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as moral damages, ₱22,050 as actual damages and ₱486,616 as indemnity for the victim's loss of earning capacity. The decision under review is *AFFIRMED* in all other respects. Costs *de oficio*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 131842. June 10, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIONISIO JACKSON,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing a twelve-year old girl. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

In affirming the conviction of appellant, the Supreme Court ruled that appellant's conviction was based on the positive and direct testimony of the victim. The absence of evidence of any improper motive on her part to testify as principal witness of the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit. When the victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.

The Court further ruled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does

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not require proof that the accused used force or intimidation in having carnal knowledge of the victim. In the case at bar, the fact of the victim's mental retardation was not alleged in the Information and, therefore, cannot be the basis of conviction. However, the Information sufficiently alleged that appellant, by means of force and intimidation, raped the victim. The prosecution has proven beyond reasonable doubt that appellant used force and intimidation in committing the crime of rape. Thus, appellant was found guilty of rape, under paragraph 1, Article 335 of the Revised Penal Code.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY GIVEN GREAT WEIGHT AND RESPECT ON APPEAL.**— [F]actual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. Only when there appears in the record some facts or circumstances of weight and influence which the trial court overlooked, misunderstood or misappreciated and which, if properly considered, would have altered the results of the case, will we depart from this rule.

2. **ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; QUALIFICATION OF WITNESSES; A MENTAL RETARDATE COULD QUALIFY AS A COMPETENT WITNESS, FOR AS LONG AS, SHE COULD PERCEIVE AND IS CAPABLE OF MAKING KNOWN HER PERCEPTIONS TO OTHERS; CASE AT BAR.**— Even a mental retardate could qualify as a competent witness, for as long as, she could perceive and is capable of making known her perception to others. It has long been settled that a person should not be disqualified on the basis of mental handicap alone. He or she can be a witness, depending on his or her ability to relate what he or she knows. If the testimony

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of a mental retardate is coherent, the same is admissible in court. Despite her mental retardation, we agree with the trial court that April adequately showed she could convey her ideas by words and could give sufficiently intelligent answers to the questions propounded by her counsel, the counsel for the defense and the court.

3. **CRIMINAL LAW; RAPE; DATE OF COMMISSION IS NOT AN ESSENTIAL ELEMENT THEREOF.**— [I]n cases of rape, the date of commission is not an essential element of the offense, what is material being the occurrence thereof and not the time of its commission.

4. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.**— Appellant's defense of alibi, although corroborated by two witnesses, has no merit. His alibi fails in the light of the positive and unequivocal declaration of April. It is an oft-quoted doctrine that positive identification prevails over denial and alibi.

5. **ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE.**— [F]or the defense of alibi to prosper, the appellant must establish that (a) he was in another place at the time of the commission of the offense; and (b) he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity, at the time of its commission.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF WITNESSES ARE ENTITLED TO FULL FAITH AND CREDIT IN THE ABSENCE OF IMPROPER MOTIVE TO FALSELY TESTIFY AGAINST ACCUSED; CASE AT BAR.**— When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit. Appellant's conviction was based on the positive and direct testimony of April. The absence of evidence of any improper motive on her part to testify as principal witness of the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit.

7. **CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE; SUFFICIENTLY ESTABLISHED WHEN VICTIM'S TESTIMONY OF THE SEXUAL ABUSE IS CORROBORATED BY PHYSICAL EVIDENCE OF PENETRATION.**— When the

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victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.

8. ID.; STATUTORY RAPE; COMMITTED BY HAVING SEXUAL INTERCOURSE WITH A WOMAN WHO IS A MENTAL RETARDATE.— Sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.

9. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— With respect to the civil liability of appellant, the trial court correctly awarded to the offended party the amount of ₱50,000.00 as civil indemnity. In addition, we grant moral damages of ₱50,000.00 even without need of further proof, considering that the victim April del Valle, in fact, sustained mental, physical and psychological suffering.

APPEARANCES OF COUNSEL

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

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is an appeal from the decision,[1] dated March 17, 1997, of the Regional Trial Court (RTC) of Quezon City (Branch 102) convicting accused Dionisio Jackson of rape in Criminal Case No. Q-96-66112, sentencing him to suffer *reclusion perpetua* and ordering him to indemnify the offended party in the amount of ₱50,000.00.

