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[G.R. No. 127152. February 12, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FILOMENO AVERGONZADO *alias MINOC*,** *accused-appellant.*

SYNOPSIS

While walking home from an errand for her grandmother, Geralyn was accosted by the accused-appellant who dragged her somewhere farther from the place and with an apparent evil intention. When Geralyn went back to her grandmother, she was crying telling her that she was raped. They were able to identify the person who sexually assaulted Geralyn thru the help of a saleslady of the store where both Geralyn and the accused first met. She filed a complaint, with the help of her mother, against appellant charging him with rape with the use of deadly weapon. The accused denied the allegations. The trial court did not sustain the alibi of the appellant and sentenced him to death. The case is for automatic review of the Supreme Court.

According to the Supreme Court, while the trial court was not unmindful of some lapses in the testimony of the complainant, it found them to be minor and insignificant to destroy the integrity of her testimony which the court characterized as plain and straightforward. However, the Court took exception to the lower court's imposition of capital punishment. Where the rape is committed with the use of a deadly weapon, the penalty imposable under the law is to death. There being no aggravating circumstance, the lesser penalty of *reclusion perpetua* should be imposed.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT BY TRIAL COURT SHOULD BE RECEIVED WITH GREAT RESPECT BY APPELLATE COURT ABSENT ANY SHOWING OF ARBITRARINESS; RATIONALE.— Time and again this Court has deferred to the trial court's assessment

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of the witnesses and their credibility having the opportunity to observe the witnesses on the stand and to detect if they were telling a lie. This Court does not have the vantage position of a trial judge but merely relies on the cold records and the judge's discretion. In the absence of any showing that his factual findings were reached arbitrarily or without sufficient basis, these findings are to be received with great respect by this Court, and indeed are binding upon it.

2. ID.; ID.; ID.; GENERALLY NOT AFFECTED BY VARIANCES BETWEEN AFFIDAVIT AND COURT TESTIMONY.— The inconsistencies between a complainant's testimony in open court and her sworn statement before the investigators are generally not fatal defects to justify a reversal of conviction. Affidavits being taken *ex parte* are almost always incomplete and often inaccurate that they are generally considered to be inferior to the testimony given in open court. Hence, variances between the affidavit and the court testimony do not by themselves affect credibility. The affidavit is frequently not a complete reproduction of what the declarant had in mind, considering that it is often prepared by the administering officer and cast in the latter's language or according to the latter's understanding of what the affiant has said, while the affiant would simply sign the affidavit after it has been read to him.

3. ID.; ID.; ID.; ID.; EXCEPTION; WHEN CONTRADICTIONS REFER TO IMPORTANT AND SUBSTANTIAL MATTERS.— To be excepted from this rule and to seriously impair the credibility of a witness, contradictions between the testimony and the narrations made in the affidavit must refer to important and substantial matters and not merely to trivial ones. The inconsistencies indicated by the defense in this case pertain to details extraneous to the rape. We hold that they are inconsequential matters which do not affect the weight and veracity of her declarations. Insofar as the authorship of the crime is concerned, the complainant clearly and consistently testified in court that it was the accused who raped her.

4. ID.; ID.; ASSESSMENT THEREOF SHOULD BE BASED IN TERMS OF QUALITY NOT NECESSARILY OF QUANTITY.— The defense also claims as an error the failure of the prosecution to present the *barangay* chairman and the saleslady of the cooperative store to corroborate the statements of the complainant. The argument is unavailing for evidence is assessed

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in terms of quality, not necessarily of quantity. The chairman and the saleslady could not augment the testimony of the complainant as to the commission of the crime itself as they were not witnesses to it. Their testimonies are not indispensable, particularly in rape cases, where the conviction may rest solely on the testimony of the victim if found credible since the crime is seldom committed in the presence of third parties.

5. **CRIMINAL LAW; RAPE; PRESENCE OF SPERMATOZOA, NOT PREREQUISITE FOR THE CONVICTION THEREOF.**— The presentation of a medical certificate and the testimony of the examining physician, although not essential in the prosecution of rape, substantiated the allegations and reinforced the testimony of the complainant. The tightness of the vaginal canal does not negate rape. The complainant's vagina was found to be elastic, given her age. Thus even with the insertion of an object like the penis in the vaginal canal, the examining physician concluded that the same would still return to its normal size. The presence of spermatozoa is not a prerequisite for conviction of rape, the important consideration being the penetration of the *pudenda* by the male organ, no matter how slight, and not the emission of seminal fluid. Nor can we seriously consider the defense's theory on the cause of complainant's injuries. The attribution of the lacerations in the genitalia of the complainant to the examination performed by the physician is simply ludicrous, clearly a desperate attempt to provide an alternative explanation for the blatant evidence of sexual assault.

