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suffering and mental anguish, may be recovered in criminal offenses resulting in the victims death. Therefore, the Court awards the amount of ₱50,000.00 as moral damages.

WHEREFORE, the appealed decision dated October 13, 1998 of the Regional Trial Court of Catbalogan, Samar, Branch 29 in Criminal Case No. 4426 finding Oscar Areo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* is hereby *AFFIRMED*, with the *MODIFICATION* that appellant is ordered to pay the heirs of Roberto Pilapil the amount of ₱50,000 as moral damages, in addition to the civil indemnity of ₱50,000. Costs against appellant.

SO ORDERED.

Puno (Chairman), Panganiban, Sandoval-Gutierrez, and *Carpio Morales, JJ.*, concur.

SECOND DIVISION

[G.R. Nos. 141280-81. June 16, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICKY SODSOD *Y* LOSITO AND DONDON BERNABE *Y* BERCASIO,** *accused-appellants.*

SYNOPSIS

Accused-appellants were convicted of forcible abduction with rape by the Regional Trial Court of Legazpi City and were sentenced to suffer the penalty of *reclusion perpetua*. In their appeal before the Court, appellants argued that the trial court erred in giving full credence to the testimonies of Lilibeth and Orlando Boridor and failed to appreciate vital evidence which, if considered, would result in their acquittal. They pointed to specific portions in the complainant's testimony which they

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alleged to be incredible and contrary to normal human behavior. Appellants insisted that their version of the incident was not disputed and was corroborated by several witnesses. Moreover, they maintained that the prosecution's evidence failed to establish their guilt with moral certainty.

The Supreme Court acquitted appellants. The Court found complainant's testimony regarding the rape incident incredible, unusual and contrary to human experience. If it were true that appellants forcibly abducted her, her normal reaction would have been to resist and struggle against the abductors. Considering the circumstances of time and place when the victim was supposedly abducted, there was every opportunity for her to seek help by simply shouting or even just walking away. Her failure to make an attempt to escape despite clear opportunities to do so undermined her credibility and rendered her testimony unworthy of belief. There was also no showing that complainant made any resistance to the alleged rape by appellants. The records were mute about any physical struggle on her part to signify resistance to the intercourse. Nowhere in complainant's testimony could be found any showing that appellants inflicted or threatened to inflict bodily harm or violence against her.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; THE EXACTING STANDARD OF PROOF BEYOND REASONABLE DOUBT ACQUIRES MORE RELEVANCE IN RAPE CHARGES WHICH ARE EASY TO MAKE BUT HARDER TO PROVE AND HARDER STILL TO DEFEND BY THE PARTY ACCUSED WHO MAY BE INNOCENT.**— In reviewing rape cases, this Court is guided by three principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. The Court adheres to the rule that by the very nature of the crime of rape, the lone testimony of the complainant

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is enough to sustain conviction, *provided* that such testimony must meet the test of credibility. The testimony should not only come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward, and in accord with human experience. Hence, the exacting standard of proof beyond reasonable doubt acquires more relevance in rape charges which are easy to make but harder to prove and harder still to defend by the party accused who may be innocent. This Court will not condemn a person if there exists the slightest hint of reasonable doubt as to his guilt.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES; COMPLAINANT'S TESTIMONY REGARDING HER ALLEGED FORCIBLE ABDUCTION CONSIDERED INCREDIBLE.**— We find it hard to believe that the complainant Lilibeth Boridor was forcibly taken against her will by the appellants. She herself admitted that at the time of her alleged abduction, there were people in the vicinity and numerous vehicles were plying both sides of the road. Also, from Mio's Café up to Peñaranda Park in Albay District, Legazpi City, where she was allegedly taken – a distance of 4 to 5 kilometers – she did not try or do anything to free herself from the appellants who had not exerted any force or intimidation on her. Inasmuch as the appellants were unarmed, she could have easily cried out or shouted for help without extreme danger to her life. To justify this omission, she reasoned that she did not attempt to shout because the appellants told her the abduction was only for a while. Note, however, that at the time of the incident, Lilibeth was already 20 years old, in the full bloom of womanhood. Thus, based on her version, she demonstrated incredible naiveté in taking the appellants' word. If it were true, as she testified, that the appellants were strangers to her and that she met them only at the time of the incident, she had no reason to trust the appellants the way she did.

3. **ID.; ID.; ID.; ID.; TESTIMONY OF COMPLAINANT IS INCREDIBLE IN ITSELF.**— We also take note of complainant's own testimony that during the entire two hours that she and the appellants had some drinks, she made no outcry, no attempt to flee, and no act to attract sympathetic attention to her plight. This despite her claim that the appellants had forcibly abducted her. The testimony of Felicidad Antones, the storeowner who testified for the defense, revealed that she did

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not notice anything untoward during the time Lilibeth and the appellants had their drink. On the contrary, she noticed that Lilibeth drank by herself. We find it unusual and contrary to human experience that Lilibeth did not even entertain suspicion about the appellants' intentions if it were true, as she alleged, that the appellants forced her to drink. In fact, she thought that the threat was only a joke and that the appellants were not at all serious simply because they were laughing as they threatened her. For evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experiences and observation of mankind can approve under the circumstances. In one case, the Court held that it runs counter to human nature and experience for a person who just abducted a woman with the intention of raping her to first enjoy a few rounds of drink with several friends and openly expose his victim to public view. It is even more foolhardy that she be taken to a public place such as a beer-house where she could be seen with her abductor and thus increases the possibility of his being seen and apprehended for his criminal act. If it were true that the appellants forcibly abducted her, her normal reaction would have been to resist and struggle against the abductors. Considering the circumstances of time and place when Lilibeth was supposedly abducted, there was every opportunity for her to seek help by simply shouting or even just walking away. Her failure to make an attempt to escape despite clear opportunities to do so undermines her credibility and renders her testimony unworthy of belief. For, although different women react differently in similar situations, it is unnatural for a would-be victim of rape not to make even a feeble attempt to escape when opportunities arose for doing so.

