 1964 and brought him to the municipal jail of Baao where Gaudencio Tabayag spent the night is not supported by the police blotter and is in conflict with the testimonies of the witnesses for the prosecution who positively identified the said Gaudencio Tabayag as one of the culprits. The trial court had concluded that the prosecution witnesses had spoken the truth and We have no reason and are not prepared to reverse his findings.

The appellant Demetrio Pielago also insists on his alibi that he was in his house at Paulba, Ligao, Albay, about one kilometer away from the house of Jose Quino, in the evening of September 18, 1964 and assails the trial court for convicting him of the crime of robbery with rape.

We, find, however, that the appellant's testimony is uncorroborated and hence, cannot prevail over his positive identification by Jose Quino and Felicidad Manzano. Jose Quino categorically declared that he saw Demetrio Pielago standing as look-out outside the house near the door while the offense was committed and Felicidad Manzano stated that Pielago was armed with a bolo. Jose Quino is the cousin of Demetrio Pielago and no motive whatsoever was presented to show why Jose Quino would implicate him in the commission of so grave an offense as robbery with rape and testify falsely against him. Besides, the distance of one kilometer between the place where this appellant claimed to be and where the crime was committed is such that it does not rule out the possibility of the appellant being at the place of the crime when it was committed. It is not enough for the accused to prove that he was somewhere else when the crime was committed, but must demonstrate that it was physically impossible for him to be at the scene of the crime at the time it was committed.

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WHEREFORE, with the modification that the indemnity to be paid to the rape victim is increased to ₱30,000.00, the judgment appealed from should be, as it is hereby AFFIRMED. With costs against the appellants.

SO ORDERED.

Abad Santos, Escolin, Cuevas, and *Alampay, JJ.*, concur.

SECOND DIVISION

(G.R. No. L-44079. December 19, 1985)

JOSEFINO C. DRACULAN, Provincial Fiscal of Isabela and PATRICIO T. DURAN, Fourth assistant Provincial Fiscal of Isabela, *petitioners, vs.* **HON. PROCORO DONATO, Judge, Court of First Instance of Isabela, Branch V,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AMENDMENT OF INFORMATION; PROPER WHERE NO JUDGMENT HAS AS YET BEEN RENDERED.**— The amendment or the filing of a new case where there had been a mistake in charging the proper offense after the dismissal of an existing one, spoken of and therein provided for apply, only to an original case where no judgment has as yet been rendered. Much less does the said section apply to an appealed case such as the instant proceeding. The reason is obvious and that is because the right to amend or to file a new complaint or information charging the proper offense after the dismissal of the original complaint or information, is subject to the rule or double jeopardy, which petitioners in the instant case miserably missed.

2. **ID.; ID.; ID.; ID.; CASE AT BAR.**— In the case at bar, the original charge was that of less serious physical injuries. Whether the