6. **ID.; ID.; ALIBI, AS A DEFENSE; ACCUSED MUST BE SHOWN NOT ONLY TO BE SOMEWHERE ELSE BUT THAT IT WAS ALSO PHYSICALLY IMPOSSIBLE FOR HIM TO BE PRESENT AT THE CRIME SCENE.**— The defense also faults the trial court for rejecting the testimonies of the defense witnesses. We rule that the lower court did so properly. Evidence indicates that they were merely requested to testify for the accused to corroborate his alibi. Moreover, the defense of alibi cannot be sustained as these witnesses failed to show that not only was the accused somewhere else when the crime was committed but that it was also physically impossible for him to be present at the place of the crime or its immediate vicinity at the time of its commission. Their testimonies cannot prevail

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over the complainant's positive identification of the accused as the perpetrator of the crime.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Eliezer R. Nuñez, Jr. for accused-appellant.

D E C I S I O N

BELLOSILLO, *J.*:

Geralyn R. Udarbe, a thirteen (13)-year old *barrio* lass, was walking home midday of 10 June 1994. She just came from the TTFA cooperative store of Sitio TTFA,[1] Barangay Zamora, Talibon, Bohol, about half a kilometer away from her house to buy salted fish[2] for her grandmother Winefreda Roselim.

Some twenty (20) meters ahead on her trail was accused Filomeno Avergonzado, a twenty-two (22)-year old farmer and chairman of the *Sangguniang Kabataan* of TTFA, who left the store before she did. Upon reaching the bridge traversing a creek Filomeno tarried and waited for Geralyn. However she stopped before him and politely suggested that he crossed the bridge ahead. But Filomeno did not respond nor did he show any sign that he was yielding to the suggestion.

As Geralyn was anxious to go ahead, she decided not to wait; instead, she proceeded on her way passing by him. She had barely taken three (3) steps when Filomeno suddenly placed his arm around her neck and threatened to kill her with his hunting knife on hand if she shouted. He dragged her under the bridge and then to a place about twenty (20) meters away from the creek. He pushed her to the ground. He raised her skirt, removed her panty, unzipped his pants and then inserted his penis in her vagina. Geralyn felt pain but, fearing for her life, she did not shout for help as he kept pointing his knife at her neck.

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[1] TTFA is an acronym for an organization; TSN, 3 March 1995, p. 2.
[2] Locally known as "*ginamos*."

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After he was through, Filomeno stood up. Geralyn asked who he was, but he simply told her to inform anyone who would ask that his name was *Boning Polestico,* and then left. Geralyn then retrieved her underwear and as she put it on again she noticed blood in her private part.

Geralyn went back to her grandmother crying and told her she was raped. Winefreda immediately accompanied Geralyn back to the store to inquire about the person who sexually assaulted her.

From a salesgirl of the store, Winefreda learned that a certain *Minoc*[3] was also at the store that noon. Winefreda then reported the incident to Boyboy Fuentes, chairman of Sitio TTFA, who happened to be there. Fuentes promptly sent for *Minoc* who turned out to be the accused Filomeno Avergonzado.

When the accused arrived, Boyboy asked Geralyn, "Is this the man, *Day*?"[4] Geralyn answered in the affirmative. Having ascertained the identity of the person who molested her granddaughter, Winefreda took Geralyn to her parents' house. Evangeline, Geralyn's mother, who came home that afternoon after spending a day rehearsing songs at the *Iglesia ni Cristo* was informed of the incident.

After informing her husband about what happened, Evangeline forthwith proceeded to the cooperative store to look for Filomeno. She found him drinking with Boyboy Fuentes. When confronted, Filomeno simply stood up and pointed a finger at her. Infuriated, Evangeline tried to hack him with a *bolo* but Boyboy Fuentes intervened and advised her instead to have her daughter examined by a doctor.