4. **ID.; ID.; ID.; ID.; COMPLAINANT'S NARRATION OF ALLEGED FORCIBLE ABDUCTION WITH RAPE INCIDENT IS OPEN TO SERIOUS DOUBT; NO PHYSICAL EVIDENCE OF BRUISES OR SCRATCHES, WHICH WOULD HAVE SPOKEN LOUDER THAN WORDS.**— The rule is that conviction for rape could be based on the lone testimony of the rape victim even in the absence of physical evidence to corroborate her claim. But there is a *proviso,* that her testimony must be clear and free from serious contradictions and her sincerity and candor beyond suspicion. In this case, we find complainant's narration of the incident

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open to serious doubt. There is no physical evidence of bruises or scratches, which would have spoken louder than words. It is noteworthy that even when she and the appellants had arrived at the police station, she never breathed a word about a rape incident. In fact, it was her father who filed a complaint for acts of lasciviousness against the appellants, not her. When asked, on cross-examination, whether the appellants *had sex with her*, complainant meekly answered in the affirmative, showing neither disgust nor outrage, as would normally be expected of one whose honor had been violated.

5. **CRIMINAL LAW; FORCIBLE ABDUCTION WITH RAPE; ELEMENT OF FORCE OR INTIMIDATION; NOT ESTABLISHED.**— Her claim that she was so drunk she lost consciousness from the moment she boarded the motorcycle up to the time they reached Tahao Road where she was raped is far from credible. She admitted in open court that she had been drinking alcoholic beverages such as "Ginebra San Miguel" and "Gilbey's Gin" prior to the incident. She testified she could consume half a bottle of "Ginebra San Miguel" without getting drunk. Her testimony shows that she is used to alcoholic drinks. Noteworthy, there is no showing that complainant made any resistance to the alleged rape by the appellants. The records are mute about any physical struggle on her part to signify resistance to the intercourse. Nowhere in complainant's testimony could be found any showing that the appellants inflicted or threatened to inflict bodily harm or violence against her. In rape committed through force or intimidation under Article 335, paragraph (1), of the Revised Penal Code (as amended by Republic Act No. 7659), the prosecution must prove that force or intimidation was actually employed by the appellant upon his victim to achieve his end. Failure to do so is fatal to prosecution's cause.

6. **ID.; ID.; APPELLANT'S CONDUCT DOES NOT JIBE WITH THE BEHAVIOR OF ONE WHO HAD JUST COMMITTED A HEINOUS CRIME.**— It seems unlikely that rapists would still take home their victim. In this case, given complainant's condition, drunk and unconscious, if indeed appellants had intended to dump her body as prosecution witness Orlando Boridor tried to suggest, they could have easily done so. They could have fled thereafter, since complainant said she did not know them. But it did not turn out that way. We have held that

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the logical post-incident impulse of a criminal is to distance himself from his victim as far as and as soon as practicable to avoid suspicion, discovery, and apprehension. Appellants' conduct here does not jibe with the behavior of one who had just committed a heinous offense.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Edmiro V. Regino for accused-appellants.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the decision[1] dated September 17, 1999 of the Regional Trial Court of Legazpi City, Branch 3, convicting appellants Ricky Sodsod *y* Losito and Dondon Bernabe *y* Bercasio of rape in Criminal Cases Nos. 7333 and 7334, and sentencing them to suffer the penalty of *reclusion perpetua* and to pay the victim ₱50,000 each as indemnity.

On January 5, 1996, the Office of the City Prosecutor of Legazpi City filed two (2) separate criminal informations against the appellants for forcible abduction with rape, defined and penalized under Article 342 in relation to Article 335 of the Revised Penal Code, committed as follows:

CRIMINAL CASE NO. 7333:

That on or about the 3rd day of January, 1997, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping each other for a common purpose, by means of force, violence, intimidation and threats, did then and there, and with lewd and unchaste designs, wilfully, unlawfully and feloniously take and carry away LILIBETH BOREDOR, while she was standing in front of MIO's Cafe, Brgy. 58, Buragwis, Legazpi City, waiting for a friend, by forcing her to ride a motorcycle, against her will and said accused having thus deprived

[1] *Rollo*, pp. 36-60.

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LILIBETH BOREDOR of liberty, in the City of Legazpi, particularly along Tahao Road, by means of force, violence, intimidation and threats, did then and there wilfully, unlawfully and feloniously take turns in having carnal knowledge of her against her will.

CONTRARY TO LAW.[2]

CRIMINAL CASE NO. 7334:

That on or about the 3rd day of January, 1997, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping each other for a common purpose, by means of force, violence, intimidation and threats, did then and there, and with lewd and unchaste designs, wilfully, unlawfully and feloniously take and carry away LILIBETH BOREDOR, while she was standing in front of MIO's Cafe, Brgy. 58, Buragwis, Legazpi City, waiting for a friend, by forcing her to ride a motorcycle, against her will and said accused having thus deprived LILIBETH BOREDOR of liberty, in the City of Legazpi, particularly along Tahao Road, by means of force, violence, intimidation and threats, did then and there wilfully, unlawfully and feloniously take turns in having carnal knowledge of her against her will.

CONTRARY TO LAW.[3]

When arraigned, the appellants pleaded not guilty. Thereafter, trial ensued.

The prosecution presented the private complainant Lilibeth Boridor,[4] Eduardo Nebria, Orlando Boridor, and Elena Boridor.

LILIBETH BORIDOR is a resident of Buragwis, Legazpi City, single, and 20 years old at the time of the incident. She testified that on January 3, 1997 about six o'clock in the evening, she was beside the road near Mio's Cafe[5] at Buragwis, Legazpi City, waiting for her friend, Shiela Atento. Suddenly, a

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[2] *Id.* at 8.