In a Complaint dated May 15, 1996, twelve-year old April del Valle *y* Labaco, assisted by her father Delfin del Valle y Alcantara, accused Dionisio Jackson of rape, committed as follows:

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[1] Penned by Judge Perlita J. Tria Tirona (now Associate Justice of the Court of Appeals).

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That on or about the 5th day of May 1996, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously drag the complainant, one APRIL DEL VALLE *Y* LABACO, a minor 12 years of age, inside a bathroom, and then and there, undressing her and thereafter put himself on top of her, and had carnal knowledge of her, without her consent and against her will, to the damage and prejudice of the said offended party.

Contrary to law.[2]

When arraigned on July 8, 1996, the accused pleaded not guilty.[3]

At the ensuing trial, the prosecution presented the complainant April del Valle and six other witnesses, namely: Irenea Alcantara, Delfin del Valle, Dr. Jesusa Nieves-Vergara, Carmen Sunico-Quesada, PO1 Ernesto Albero and Dr. Pablo Reyes.

The prosecution evidence established the following facts:

At around 8:00 p.m. of May 4, 1996, accused Jackson and six other male companions were having a drinking session at the back of the house of Erlinda del Valle at 338 Marian Subdivision, Novaliches, Quezon City. Waiting on them was Erlinda's granddaughter, twelve-year old April who collected the empty liquor bottles. At around 1:00 a.m. of May 5, 1996, the accused invited April to the comfort room, which is located a few meters outside of the house of Erlinda. When April and the accused were near the comfort room, the accused dragged April inside the comfort room. The accused punched her, then pushed her down to the cemented floor where she hit her head. A rope was tied on her neck and her hands. When accused saw that April could not breathe, he removed the rope around her neck. While she lay on the floor, the accused lowered her short pants, straddled ("*sinakyan*") her and then inserted his penis inside her vagina. April felt pain but she did not shout because the accused warned her not to shout or else she would be beheaded. After the rape, April pulled the rope from her hands, pulled up her short pants and placed the rope

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[2] Original Records, p. 1.

[3] *Id.*, p. 24.

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on the side of the comfort room. She then returned to where the drinking session was going on and waited for the empty liquor bottles.[4]

Six days later, on May 11, 1996, April went to Irenea Alcantara, her grand-aunt, who lived a few meters from her grandmother's house. April told Irenea that the accused inserted his penis inside her vagina. Upon hearing this, Irenea called April's father, Delfin del Valle. Delfin del Valle brought April to the *Barangay* but they were referred to the Quezon City General Hospital. The hospital, in turn, referred them to Camp Crame for medical examination.[5]

On May 11, 1996, Dr. Jesusa Nieves-Vergara, a medico-legal officer of the PNP Crime Laboratory in Camp Crame, conducted a medico-legal examination on April. She found the "hymen with shallow healed lacerations at 2, 5, and 10 o'clock positions." Dr. Vergara concluded that April is in a "non-virgin state physically."[6] On May 13, 1996, April and her father went to the Novaliches Police Station where PO1 Ernesto Albero took their sworn statements, on the basis of which a criminal complaint for rape was filed.[7]

April was brought to the Psychiatric Department of the Quezon City General Hospital. The Psychiatric Department referred April to Carmen Sunico-Quesada, a child psychologist at the Child Development Unit-Pediatrics Department of the Quezon City General Hospital, for psychiatric examination. The psychiatric examination revealed that April has an I.Q. of 52 which is "comparatively fit for an average 6 year old girl."[8] The psychiatric findings of Carmen Sunico-Quesada were affirmed by Dr. Pablo Reyes, a Physician-Psychiatrist of the Quezon City General Hospital, who also examined April. Dr. Reyes added that April is suffering from "mild mental retardation."[9]

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[4] TSN, August 12, 1996, pp. 5-9; TSN, August 14, 1996, pp. 2-5; September 23, 1996, pp. 18-23.

[5] TSN, August 14, 1996, pp. 10-14.

[6] TSN, September 13, 1996, pp. 7, 13; Exhibit "C".

[7] TSN, September 18, 1996, pp. 18-19.

[8] TSN, September 13, 1996, p. 22; Exhibit "G".

[9] TSN, September 26, 1996, pp. 6, 13; Exhibit "H".