The Udarbe spouses brought Geralyn that evening to the Garcia Memorial Provincial Hospital where she was examined by Dr. Romeo Camargo. The medical certificate issued by Dr. Camargo showed the "presence of blood at the vaginal canal"

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[3] Also spelled as "*Menok*" in the TSN.

[4] TSN, 7 March 1995, p. 9.

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and the "presence of vaginal laceration at 6:00 o'clock with fresh blood." There was also laceration of the hymen.[5]

On 11 June 1994 Geralyn filed a complaint[6] with the assistance of her mother before the Municipal Circuit Trial Court of Talibon-Getafe, Bohol, charging Filomeno Avergonzado with rape with use of a deadly weapon. On 23 August 1994 the complaint was amended to specifically allege that the rape was committed in violation of Art. 335 of *The Revised Penal Code* as amended by RA 7659.[7]

When the case reached the Regional Trial Court of Tagbilaran City it was raffled to Branch 1 presided over by Judge Antonio H. Bautista. On 20 December 1994 the accused pleaded not guilty to the charge. On 2 March 1995 the trial started, but due to the retirement of Judge Bautista, it had to be continued by Judge Teofilo B. Buslon, Jr., with the prosecution presenting Geralyn Udarbe, Winefreda Roselim, Evangeline Udarbe and Dr. Romeo Camargo as witnesses.

The accused took the witness stand in his defense. He denied raping Geralyn and claimed he was in Brgy. San Agustin, Talibon, Bohol, sawing coconut trees from the 8th to the 11th of June 1994. He said that Brgy. San Agustin was approximately seven (7) kilometers away from the center of TTFA. To corroborate his claim, the defense presented Felix Polistico, owner of the coconut trees he allegedly sawed and in whose house he lodged in Brgy. San Agustin.

The defense also presented Herminigildo Caparoso, brother-in-law of the accused who ran his own store twenty (20) meters away from the TTFA cooperative store. Caparoso testified that about noon of 10 June 1994 Geralyn went to his store to buy a bottle of *kulafu* wine but asserted that at that time he did not see Filomeno among those in the TTFA cooperative store.

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[5] Records, p. 2.

[6] *Id.*, p. 1.

[7] *Id.*, p. 14.

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The trial court did not sustain the alibi of the accused Filomeno Avergonzado. On 9 July 1996 the court adjudged him guilty of rape, sentenced him to death, and ordered him to indemnify his victim Geralyn Udarbe the sum of ₱50,000.00 for moral damages.[8]

The case is now before us on automatic review. Accused Filomeno Avergonzado contends that the court *a quo* erred in its findings and urges the reversal of his conviction. As his conviction hinged primarily on her testimony, he assails the credibility of complainant Geralyn Udarbe and claims that the trial court erroneously relied on her testimony that was tainted with discrepancies.

We find no merit in the appeal. While the trial court was not unmindful of some lapses in the testimony of the complainant, it found them to be minor and insignificant to destroy the integrity of her testimony which the court characterized as "plain and straightforward."[9]

Time and again this Court has deferred to the trial court's assessment of the witnesses and their credibility having the opportunity to observe the witnesses on the stand and to detect if they were telling a lie.[10] This Court does not have the vantage position of a trial judge but merely relies on the cold records and the judge's discretion. In the absence of any showing that his factual findings were reached arbitrarily or without sufficient basis, these findings are to be received with great respect by this Court, and indeed are binding upon it.[11] A cautious examination of the records and stenographic notes required in reviewing rape cases convinces us that the supposed inconsistencies have been satisfactorily explained.

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[8] Decision penned by Judge Teofilo B. Buslon, Jr., RTC-Br. 1, Tagbilaran City, Records, pp. 87-89.

[9] *People v. Verano*, G.R. No. 110109, 21 November 1996, 264 SCRA 202; *People v. Villanueva*, G.R. No. 96469, 21 October 1992, 215 SCRA 22.

[10] *People v. Recio*, G.R. Nos. 118104-06, 28 November 1997, 282 SCRA 274.

[11] *People v. Tulop*, G.R. No. 124829, 21 April 1998, 289 SCRA 316.