[3] *Id.* at 10.

[4] Sometimes spelled as Boredor in some parts of the records.

[5] Also referred to as Meo's Cafe and Mayor's Cafe somewhere in the TSN.

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motorcycle with two men aboard stopped near her. According to Lilibeth, the appellant Dondon Bernabe drove the motorcycle while the appellant Ricky Sodsod rode at the back. After stopping, Ricky alighted and suddenly pulled her to the motorcycle telling her that somebody wanted to meet her. She shouted, but she tripped over the motorcycle and Ricky lifted her onto the motorcycle. Thereafter, the appellants took her to Peñaranda Park in Albay. Appellant Dondon parked the motorcycle near the Bureau of Jail Management and Penology where it was somewhat dark. They proceeded to a nearby store and Dondon instructed Ricky to order six (6) bottles of Red Horse Beer. She refused to drink, but when Ricky told her that something bad might happen to her, she forced herself to drink the beer. She could not tell how many bottles of beer she consumed. After she felt drunk, she asked the appellants to take her home.

She boarded the motorcycle sitting between Dondon, who was driving, and Ricky, who rode at the back. Being drunk, she did not notice where they were headed thinking that they were going to Buragwis. She fell asleep, but was awakened when they negotiated a curve and her right calf touched the exhaust pipe of the motorcycle. It was only then that she realized that they were somewhere in a grassy area along the Tahao Road, Legazpi City. She shouted. At Tahao Road, Ricky alighted and she slid from the motorcycle and vomited because of the beer she drunk.

Lilibeth further testified that the appellants just watched her as she attempted to stand, but Dondon pushed her causing her to roll down to the grassy area. She crawled and shouted for help. When she saw Dondon removing his pants she told him, "Dondon, please help me because I want to go home." Dondon then dragged her, and at the same time, removed her walking shorts and panty. She tried to ward him off but failed as she was then feeling very weak. Thereafter, Dondon laid on top of her, inserted his penis into her vagina and made push and pull movements. She could not tell how many minutes it lasted because she was already very weak.

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After Dondon satisfied his lust, Ricky also went on top of her and had sex with her. She was not able to make any movement because she was then feeling very weak and drunk. After the appellants had dressed up, Dondon helped her put on her shorts and panty. He then assisted her in going up the road. At the road, Ricky helped in placing her on the motorcycle. They proceeded to the direction of Bitano where she became unconscious. She regained her consciousness when she heard someone call her name. According to Lilibeth, it was only then that she realized that they were already back at Mio's Cafe — the very place where she was abducted — and that was already 10:30 p.m. She recognized her father's voice who was calling her name. The following day, she had herself examined by a doctor at the Albay Provincial Hospital.[6]

EDUARDO N. NEBRIA, a *barangay tanod* and a resident of Buragwis, Legazpi City, testified that on January 3, 1997 at 10:30 p.m., he and a certain Aldrin Peñaflor were on duty as *barangay tanods*. While pacifying a person who was creating trouble, a man by the name of Orlando Boridor came in. Orlando was asking for their assistance regarding his daughter, Lilibeth, who was allegedly taken by two unknown men. They were about to search for Lilibeth when the latter together with a man later identified as appellant Dondon Bernabe arrived drunk. Eduardo further testified that Lilibeth alighted from the motorcycle and sat on the stairs. He noticed that she was "*lupaypay*" or very weak. Afterwards, they brought Lilibeth and Dondon to the *barangay* captain, but the latter was not available so they proceeded to the police headquarters instead and turned in the duo.[7]

ORLANDO BORIDOR, the father of the complainant, testified that on January 3, 1997 at 9:30 p.m., he learned from his wife that their daughter, Lilibeth, was taken by two unidentified men. He immediately reported the incident to *Barangay Tanod* Eduardo Nebria. In the course of his search,

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[6] TSN, 18 March 1997, pp. 3-27.

[7] TSN, 7 May 1997, pp. 3, 6-9, 12-14.

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he saw a motorcycle with three (3) persons on it. He could not recognize the three because he was blinded by the bright light from the motorcycle as it approached his way. The motorcycle then slowed down at a distance of three meters from him. He heard the sound of a body being dumped off a vehicle so he shouted at the three, but there was no reply. Because he was already suspicious he called out "Bebe", Lilibeth's nickname. He heard a girl moaning from the direction of the appellants. It turned out that the sound came from Lilibeth who was sprawled on the ground, practically unconscious, and very weak. Instinctively, he grabbed Ricky Sodsod by the collar and ordered him to pick up Lilibeth. Ricky carried Lilibeth back to the motorcycle. Then he ordered the appellants to bring Lilibeth to Centro, Buragwis, where there were many people. Unfortunately, Ricky was able to flee. Dondon Bernabe, however, drove Lilibeth towards Puro where she slumped down on some steps, her head bowed down, and unable to move. Orlando testified that he and the *barangay tanods* had to force Dondon to alight from the motorcycle. That same night, he and the *tanods* took Dondon and Lilibeth to the police station for investigation, but the police were not able to ask Lilibeth questions because she was drunk and was moaning. Orlando also declared that he gave a statement and lodged a complaint against the appellants.[8]

ELENA BORIDOR, the mother of the complainant, testified that on the evening of January 3, 1997, she was at their house when she received information that Lilibeth was taken by two unidentified men. Together with one of her children, she immediately went to look for Lilibeth but did not find her. At 8:30 p.m. that same night, she returned home and found her husband. She informed him of what happened to their daughter. According to Elena, she did not know the person who informed her of the incident. She only testified that it was a boy about 11 or 12 years old who immediately left after telling her what happened to her daughter.[9]

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[8] TSN, 9 May 1997, pp. 5-14, 17, 19-21.