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The evidence for the defense consisted of denial and alibi. The witnesses for the defense were Erlinda del Valle, accused Dionisio Jackson, Francisco Leysis and Agustina Calvero.

Erlinda del Valle testified: She is April's grandmother. April lives with her. She knew the accused who formerly rented a room in her house. On May 4, 1996, she did not see the accused because he went to work. On May 5, 1996, he arrived in the afternoon and had a drinking spree. When she woke up on May 5, 1996, she did not notice any contusions on the face of April. April did not narrate to her the alleged rape but she learned about it from his son, Delfin del Valle. The comfort room does not have a light and it is dark inside, that at nighttime, she cannot see who is inside or outside.[10]

For his part, the accused testified: On May 4, 1996, he went to work at Isuzu Sales Phils., Inc. located at Caloocan City and left the office at about 5:30 p.m. and proceeded to his residence at San Francisco Compound, Tandang Sora Extension, Quezon City. He arrived home at about 8:00 p.m. and after he took his supper at around 9:00 p.m., he rested for a while listening to music till he fell asleep. He woke up at about 5:00 o'clock the following morning of May 5, 1996 and washed his clothes before he took his breakfast. Then, he rested for a while before he took his lunch together with his companions in the house. He learned of the criminal accusation of rape against him only when his sister, Editha Jackson, called him up on May 11, 1996 at around 12:30 noon at his office at Isuzu Sales Phils., Inc. and told him that their father, Emiliano Jackson, wanted to talk to him about the matter.[11]

Francisco Leysis testified: He was the companion of the accused in the house at 259 Tandang Sora Extension, Sangandaan, Quezon City. On May 4, 1996, accused arrived at the house at 8:00 p.m. and he saw the accused asleep at around 1:00 a.m. of May 5, 1996 when the alleged rape took place.[12]

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[10] TSN, October 7, 1996, pp. 3-19.

[11] TSN, October 9, 1996, pp. 4-10.

[12] TSN, October 10, 1996, pp. 29-32.

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Agustina Calvero testified: She has been a co-worker of the accused for thirteen years in Isuzu Sales Phils., Inc. She is the timekeeper of the company. Based on her notebook, the accused reported to work on May 4, 1996 from 8:25 a.m. until 5:30 p.m. Accused is a good family man and has no derogatory record at work.[13]

The prosecution presented Mario Bojo as rebuttal witness. He testified that he saw the accused on the evening of May 4, 1996 at Marian Subdivision, Novaliches, Quezon City.[14]

After evaluating the evidence adduced by the opposing parties, the trial court rendered judgment convicting the accused of the crime of rape. The dispositive portion of the decision reads:

> WHEREFORE, the Court Finds the accused Dionisio Jackson guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of *reclusion perpetua*, and to indemnify the complainant in the amount of ₱50,000.00
>
> SO ORDERED.

Accused did not file a motion for reconsideration.[15] Instead, he interposed the present appeal to this Court.

In his Brief, appellant bewails the decision of the trial court and submits the following Assignment of Errors:

I

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE TESTIMONY OF PRIVATE COMPLAINANT, APRIL DEL VALLE WAS PUNCTURED WITH MATERIAL IMPROBABILITY, CONTRADICTION AND UNRELIABILITY THEREBY CASTING DOUBT ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF THE CRIME OF RAPE

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[13] TSN, October 14, 1996, pp. 3-10.

[14] TSN, October 21, 1996, pp. 12-15.

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NOTWITHSTANDING THE PRESENCE OF EXCULPATORY PHYSICAL EVIDENCE SUPPORTING THE SAME.[16]

Anent the first assigned error, appellant argues that the trial court "reluctantly" gave weight and credence to the testimony of April notwithstanding that the trial court itself acknowledged in its Decision that April "gave a somewhat confused testimony." He points to contradictory statements which escaped the proper appreciation of the trial court, namely: (a) to whom and when did she report the crime; (b) when did the crime happen, on a Saturday or a day that televised basketball is shown; (c) was she sleeping when the crime happened; and, (d) how was force exerted on her.

As to the second assigned error, he claims that the alleged rape could not have occurred on May 5, 1996 since the medico-legal officer, Dr. Vergara, on cross-examination, revealed that the lacerations in the hymen of April could have been inflicted or could have occurred more than seven days prior to the date of examination on May 11, 1996.