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The defense makes much of the alleged failure of Geralyn to inform Chairman Fuentes that the name of the person who raped her was *Boning Polestico*, and of the swift summons made by the Chairman specifically for the accused notwithstanding the fact that the complainant did not disclose the name of her abuser. But the omission to relay the name given by the rapist is understandable. It is incredible for a person who perpetrated the crime of rape to leave his real name to his victim, like giving her his printed calling card, and thus pave the way for his easy apprehension and facilitate his prosecution. Neither Geralyn nor her grandmother could have been expected to accept the name left by the culprit as his correct name. Apparently, it was Winefreda's skepticism that led her back to the store together with Geralyn to ascertain the real identity of the rapist.

We do not find anything suspicious with the action of the *sitio* chairman to summon the accused. The accused was sent for precisely because he was known by the *sitio* chairman as *Minoc*, the same person identified by the salesgirl to have been present that noon at the store, and who was suspected to be the same person who sexually assaulted Geralyn.

It is also suggested that the complainant lied when she claimed that she did not know the accused before the sexual encounter. The defense points out that both the complainant and the accused were residents of the same *sitio* and had on several occasions assisted in *palay* harvests in other people's ricefields. In her first affidavit, which was sworn before the mayor of Talibon and filed with her complaint,[12] Geralyn claimed that she knew the accused for a long time. In the second, executed before MCTC Judge Romualdo G. Buno who conducted the preliminary investigation,[13] she stated that she knew him only recently.

We agree with the Solicitor General that we cannot infer from the mere fact that they were residents of the same *sitio* that the complainant and the accused already knew each other

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[12] Records, p. 4.

[13] *Id.*, p. 9.

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before then. There is no showing that their houses were located in close proximity. Geralyn was barely in her teens and had yet to attend any of the social gatherings in their community.[14] The two (2) were also unlikely to share the same circle of friends as the accused is almost ten (10) years her senior. Nor can we presume such an acquaintance only because of their presence at *palay* harvests under the local residents' customary *bayanihan*. These activities are usually participated in by numerous people and there is not even any insinuation that the thirteen (13)-year old complainant was ever introduced much less talked to the accused.

What lent more credence to the complainant's averment was the defense's dubious assertion that even before January 1993 the accused had approached Geralyn twice to invite her to "join the Sangguniang Kabataan."[15] Under the Local Government Code, only persons who are fifteen (15) but not more than twenty-one (21) years of age are allowed to register with the *Sangguniang Kabataan* or be included in the official *barangay* list as members of the *Katipunan ng Kabataan*.[16] This is also the same age requirement for those who wish to run for a post in the *Sangguniang Kabataan*.[17] Although the records do not state the complainant's exact date of birth, it is not disputed that she was thirteen (13) years old on 10 June 1994 when the rape was committed. At most, she could not have been more than eleven (11) years old at the time she was supposedly invited to join the organization in January 1993.

The inconsistencies between a complainant's testimony in open court and her sworn statement before the investigators are generally not fatal defects to justify a reversal of conviction. Affidavits being taken *ex parte* are almost always incomplete and often inaccurate that they are generally considered to be inferior to the testimony given in open court.[18] Hence, variances between the affidavit

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[14] TSN, 3 March 1995, p. 2.

[15] TSN, 8 February 1996, p. 15.

[16] Rep. Act No. 7160, also known as the Local Government Code of 1991, Sec. 424.

[17] *Ibid.*

[18] *People v. Pontillar*, G.R. No. 104865, 11 July 1997, 275 SCRA 338.

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and the court testimony do not by themselves affect credibility. The affidavit is frequently not a complete reproduction of what the declarant had in mind, considering that it is often prepared by the administering officer and cast in the latter's language or according to the latter's understanding of what the affiant has said, while the affiant would simply sign the affidavit after it has been read to him.[19]

To be excepted from this rule and to seriously impair the credibility of a witness, contradictions between the testimony and the narrations made in the affidavit must refer to important and substantial matters and not merely to trivial ones.[20] The inconsistencies indicated by the defense in this case pertain to details extraneous to the rape. We hold that they are inconsequential matters which do not affect the weight and veracity of her declarations. Insofar as the authorship of the crime is concerned, the complainant clearly and consistently testified in court that it was the accused who raped her.