[9] TSN, 21 May 1997, pp. 4-5, 16-17.

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For their defense, counsel for appellants presented Shiela Atento, Tito Esquivel, Erwin Sodsod, Oliver Lana, Felicidad Antones, Napoleon Cardel, and the appellants Ricky Sodsod and Dondon Bernabe as witnesses.

SHIELA ATENTO testified that she is a close friend of the complainant, Lilibeth Boridor, having been classmates in grade school and since then being close to each other. According to Sheila, in the early morning of January 1, 1997, she met Lilibeth who asked her to go to the Guadalupe Shrine. At the Shrine, a tricycle arrived boarded by one of the appellants, Dondon Bernabe, together with Erwin Sodsod, one "Bong" and one "Tots." Lilibeth went inside the tricycle and invited her to join them "joy riding." She acceded to the request and joined them inside the tricycle. The group proceeded to the Tahao road where Lilibeth alighted together with Erwin Sodsod while Shiela remained inside the tricycle. They stayed there for a while and left the place around 4:00 a.m.

According to Shiela, she and Lilibeth met again on January 3, 1997, around 7:00 p.m. near the Iglesia ng Watawat ng Lahi. Appellant Ricky Sodsod arrived together with some of his friends. They proceeded to a place near the house of a certain Adornado where they saw appellant Dondon Bernabe on a motorcycle. Lilibeth and Ricky Sodsod also boarded the motorcycle, but she did not go with them because Lilibeth did not ask her to go. The trio told Shiela that they will go "joy riding." After the three left, Shiela went home. Upon reaching Buragwis, she met Lilibeth's sister, Michelle. They waited for Lilibeth at the bridge of Binanuahan because Michelle told her that their mother was already looking for Lilibeth. Later, Lilibeth's mother arrived and the three of them tarried at the bridge for an hour and then went home.[10]

The following day, or on January 4, 1997, she learned — but could not believe — that Lilibeth was allegedly raped by the appellants Ricky and Dondon the night before. Later on the same day, Mrs. Elena Boridor asked Shiela to accompany

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[10] TSN, 24 June 1997, pp. 5-6, 14-27.

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her to the police station. There, she was able to talk to Lilibeth who confessed that she did not want to file a case against anybody and that it was upon the prodding of her father that she filed a case.[11] Shiela further testified that at various times towards the end of May 1997, Lilibeth asked her not to testify as witness for the appellants. Lilibeth even offered her ₱1,000 to leave Legazpi and go to Manila. She declined Lilibeth's offer, telling her that the truth cannot be paid with money.[12]

TITO ESQUIVEL, single and a resident of Binanuahan, Legazpi City, testified that on December 24, 1996 he came to know Lilibeth Boridor through his friend, Randy Vicente. Randy was then courting Lilibeth's sister, Michelle. Tito narrated that he met Lilibeth on January 1, 1997 about 2:00 a.m., while he was walking home, because Lilibeth followed him and asked him to summon appellant Dondon Bernabe. He got to talk with Dondon who was then with his friends, Ompong Mira and Erwin Sodsod. On Ompong's tricycle all four of them proceeded to Mio's Cafe. At Mio's Cafe, they found Shiela Atento and Lilibeth. Afterwards, they went for a joyride at the airport, and then proceeded to Tahao road. At Tahao road, Lilibeth alighted from the tricycle and sat beside him at the baggage rack of the tricycle. Lilibeth then placed her hand on his shoulder. When Tito saw Dondon come near them, he went inside the tricycle. According to Tito, from where he was seated, he saw through the small glass pad of the tricycle that Lilibeth was kissing Dondon on his cheek and the latter responded by kissing Lilibeth on her chest. Then, Erwin Sodsod came and approached Dondon and Lilibeth. Erwin embraced Lilibeth then kissed her breasts in the presence of Dondon. Erwin and Lilibeth walked to a distance of about 30 meters away from the tricycle. A few minutes later, the two returned. Tito further declared that while all this was happening Shiela Atento remained inside the tricycle. Finally, Tito testified that they all returned home around four o'clock in the morning of January 1, 1997.[13]

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[11] TSN, 18 July 1997, p. 4.

[12] *Id.* at 7-8.

[13] TSN, 1 August 1997, pp. 4, 7-8, 17-23, 26-28.

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ERWIN SODSOD, 20 years old and a resident of Binanuahan, Legazpi City, testified he met Lilibeth for the first time on December 31, 1996 around 11:00 p.m. He was introduced to Lilibeth by Randy Vicente and Tito Esquivel at the bridge of Binanuahan. Lilibeth was then with Shiela Atento and another woman whose name he could no longer remember. According to Erwin, in the early morning of January 1, 1997 at 2:00 a.m., he received information from Tito that Lilibeth wanted to see him. He went with Tito and other friends, namely the appellant Dondon Bernabe, Obias and Mira to Buragwis in front of Mio's Cafe where they met Lilibeth and Shiela. The group then went to the airport. Lilibeth later suggested they go to the Tahao road, so they did. Together with Lilibeth and Dondon, he alighted from the tricycle at Tahao road and the three talked. At that moment, he asked Lilibeth which of them she likes better. Lilibeth responded that if all of them agree, he (Erwin) will be her boyfriend on Mondays, Dondon on Tuesdays, Ompong (Rodolfo Mira) on Wednesdays and Randy (Obias) for Thursdays. Lilibeth then invited him for a walk to about 15 steps away from the tricycle. Erwin also testified that while he was seated beside the road, Lilibeth sat on his lap and they kissed several times. Then, he lifted her dress, kissed her breasts, and unzipped her pants. When he placed his hands on Lilibeth's private part, he found her sanitary napkin with blood so he told Lilibeth that he could not have intercourse with her. Lilibeth then unzipped his pants and masturbated his private part until he ejaculated. After Lilibeth wiped his private part clean, they both closed their zippers, stood up, and made their way back to the tricycle. They saw Shiela and Tito still inside the tricycle. Lilibeth and Dondon sat on the baggage rack of the tricycle and had a talk. Erwin testified that from inside the tricycle, he saw through the glass pad that Dondon was mashing Lilibeth's breasts. Shortly afterwards, Lilibeth and Dondon took a walk and returned after 30 minutes. At 4:00 a.m. of January 1, 1997, the group went home. Finally, Erwin declared that after that incident, he had no opportunity to meet and be with Lilibeth.[14]

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[14] TSN, 16 October 1997, pp. 2, 4, 8-17.