We have held time after time that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal.[17] This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[18] Only when there appears in the record some facts or circumstances of weight and influence which the trial court overlooked, misunderstood or misappreciated and which, if

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[15] Original Records, pp. 146-147.

[16] *Rollo*, p. 69.

[17] *People vs. Bertulfo*, G.R. No. 143790, May 7, 2002, p. 8.

[18] *People vs. Abella*, 339 SCRA 129, 144–145 (2000).

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properly considered, would have altered the results of the case, will we depart from this rule.[19]

The appeal is without merit. A close and detailed examination of the entire record of the instant case impels us to affirm the assailed decision of the RTC.

The trial court indeed had observed that April gave a "somewhat confused testimony." However, it attributed her manner of testifying to the fact that she was suffering from mental deficiency — "mild mental retardation." Significantly, when the matter of April's mental retardation cropped up at the trial, the appellant did not challenge her competence as a witness and ability to testify in court. Indeed, we find no reason to doubt her competency. Even a mental retardate could qualify as a competent witness,[20] for as long as, she could perceive and is capable of making known her perception to others.[21] It has long been settled that a person should not be disqualified on the basis of mental handicap alone.[22] He or she can be a witness, depending on his or her ability to relate what he or she knows. If the testimony of a mental retardate is coherent, the same is admissible in court.[23] Despite her mental retardation, we agree with the trial court that April adequately showed she could convey her ideas by words and could give sufficiently intelligent answers to the questions propounded by her counsel, the counsel for the defense and the court. Enlightening are the following excerpts from her candid and unequivocal testimony which we quote verbatim:

Q : Who is that person whom you said who raped you?
A : Diony, '*yan.*' (witness pointing to accused)

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[19] *People vs. Fernandez*, G.R. No. 139341-45, July 25, 2002, p. 11.

[20] *People vs. Lagarto*, 326 SCRA 693, 731 (2000).

[21] *People vs. Baid*, 336 SCRA 656, 666 (2000).

[22] *Id.*, p. 671.

[23] *People vs. Padilla*, 301 SCRA 265, 270 (1999).

[24] TSN, August 12, 1996, p. 9.

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PROSECUTOR CONCHA:

Witness is pointing to the person of the accused.

Q : You said that this person by the name of Diony raped you, what did he do to you?
A : '*Yong titi niya inilagay sa akin.*'
He put his penis to my organ.

Q : You point to the part of your body where he put his penis?
A : Here, inside (witness pointing to her sex organ). '*Dito po, sa may loob.*'[24]

. . . . . .

Q : When you said 'here,' what do you mean?
A : Inside the vagina, sir.

Q : What do you feel?

. . . . . .

A : It was painful, sir.

PROSECUTOR CONCHA:

Q : Where did that happen?
A : *He dragged* me to the comfort room, sir.

Q : How did it happen that you were in the comfort room?

COURT:

She answered '*Hinila niya ako sa* comfort room.' There was already an answer. 'He dragged me.'

. . . . . .

PROSECUTOR CONCHA:

Q : Madam Witness, you said that you were made to lie down in the comfort room . . .

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COURT:

She said *'Hinila ako sa* comfort room,' so she was dragged to the comfort room.

WITNESS:

A : I was *pushed to the comfort room*, sir.

PROSECUTOR CONCHA:

Q : What happened to you after you were pushed to the comfort room?
A : *'Sinakyan po.*

Q : After you were brought to the comfort room and the person sexually abused you, after that what happened?

. . . . . .

Q : After that what happened?
A : He inserted his penis.[25] (Italics supplied).

April remained steadfast and unwavering on cross-examination despite persistent efforts by defense counsel to throw her off track, thus:

Q : When you say the word 'rape,' what do you mean by that?
A : He put his penis on my sex organ (Titi niya lagay niya sa akin).

. . . . . .

Q : So that you mentioned that it is very dark, how would you know that it was the penis that was inserted on your organ?
A : Because I saw him.

Q : You saw him?
A : Yes, Ma'am.

Q : So what did you see?
A : His penis was inserted.

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[25] TSN, August 14, 1996, pp. 2-5.