We also reject the defense's contention that the trial court incorrectly appreciated the medical certificate and the testimony of the examining physician, Dr. Romeo Camargo. The accused argues that the finding of a tight vaginal canal upon the insertion of a finger and the absence of spermatozoa disprove that any sexual intercourse occurred. He posits that injuries discovered by the examining physician may have resulted from the insertion of a blunt instrument during medical examination.

We do not agree. The presentation of a medical certificate and the testimony of the examining physician, although not essential in the prosecution of rape, substantiated the allegations and reinforced the testimony of the complainant. The tightness of the vaginal canal does not negate rape. The complainant's vagina was found to be elastic, given her age. Thus even with the insertion of an object like the penis in the vaginal canal, the examining physician concluded that the same would still return to its normal size.[21] The

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[19] *People v. Banguis*, G.R. No. 121626, 26 June 1998, 291 SCRA 279; *People v. Verano*, G.R. No. 110109, 21 November 1996, 264 SCRA 202.

[20] *People v. Castillo*, G.R. No. 116122, 6 September 1996, 261 SCRA 493.

[21] TSN, 20 March, p. 11.

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presence of spermatozoa is not a prerequisite for conviction of rape, the important consideration being the penetration of the *pudenda* by the male organ, no matter how slight, and not the emission of seminal fluid.[22]

Nor can we seriously consider the defense's theory on the cause of complainant's injuries. The attribution of the lacerations in the genitalia of the complainant to the examination performed by the physician is simply ludicrous, clearly a desperate attempt to provide an alternative explanation for the blatant evidence of sexual assault.

The defense also claims as an error the failure of the prosecution to present the *barangay* chairman and the saleslady of the cooperative store to corroborate the statements of the complainant. The argument is unavailing for evidence is assessed in terms of quality, not necessarily of quantity.[23] The chairman and the saleslady could not augment the testimony of the complainant as to the commission of the crime itself as they were not witnesses to it. Their testimonies are not indispensable, particularly in rape cases, where the conviction may rest solely on the testimony of the victim if found credible since the crime is seldom committed in the presence of third parties.

The defense also faults the trial court for rejecting the testimonies of the defense witnesses. We rule that the lower court did so properly. Evidence indicates that they were merely requested to testify for the accused to corroborate his alibi. Moreover, the defense of alibi cannot be sustained as these witnesses failed to show that not only was the accused somewhere else when the crime was committed but that it was also physically impossible for him to be present at the place of the crime or its immediate vicinity at the time of its commission.[24] Their testimonies cannot prevail over

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[22] *People v. Quinones*, G.R. No. 102719, 16 June 1995, 245 SCRA 87, *People v. Ferrer*, G.R. No. 142662, 14 August 2001.

[23] *People v. Recio*, G.R. Nos. 118104-06, 28 November 1997, 282 SCRA 274.

[24] *People v. Lazaro*, G.R. No. 99263, 12 October 1995, 249 SCRA 234.

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the complainant's positive identification of the accused as the perpetrator of the crime.[25]

We take exception however to the lower court's imposition of the capital punishment. Where rape is committed with the use of a deadly weapon, the penalty imposable under the law is *reclusion perpetua* to death.[26] There being no aggravating circumstance, the lesser penalty of *reclusion perpetua* should be applied.[27]

The trial court also awarded moral damages in the amount of ₱50,000.00 but failed to award civil indemnity which is mandatory upon a finding of the fact of rape.[28] Moral damages is separate and distinct from the civil indemnity awarded to rape victims and it cannot take the place of the civil indemnity. Pursuant to recent jurisprudence, the rape victim is also entitled to civil indemnity of ₱50,000.00.[29]

WHEREFORE, the Decision of the court *a quo* finding the accused FILOMENO AVERGONZADO *alias Minoc* guilty of rape is *AFFIRMED* with the modification that the penalty is reduced from death to *reclusion perpetua.* The accused is ordered to pay the victim ₱50,000.00 as civil indemnity in addition to the ₱50,000.00 already awarded by the court *a quo* as moral damages.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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[25] *People v. Espanola*, G.R. No. 119308, 18 April 1997, 271 SCRA 689.

[26] The Revised Penal Code, Art. 335.

[27] *People v. Anoñuevo*, G.R. No. 137843, 12 October 2001.

[28] *People v. Alay-ay*, G.R. Nos. 137199-230, 23 August 2001.

[29] See Note 21.