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OLIVER LANA testified he first met Lilibeth on December 25, 1996 when his friend, Randy Vicente, went to visit Lilibeth's sister, Michelle. He said that on January 3, 1997, at 6:00 p.m., he and his friends Rey Orosco and Marlon Alcera went to Lilibeth's house. There they saw the appellant Ricky Sodsod, Ada Boridor, and a certain Vanessa. Shortly after their arrival, Lilibeth invited them for a stroll along Binanuahan. According to Oliver, Lilibeth told him that they were going to wait for "Padon," nickname of the appellant Dondon Bernabe, whom they later met at Mio's Cafe. Afterwards, Lilibeth asked Shiela to come with her and the appellants for a joyride. Oliver further testified that it is not true that the appellants abducted Lilibeth, but rather, that Lilibeth voluntarily boarded the motorcycle.[15]

FELICIDAD ANTONES, owner of the stall at the Peñaranda Park, where the complainant and the appellants had drinks, testified that on January 4, 1997, the father of appellant Dondon Bernabe came to her store and inquired from her if she saw Dondon with two companions in her store on the night of January 3, 1997. Felicidad recalled that on January 3, 1997 around 7:30 p.m., the appellants and Lilibeth arrived at her store. They ordered and drank six (6) bottles of Red Horse beer. According to her, the trio were conversing with each other in a normal manner and that she noticed nothing unusual. She remembered having observed that Lilibeth was not forced to drink the beer; Lilibeth drank all by herself. Lilibeth did not appear to be drunk as she was able to board the motorcycle by herself. She also testified having seen Lilibeth waiting at the motorcycle parked in front of the BJMP office which was always open even at night. According to Felicidad, she never heard any complaint or plea for assistance from Lilibeth on the night of the incident.[16]

Appellant RICKY SODSOD, 18 years old and a resident of Binanuahan, Legazpi City, testified that he is a friend of his co-appellant, Dondon Bernabe. Ricky testified that he was

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[15] TSN, 5 November 1997, pp. 2-7.

[16] TSN, 4 December 1997, pp. 3-8.

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introduced to Lilibeth on January 2, 1997, when he joined his friends, Rey Orosco and Randy Vicente, to visit Lilibeth's sister, Michelle, whom Randy was courting. During his conversation with her, Lilibeth asked him if he knew Erwin Sodsod and Dondon Bernabe, and he answered that Erwin is his brother while Dondon is his friend. Then, Lilibeth requested him to tell Erwin and Dondon to come to her place the following night. On their way home to Binanuahan, he and his friends saw Dondon. He told Dondon what Lilibeth told him.

Ricky further testified that around 6:00 p.m. of January 3, 1997, he went to Dondon's house and told the latter that his brother Erwin could not go. When Dondon asked him to go, he acceded to go in Erwin's stead. They went to Lilibeth's house using Dondon's motorcycle. Upon their arrival there, Dondon told him that he will just wait for him and Lilibeth at Mio's Cafe. Ricky said he waited for Lilibeth who, once outside, asked him "where he was" without mentioning whom she meant. He replied that "he is there at Mio's Cafe." Lilibeth then told him that she still had to fetch Shiela from the chapel, and went away. In a short while, Lilibeth returned, with Shiela, a certain Ada Boridor, Rey Orosco, and Oliver Lana. The group then proceeded to Mio's Cafe where they found Dondon sitting on his motorcycle.

According to Ricky, Lilibeth went to Dondon while he talked with Shiela. Later, Dondon boarded his motorcycle followed by Lilibeth. He also boarded the motorcycle when Lilibeth asked him to join Dondon and her for a joyride. Before leaving, Lilibeth instructed Shiela to wait for them at Binanuahan Bridge.

From Mio's Cafe, they proceeded to Albay park. Dondon parked his motorcycle near the BJMP office which was still open at that time. They walked to a store. Dondon ordered Red Horse beer. During their conversation, Lilibeth told them that she was into alcoholic drinks even from high school. She drank two (2) bottles of beer. They left the store after consuming six (6) bottles of beer. Ricky added that Lilibeth was not drunk because she even walked straight up to the motorcycle all by

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herself.[17] While on board, he noticed that Lilibeth put her arms around Dondon and rubbed his chest. They arrived at the airport, had a joyride, but did not stay long because there were many people. Upon Lilibeth's instruction, Dondon stopped the motorcycle along Tahao road where they all alighted. He then saw Lilibeth and Dondon kiss each other. Shortly after, the two went down to the lower portion of the road where they kissed again. He saw Lilibeth remove her short pants and panty as well as Dondon's pants and briefs as they laid on the ground. According to Ricky, he was about five (5) meters away from Lilibeth and Dondon.[18] Thereafter, Dondon stood up and went up near the road. Lilibeth called to him next. When he came to her, she grabbed his shirt with both hands and pulled him close and kissed him. Upon Lilibeth's instruction, he removed his short pants. They had sex. Afterwards, they both went up the road.[19]

The trio proceeded home to Buragwis, stopping at the Centro of Buragwis to let him alight. Dondon drove Lilibeth to her house. He followed them. When he neared Lilibeth's house, he saw from 15 meters away Lilibeth's father strike Dondon with a G.I. pipe while her brother and bystanders ganged up on Dondon. He followed Dondon to the police station where he was able to talk with Lilibeth. According to Ricky, Lilibeth told both of them that she has no complaint against them; it was only her father who was insistent on filing the complaint.[20]

Appellant DONDON BERNABE, 20 years old and a resident of Binanuahan, Legazpi City, testified that he came to know Lilibeth Boridor on December 31, 1996. She was introduced to him by Tito Esquivel. At the time he was with Erwin Sodsod, Rodolfo Mira, and Randy Obias at the bridge of Binanuahan. Lilibeth was with Shiela Atento and a certain Vanessa. After

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[17] TSN, 27 April 1998, pp. 2-19.