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Q : So that, even if it was very dark, you know that it was his penis that was inserted?
A : Yes, Ma'am.

Q : It was not his hands?
A : '*Daliri po.*'

Q : So that, you are not sure what was inserted in your vagina?
A : '*Sigurado po.*'

Q : You are sure that the finger was inserted in your vagina?
A : No, Ma'am, his penis.

Q : But you mentioned that he inserted his fingers?
A : Yes, ma'am.

Q : So that, did Dionisio Jackson, the accused in his case, try to inflict physical injuries on you?
A : Yes, Ma'am.

Q : When you say that he tried to inflict injuries to you, what do you refer to?
A : When I went ahead inside the comfort room he gave me fistic blows. (. . . *pinagsusuntok po niya ako.)*

Q : He boxed you? Where did he box you?
A : On my face.

Q : Was it strong?
A : Yes, Ma'am.

Q : Very strong?
A : Yes, Ma'am

Q : How many times did he try to hit you?
A : Once, ma'am.

Q : Not twice?
A : No, Ma'am.

Q : How did he hit you?
A : (*Witness demonstrated how she was boxed with a closed fist on her left cheek.*)

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. . . . . .

Q : So that, you did not shout for help even if he boxed you very hard?
A : He said, '*pupugutin daw niya ang ulo ko pag sumigaw ako.*'

Q : When he said he will '*pupugutin ang ulo mo,*' what do you mean?
A : (no answer).

COURT:
'*Paano niya pupugutin ang ulo mo*?'

A : '*Dito Po.*' (witness pointing to her neck.)

COURT:
How will he '*pugot* your *ulo*?'
Do you know the meaning of '*pugot*'?

A : Like this (witness pointing her fingers around her neck.)[26] (Italics supplied).

On re-direct examination, April further fortified her testimony:

Q : A while ago you said that you were raped, and when you said by the word raped, you mean that '*yong ari niya inilagay sa iyo?*'
A : Yes, sir.

Q : And then you also mentioned that time he also inserted his finger?
A : Yes, sir.

Q : That was when you were raped?
A : Yes, sir.

Q : In other words, when you were raped, beside putting his *'pag-aari sa iyo'* he was putting his finger?
A : Yes, sir.

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[26] TSN, September 12, 1996, pp. 8-11.

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Q : And that was inside the bathroom?
A : Yes, sir.

Q : And a while ago you mentioned that you were not able to shout because you said '*pupugutin ang ulo mo*?'
A : Yes, sir.

Q : How did you know that '*pupugutin niya ang ulo mo*?'
A : If I shout.

Q : What did he tell you?
A : '*Pag sumigaw daw ako pupugutin niya ang ulo ko.*'

COURT:

Q: How were you raped? '*Nakahiga ka*?'
A: Yes, Ma'am.

Q: Inside the comfort room?
A: Yes, Ma'am.

Q: If the comfort room is smaller than this comfort room, is it not there is a bowl? Where is the Bowl? Does your comfort room has a bowl?
A: Yes, Ma'am.

Q: How was it placed? Where do you sit? Where is the door?
A: I cannot remember.

Q: '*Inihiga ka ba niya*?'
A: 'Opo.'

Q: '*Papaano ka niya inihiga*?'
A: '*Itinulak niya ako.*'

Q: '*Nang itinulak ka, bumagsak ka*?'
A: '*Opo, nauntog po ako.*'

Q: '*Saan ka nauntog?*' '*Ano ang nauntugan ng ulo mo*?'
A: '*Sa semento po.*'

Q: '*Sa sahig*?' '*Doon tumama ang ulo mo*?'
A: '*Opo.*'

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Q : Then you said he tied you, when did he tie you?
A : *He tied my neck.*

Q : How did he tie you? '*Ano ang nauna, pagtumba sa iyo o pagtali sa iyo sa ulo*?'
A : '*Pagtali po sa leeg.*'

Q : '*Saan ka itinali?' 'Dito*?'
A : '*Una po leeg, tapos paganyan sa kamay.*'

Q : '*Una leeg, tapos itinali kang paganyan*?'
A : '*Opo.*'

Q : Then, what happened?
A : Then he removed the rope.

Q : When did he remove the rope?
A : Because I cannot breathe, Ma'am.

Q : You cannot breathe anymore, so he removed the rope?
A : Yes, Ma'am.

Q : Then what happened?
A : Then he told me, '*apo niya ako.*'

Q : Then, '*itinumba ka niya*?'
A : '*Opo.*'

Q : '*Kailan ka niya sinuntok*?'
A : '*Anong oras po*?'

Q : '*Ano ang nauna, ni-rape ka or sinuntok ka muna*?' '*Sinuntok ka muna, bago ka niya ni-rape*?'
A : '*Opo.*'

Q : '*Alin ang nauna, ang pagsuntok sa iyo o pagtali sa leeg mo?'*
A : '*Sinuntok niya ako.*'

Q : '*Sinuntok ka muna, tapos itinali ka sa leeg*?'
A : '*Opo.*'

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Q : '*Pagkatapos itinali ka sa kamay*?'
A : '*Opo.*'

Q : '*Tapos, itinumba ka*?'
A : '*Opo.*'

Q : '*Sinong nag-alis ng tali sa leeg mo*?'
A : '*Siya po.*'

Q : '*Sabi mo kanina, inalis mo*?'
'*Sa kamay mo, sinong nag-alis ng tali mo*?'
A : '*Ako, po, hinila ko po.*'

Q : '*Anong tali ba ang pinangtali niya*?'
A : '*Lubid po.*'

Q : '*Malaki ba ang lubid*?'
A : '*Opo, mahaba.*'

Q : When did you pull the rope from your hands, after the rape?
A : Yes, Ma'am.

Q : What did you do with the rope?
A : I put it on the side (*gilid*).

Q : '*Gilid*' of what?
A : Of the comfort room.

Q : Then, what did you do? Were you wearing pants?
A : No, Ma'am, I was wearing shorts.

Q : After you were raped, you stood up?
A : Yes, Ma'am.

Q : '*Alam mo ba ang ikinuwento mo rito? Alam mo yan*?'
A : '*Opo.*'

Q : '*Totoo bang lahat yang sinasabi mo*?'
A : '*Opo.*'

Q: After you were raped, where did you go?
A: I returned to the place where there was drinking?

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Q: What did you do there?
A: I waited for the bottles.[27]
(Italics supplied).

Appellant belabors on alleged inconsistencies in April's testimony as to whom, Irenea or Erlinda, and when she narrated her ordeal, whether a basketball game was televised on a Saturday, and whether she was indeed raped at 1:00 a.m. of May 5, 1996 since she also testified that she went to sleep on May 4, 1996 and woke up at 7:00 a.m. the next day — these alleged contradictions easily dissipate to naught when the testimony of April is considered and calibrated in its entirety and not only based on truncated portions or isolated passages.[28] The true meaning of answers to isolated questions propounded to a witness is to be ascertained by due consideration of all the questions propounded to the witness and his answers thereto.[29] The whole impression or effect of what had been said or done must be considered and not individual words or phrases alone.[30] It should be noted that April is a mental retardate and, hence, her testimony must be treated with the broadest understanding without, however, in any way sacrificing the quest for truth.

The alleged contradictory statement of April as to whether a basketball game is held on a Saturday is not sufficient to render April's testimony doubtful nor does it negate the commission of rape. Said contradiction is inconsequential considering that it refers to a trivial detail which has nothing to do with the essential fact of the commission of the crime of rape, that is, carnal knowledge through force or intimidation. A rape victim, especially a mental retardate, cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[31] Truly, April's failure to give a perfect and flawless account of every

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[27] TSN, September 12, 1996, pp. 18-23.

[28] *People vs. Pailanco*, 322 SCRA 790, 797(2000).

[29] *People vs. Delim*, G.R. No 142773, January 28, 2003, citing Francisco, *Revised Rules of Court*, Part II, Vol. VII, 1991 ed.

[30] *People vs. Rosario*, 246 SCRA 658, 668 (1995).

[31] *People vs. Rabosa*, 273 SCRA 142, 149 (1997).

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grisly detail of the crime for which she seeks retribution should not be taken against her.