[18] TSN, 27 May 1998, pp. 3-9.

[19] TSN, 24 June 1998, pp. 4-8.

[20] TSN, 16 July 1998, pp. 2-5.

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a short conversation, they decided to go joyriding upon Lilibeth's suggestion.

At 2:00 a.m. of the following day, he met Lilibeth again after Erwin Sodsod informed him that Lilibeth wanted to see him and his friends again. Rodolfo Mira got his tricycle and they went to Buragwis where they found Lilibeth with Shiela. The two ladies sat inside the tricycle with Dondon. Tito and Randy sat at the back of Rodolfo who drove. Erwin rode at the side of the tricycle.[21] Dondon corroborated Ricky Sodsod's testimony as to the events leading to the time they stopped at Tahao Road. He then gave nearly identical testimony concerning the events that transpired at Tahao road including Lilibeth's proposal to have several boyfriends in a week.

Dondon further testified that on January 3, 1997, Ricky Sodsod informed him that Lilibeth wanted to see him at Buragwis. At 6:15 p.m. of the same day, they both went to Lilibeth's house, but he told Ricky that he would just wait for Lilibeth and him at Mio's Cafe. When Lilibeth came, she was with Shiela, Vanessa, Rey Orosco, and Oliver Lana. Then Lilibeth invited him for a joyride; he said yes. Lilibeth also asked Ricky to join. She sat between him and Ricky. At Lilibeth's request, they proceeded to Albay Park. They arrived there around 7:00 p.m. and stopped at a store near the BJMP office which was still open. He asked Lilibeth what she wanted and the latter replied that she would drink whatever they would order. So, he ordered six bottles of Red Horse beer and some sticks of barbecue. After drinking, they went for a joyride upon Lilibeth's request. Afterwards, they proceeded to Legazpi airport, but about 50 meters from the junction of the road going to Legazpi, Lilibeth told them to stop. They all alighted.

Lilibeth immediately hugged and kissed him in the presence of Ricky. Moments later, she asked him to go with her to the lower portion of the side of the road. They kissed and she unzipped his pants. She removed her shortpants. He tried to have sex with her but his penis could not penetrate her organ.

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[21] TSN, 3 September 1998, pp. 2-4, 7-8.

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So, Lilibeth taunted him for being unable to perform. That was the time Lilibeth called Ricky. Dondon testified he then returned to where the motorcycle was. Three minutes later, Ricky and Lilibeth joined him. It was around 10:00 p.m. when they proceeded home.

After Ricky had alighted and gone home, he accompanied Lilibeth to her residence. Near Centro of Buragwis, he saw Lilibeth's father waiting for them with a piece of wood. Her brother was with their father. Lilibeth's father flagged him down. When he stopped, Lilibeth's father struck him at the back with the piece of wood. Her brother ganged up on him. When the *tanods* came to pacify her father, Lilibeth embraced him and told her father that he had done nothing wrong to her. The *tanods* arrested Dondon and brought him to the *barangay* chairman who was, unfortunately, not around that time. So they brought him to the police station. Dondon further testified that Lilibeth's father filed a complaint for acts of lasciviousness despite Lilibeth's declarations that she did not want to file a complaint.[22]

NAPOLEON CARDEL, *barangay* chairman of Barangay 22 of Binanuahan East, Legazpi City, testified that he knew the appellant Dondon Bernabe as the Sangguniang Kabataan Chairman. He also testified that he knew the appellant Ricky Sodsod for a period of five (5) years, more or less since the latter had just transferred to their *barangay*. According to Chairman Cardel, the two appellants do not have any derogatory record in their *barangay*.[23]

After trial, the trial court found the appellants guilty of simple rape and sentenced them to the penalty of *reclusion perpetua*. The trial court rationalized as follows:

> . . . Thus, the prosecution had proven the guilt of the two (2) accused with moral certainty, all the elements of forcible abduction with rape having been duly established. The accused should therefore be punished

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[22] TSN, 30 September 1998, pp. 2-24.

[23] TSN, 9 December 1998, pp. 3-4.

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for the complex crime of Forcible Abduction with Rape. However, while there was Forcible Abduction when the accused brought the private complainant to Tahao Road against her will, *the main objective of the accused was to rape her because immediately after the private complainant was sexually abused, the accused brought her back near her residence at Buragwis. Hence, as held in the case of Peo. vs. Toledo, 83 Phil. 777, Forcible Abduction is absorbed in the crime of rape.* In this connection, the court believes and so holds that the prosecution should have filed only one information for forcible abduction with rape committed on the same occasion, against the same victim, in the same place, although perpetrated by the two (2) accused by having one after the other, one successive sexual intercourse each with the victim. For the purpose of rendering judgment therefore, Crim. Case No. 7333 and Crim. Case No. 7334 are to be considered only as one case.[24] (Italics supplied.)

Appellants now plead for the reversal of the decision alleging that:

1.

THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE OFFENDED PARTY AND THE GOVERNMENT'S WITNESSES WHOSE TESTIMONIES WERE INHERENTLY WEAK, FLAWED AND CONTRARY TO NORMAL HUMAN BEHAVIOR. IT LIKEWISE TOOK THE TESTIMONY OF THE COMPLAINANT AS GOSPEL TRUTH *SANS* ANY CRITICAL SCRUTINY AND ACCEPTED THE SAME WITH PRECIPITATE CREDULITY.

2.

THE TRIAL COURT ERRED BY FAILING TO APPRECIATE NUMEROUS VITAL EVIDENCE, WHICH IF CONSIDERED, WOULD OTHERWISE RESULT IN THE ACQUITTAL OF THE BOTH APPELLANTS.

3.

FINALLY, THE TRIAL COURT ERRED IN CONVICTING THE APPELLANTS WHEN THE EVIDENCE ADDUCED BY THE

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[24] *Rollo*, pp. 59-60.

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PROSECUTION FAILED TO MEET THE STANDARD OF MORAL CERTAINTY.[25]

The main issue for our resolution now is whether or not the testimony of the offended party suffices to warrant the conviction of the appellants beyond reasonable doubt. For, despite the above formulation of alleged errors by appellants, their appeal is really directed at the credibility and weight of the victim's testimony as well of other witnesses for the prosecution.

The appellants argue that the trial court erred in giving full credence to the testimonies of Lilibeth and Orlando Boridor and failed to appreciate vital evidence which, if considered, would result in their acquittal. They point to specific portions in the complainant's testimony which they allege to be incredible and contrary to normal human behavior. The appellants insist that their version of the incident was not disputed and was corroborated by several witnesses. Moreover, they maintain that the prosecution's evidence failed to establish their guilt with moral certainty.

The Office of the Solicitor General, for the appellee, stresses that the trial court's evaluation of the testimony of the witnesses is accorded great respect and finality. Generally, the Supreme Court will not interfere with the trial court's findings on the credibility of witnesses in the absence of any indication that it overlooked certain facts or circumstances of weight and influence, which if reconsidered, would affect the outcome of the case. The inconsistencies that the appellants point out are on minor points that are irrelevant to the elements of the crime; hence, they do not affect the credibility of prosecutions' witnesses. Further, according to the OSG, the appellants should be convicted of the complex crime of forcible abduction with rape, considering that the evidence shows they forcibly abducted the complainant as a means to commit rape. Finally, the OSG recommends that aside from civil indemnity, moral damages should also be awarded in the amount of ₱50,000 pursuant to prevailing jurisprudence.

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[25] *Id.* at 80-81.

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In reviewing rape cases, this Court is guided by three principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[26]

The Court adheres to the rule that by the very nature of the crime of rape, the lone testimony of the complainant is enough to sustain conviction, *provided* that such testimony must meet the test of credibility. The testimony should not only come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward, and in accord with human experience.[27] Hence, the exacting standard of proof beyond reasonable doubt acquires more relevance in rape charges which are easy to make but harder to prove and harder still to defend by the party accused who may be innocent. This Court will not condemn a person if there exists the slightest hint of reasonable doubt as to his guilt.[28]

In this case, we find it hard to believe that the complainant Lilibeth Boridor was forcibly taken against her will by the appellants. She herself admitted that at the time of her alleged abduction, there were people in the vicinity and numerous vehicles were plying both sides of the road. Also, from Mio's Cafe up to Peñaranda Park in Albay District, Legazpi City, where she was allegedly taken — a distance of 4 to 5 kilometers[29]— she did not try or do anything to free herself from the appellants who had not exerted any force or intimidation

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[26] *People v. Peligro*, G.R. No. 148899, 28 October 2002, p. 6.

[27] *People v. Torion*, G.R. No. 120469, 18 May 1999, 307 SCRA 169, 175-176.

[28] *People v. Mariano*, G.R. No. 134309, 17 November 2000, 345 SCRA 1, 10.

[29] TSN, 24 March 1997, p. 20.

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on her. Inasmuch as the appellants were unarmed, she could have easily cried out or shouted for help without extreme danger to her life. To justify this omission, she reasoned that she did not attempt to shout because the appellants told her the abduction was only for a while.[30] Note, however, that at the time of the incident, Lilibeth was already 20 years old, in the full bloom of womanhood. Thus, based on her version, she demonstrated incredible naiveté in taking the appellants' word. If it were true, as she testified, that the appellants were strangers to her and that she met them only at the time of the incident, she had no reason to trust the appellants the way she did. In *People v. Sison*,[31] a case where the accused was acquitted of the crime of forcible abduction with rape, this Court noted that all throughout the long trip, the complainant in that case neither screamed for help nor created a commotion to alert the jeepney driver or passengers, even when there were many people along the way.

We also take note of complainant's own testimony that during the entire two hours that she and the appellants had some drinks,[32] she made no outcry, no attempt to flee, and no act to attract sympathetic attention to her plight. This despite her claim that the appellants had forcibly abducted her. The testimony of Felicidad Antones, the storeowner who testified for the defense, revealed that she did not notice anything untoward during the time Lilibeth and the appellants had their drink. On the contrary, she noticed that Lilibeth drank by herself. We find it unusual and contrary to human experience that Lilibeth did not even entertain suspicion about the appellants' intentions if it were true, as she alleged, that the appellants forced her to drink. In fact, she thought that the threat was only a joke[33] and that the appellants were not at all serious simply because they were laughing as they threatened her.[34] For evidence to be believed,

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[30] *Id.* at 19.

[31] No. L-45857, 27 October 1983, 125 SCRA 369.

[32] TSN, 24 March 1997, pp. 24, 31.

[33] *Id.* at 29-30.

[34] *Id.* at 30.