With respect to the physical evidence of lacerations on the hymen of April, Dr. Vergara testified that the lacerations could have been inflicted or could have occurred more than seven days prior to the date of examination on May 11, 1996, or on May 3, 1996 or earlier. However, such testimony does not help the defense since Dr. Vergara did not foreclose that the rape did not occur. She merely assessed the probability of the date of its occurrence. She also stated that the laceration could have been inflicted less than seven days prior to the examination.[32] Besides, it bears stressing that, in cases of rape, the date of commission is not an essential element of the offense, what is material being the occurrence thereof and not the time of its commission.[33]

Appellant's defense of alibi, although corroborated by two witnesses, has no merit. His alibi fails in the light of the positive and unequivocal declaration of April. It is an oft-quoted doctrine that positive identification prevails over denial and alibi.[34] Furthermore, for the defense of alibi to prosper, the appellant must establish that (a) he was in another place at the time of the commission of the offense; and (b) he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity, at the time of its commission.[35] Appellant failed to establish both requirements. Aside from the testimony of April, the clear and categorical testimony of rebuttal witness Mario Bojo established that appellant was at the scene of the incident on May 4, 1996. The defense failed to show Bojo had any motive to falsely testify against the appellant. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives,

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[32] TSN, September 13, 1996, p. 14.

[33] *People vs. Cabigting*, 344 SCRA 86, 92 (2000); *People vs. Brondial*, 343 SCRA 600, 614 (2000); *People vs. Cutamora*, 342 SCRA 231, 240 (2000); *People vs. Magtrayo*, 342 SCRA 73, 89 (2000).

[34] *People vs. Domingo*, G.R. No. 143660, June 5, 2002, p. 19.

[35] *People vs. Ferrer*, G.R. No. 139695, August 26, 2002, pp. 13-14.

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the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.[36]

Appellant's conviction was based on the positive and direct testimony of April. The absence of evidence of any improper motive on her part to testify as principal witness of the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit.[37] When the victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.[38]

Article 335 of the Revised Penal Code, provides:

Art. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and

When the woman is under twelve years of age or is demented.

We note that the trial court convicted the appellant of rape without specifying under which paragraph of Article 335 was the crime committed.

Sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.[39] However, the fact of her mental retardation was not alleged in the Information and, therefore, cannot be the basis of conviction.[40]

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[36] *People vs. De la Rosa, Jr.*, 341 SCRA 425, 438 (2000).

[37] *People vs. Banela*, 301 SCRA 84 (1999); *People vs. Sotto*, 275 SCRA 191, 201 (1997).

[38] *People vs. Segui*, 346 SCRA 178, 186 (2000).

[39] *People vs. Lopez*, 346 SCRA 469, 474 (2000); *People vs. Padilla*, 301 SCRA 265, 273 (1999).

[40] *People vs. Capinpin*, 344 SCRA 420, 429 (2000).

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However, the Information sufficiently alleged that appellant, by means of force and intimidation, raped 12-year old April del Valle. The prosecution has proven beyond reasonable doubt that appellant used force and intimidation in committing the crime of rape in this case. April's testimony sufficiently demonstrated that the sexual act was forced on her as she was dragged to the comfort room, punched, pushed down to the cemented floor, tied with a rope around her neck and both hands, and was warned not to shout or else she will be beheaded.

Indeed, appellant is guilty of rape, under paragraph 1, Article 335 of the Revised Penal Code which is punishable with the penalty of *reclusion perpetua.*

There are no aggravating or mitigating circumstances.

With respect to the civil liability of appellant, the trial court correctly awarded to the offended party the amount of ₱50,000.00 as civil indemnity. In addition, we grant moral damages of ₱50,000.00 even without need of further proof, considering that the victim April del Valle, in fact, sustained mental, physical and psychological suffering.[41]

WHEREFORE, the decision, dated March 17, 1997, of the Regional Trial Court of Quezon City (Branch 102) convicting appellant Dionisio Jackson of rape in Criminal Case No. Q-96-66112, sentencing him to suffer *reclusion perpetua* and ordering him to indemnify the offended party April del Valle in the amount of Fifty Thousand Pesos (₱50,000.00) is *AFFIRMED* with *MODIFICATION* that he is ordered to pay to the victim another Fifty Thousand Pesos (₱50,000.00) as moral damages.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and *Callejo, Sr., JJ.*, concur.

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[41] *People vs. Alcantara*, 355 SCRA 601, 607 (2001); *People vs. Sarmiento*, 344 SCRA 345, 357 (2000).