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it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experiences and observation of mankind can approve under the circumstances.[35] In one case, the Court held that it runs counter to human nature and experience for a person who just abducted a woman with the intention of raping her to first enjoy a few rounds of drink with several friends and openly expose his victim to public view. It is even more foolhardy that she be taken to a public place such as a beer-house where she could be seen with her abductor and thus increases the possibility of his being seen and apprehended for his criminal act.[36] If it were true that the appellants forcibly abducted her, her normal reaction would have been to resist and struggle against the abductors. Considering the circumstances of time and place when Lilibeth was supposedly abducted, there was every opportunity for her to seek help by simply shouting or even just walking away. Her failure to make an attempt to escape despite clear opportunities to do so undermines her credibility and renders her testimony unworthy of belief. For, although different women react differently in similar situations, it is unnatural for a would-be victim of rape not to make even a feeble attempt to escape when opportunities arose for doing so.[37]

Her claim that she was so drunk she lost consciousness from the moment she boarded the motorcycle up to the time they reached Tahao Road where she was raped is far from credible. She admitted in open court that she had been drinking alcoholic beverages such as "Ginebra San Miguel" and "Gilbey's Gin" prior to the incident.[38] She testified she could consume half a bottle of "Ginebra San Miguel" without getting drunk. Her testimony shows that she is used to alcoholic drinks. Noteworthy,

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[35] *People v. Laurente*, G.R. No. 129594, 7 March 2001, 353 SCRA 765, 777.

[36] *People v. Benoza*, G.R. No. 139470, 29 November 2001, p. 8.

[37] *People v. De la Cruz*, G.R. No. 137967, 19 April 2001, 356 SCRA 705, 716.

[38] TSN, 24 March 1997, p. 33.

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there is no showing that complainant made any resistance to the alleged rape by the appellants. The records are mute about any physical struggle on her part to signify resistance to the intercourse. Nowhere in complainant's testimony could be found any showing that the appellants inflicted or threatened to inflict bodily harm or violence against her. In rape committed through force or intimidation under Article 335, paragraph (1),[39] of the Revised Penal Code (as amended by Republic Act No. 7659), the prosecution must prove that force or intimidation was actually employed by the appellant upon his victim to achieve his end. Failure to do so is fatal to prosecution's cause.[40]

The only reference to any amount of force used on her was when complainant stated that appellant Dondon pushed her *lightly* to the ground.[41] Yet, she testified that after the alleged rape appellant Dondon even helped her put clothes on and assisted her in going up the road. As for appellant Ricky, he extended help in placing her aboard the motorcycle. None of the appellants was shown on record to possess, much less use, any weapon in connection with the alleged offense.

The rule is that conviction for rape could be based on the lone testimony of the rape victim even in the absence of physical evidence to corroborate her claim. But there is a *proviso*, that her testimony must be clear and free from serious contradictions and her sincerity and candor beyond suspicion.[42] In this case, we find complainant's narration of the incident open to serious doubt. There is no physical evidence of bruises or scratches,

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[39] 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
3. When the woman is under twelve years of age or is demented.

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[40] *People v. Ollamina*, G.R. No. 133185, 6 February 2002, p. 5.

[41] TSN, 10 April 1997, p. 23.

[42] *People v. Benoza, supra*, at 14.

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which would have spoken louder than words.[43] It is noteworthy that even when she and the appellants had arrived at the police station, she never breathed a word about a rape incident. In fact, it was her father who filed a complaint for acts of lasciviousness against the appellants, not her. When asked, on cross-examination, whether the appellants *had sex with her*, complainant meekly answered in the affirmative, showing neither disgust nor outrage, as would normally be expected of one whose honor had been violated.

Moreover, it seems unlikely that rapists would still take home their victim. In this case, given complainant's condition, drunk and unconscious, if indeed appellants had intended to dump her body as prosecution witness Orlando Boridor tried to suggest, they could have easily done so. They could have fled thereafter, since complainant said she did not know them. But it did not turn out that way. We have held that the logical post-incident impulse of a criminal is to distance himself from his victim as far as and as soon as practicable to avoid suspicion, discovery, and apprehension.[44] Appellants' conduct here does not jibe with the behavior of one who had just committed a heinous offense.

As held in several cases, when the guilt of the accused has not been proven with moral certainty, the presumption of innocence of the accused must be sustained and his exoneration be granted as a matter of right.[45] For the prosecution's evidence must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense.[46] Here, we find that the prosecution evidence has not established the appellants' guilt beyond reasonable doubt. Their acquittal is in order.

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[43] *People v. Docdoc*, G.R. No. 134679, 8 August 2000, 337 SCRA 407, 416.

[44] *People v. Laurente, supra*, at 779.

[45] *People v. Amogis*, G.R. No. 133102, 25 October 2001, 368 SCRA 232, 246.

[46] *People v. Castillo*, G.R. No. 131200, 15 February 2002, p. 14.

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WHEREFORE, the decision of the Regional Trial Court of Legazpi City, Branch 3, in Criminal Cases Nos. 7333 and 7334, is *REVERSED and SET ASIDE*. Appellants RICKY SODSOD and DONDON BERNABE are hereby *ACQUITTED* for insufficiency of evidence to prove their guilt beyond reasonable doubt.

The Director of Prisons is directed to immediately *RELEASE* appellants Ricky Sodsod and Dondon Bernabe from custody, unless they are being lawfully held for some other charge, and to report to this Court the action taken hereon within five (5) days from receipt of this decision.

SO ORDERED.

Bellosillo (Chairman), Austria-Martinez and *Callejo, Sr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 144589. June 16, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JUANITO PACUANCUAN,** *appellant.*

SYNOPSIS

Appellant was convicted of murder by the Regional Trial Court of Roxas City and was sentenced to suffer the penalty of *reclusion perpetua*. In his appeal before the Court, appellant contended that a review of the prosecution witnesses' testimonies showed that they were too inconsistent, absurd and unreliable to sustain a conviction. He maintained that the trial court should not have disregarded the testimonies given by him and his brother-in-law.