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FIRST DIVISION

[G.R. No. 145338. June 9, 2003]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ZALDY LABIANO** *y* **PAGTAN,** *appellant.*

SYNOPSIS

Appellant was convicted of raping Soledad. He was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the victim civil indemnity of ₱75,000.00 and moral damages in the amount of ₱50,000.00.

The Supreme Court affirmed his conviction on appeal ruling: that the findings of the trial court, which gets a good chance to observe the demeanor of the declarant at the witness stand, with regards to reliability of testimony given before it, are generally not disturbed on appeal; that the testimony given by Soledad was sufficiently straightforward and there was no indication that she harbored ill-motive that would have prompted and urged her to falsely accuse appellant; that appellant's alibi is a weak defense in the face of a positive identification made by an eyewitness; that under Article 335 of the Revised Penal Code, as amended, the penalty prescribed for a crime of rape committed with the use of a deadly weapon is *reclusion perpertua* to death and since neither mitigating nor aggravating circumstance is present, the penalty that can be imposed is *reclusion perpetua.* The Court, however, reduced the amount of civil indemnity from ₱75,000.00 to ₱50,000.00.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS WILL NOT GENERALLY DISTURB FINDINGS OF TRIAL COURT.— As has so often been stated by this Court, the issue of credibility is a matter best addressed by the trial court which gets a good chance, unlike that of an appellate court, to observe the demeanor of the declarant at the witness stand, and that, in the absence of any fact or circumstance of substance that has apparently been overlooked, its findings on the reliability of the testimony given before it

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are not thus disturbed on appeal. The records in this case yield no evident trace that any such significant fact or circumstance has been missed out.

2. **ID.; ID.; ID.; STRAIGHTFORWARD TESTIMONY OF RAPE VICTIM MUST BE GIVEN CREDENCE; CASE AT BAR.**— The testimony given was sufficiently straightforward. Nothing was shown to indicate that Soledad harbored any ill-motive that would have prompted and urged her to falsely accuse appellant. It would indeed be unthinkable for the young woman to charge a man she barely knew with so grave a crime as rape and to then unnecessarily open herself to public scrutiny if she was not really subjected to the sexual indignity complained of.

3. **ID.; ID.; ID.; DEFENSE OF ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION BY EYEWITNESS; CASE AT BAR.**— The defense of *alibi* is unavailing to disprove the occurrence of the crime. For this asseveration to prosper, it is not enough to establish that the person charged has been at some other place during the commission of the crime but that it would have also been impossible for him to at all be at the *locus criminis* at the time. It remains undisputed that appellant and Soledad have then been both staying at the Sanitary Camp. *Alibi*, verily a weak defense, would almost invariably be likewise ignored in the face of a positive identification made by an eyewitness.

4. **CRIMINAL LAW; REVISED PENAL CODE; ART. 335 THEREOF; WHEN CRIME OF RAPE IS COMMITTED WITH USE OF DEADLY WEAPON, PENALTY PRESCRIBED IS *RECLUSION PERPETUA* TO DEATH.**— Under Article 335 of the Revised Penal Code, as so amended by Section 11 of Republic Act No. 7659, rape is committed by having carnal knowledge of a woman by, among other circumstances, using force and intimidation. The records bear the fact that appellant has used a knife to cow Soledad into submission to his beastly desires and to force her to undergo the sexual ordeal. When the crime is committed with the use of a deadly weapon, the penalty prescribed is *reclusion perpetua* to death.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Sebastian C. Badongen for accused-appellant.

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DECISION

VITUG, *J.*:

Appellant Zaldy Labiano was charged with rape under an accusatory Information that read:

"The undersigned 3rd Asst. City Prosecutor hereby accuses ZALDY LABIANO *Y* PAGTAN, of the crime of RAPE, at the instance, relation and the written sworn complaint of SOLEDAD DILEM *Y* CAGUITE. Copies of her statement are hereto attached, incorporated and made an integral part of this Information, committed as follows:

"That on or about the 18th day of December, 1994 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of force and intimidation, have carnal knowledge of the said complainant, SOLEDAD DILEM *Y* CAGUITE, against her will and consent."[1]

At his arraignment, Zaldy Labiano entered a plea of "not guilty." The trial ensued with the prosecution first presenting its case and the defense following shortly thereafter.

On the witness stand, 21-year old Soledad Dilem-Pacada narrated that, on the early morning of 18 December 1994, she was in a rented room in the house of a certain Mrs. Aydoc at Sanitary Camp, Baguio City. She was all alone as the two other occupants of the house were not yet home. The light cast by the incandescent full moon that shone through the glasswindows illuminated the small room. She was awakened, about two o'clock, from sleep when the plastic curtain rustled on her window. She saw a man who immediately held her hands. She asked, "*mama, sino ka ba? bakit ka nandito?*" He told her "*sorry ka na lang*," and he poked a knife at her neck. Soon, the stranger removed her shorts and sleeveless top with his right hand while his left hand held on to the knife. She tried to push him away but he threatened her with death if she were to resist him. She was so frightened that she did not move. With his

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[1] *Rollo*, p. 7.

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feet, he completely pulled down her shorts and panties below her knees. He then unbuttoned his pants and pushed it down with his right hand. Lying fearfully silent on the bed, Soledad could only watch as the stranger inserted his penis into her. She tried to move her buttocks to avoid the thrusts but he simply pounded his weight on her. The man stayed on her for about ten minutes while she looked at his face intently. She recognized him to be Zaldy Labiano, a resident of Sanitary Camp. When he ejaculated, he retrieved his pants and told her not to report what had just transpired to anybody or he would come back and kill her. She asked for his name, and he said, "Ricardo." When he had left, she cried and thought that she would be unable to face her parents, relatives, friends and her boyfriend.

Later, about six o'clock of the same day, she went to her friend Flordeliza Tigwa and told her what had happened just a few hours before. Flordeliza advised her to report the incident to the *Barangay* Captain who then accompanied them to the police station. Soledad was later brought to the Baguio General Hospital for medical examination. Dr. Susan Chungalao who performed the examination testified that she found an old healed laceration at the hymen but sperm cells were present in Soledad's vagina which could indicate that she had a recent sexual contact.

Zaldy Labiano denied the accusation. He claimed that he was at home taking care of his children during the time the alleged rape took place. According to him, he only learned that he was being accused of rape in the afternoon of 18 December 1994. With his father, he went to the police station only to inquire about the reported complaint filed by Soledad but, to his dismay, a certain SPO4 Romulo Danglose forced him to admit his complicity to the crime.

Barangay Captain Esteban Rifani testified that Soledad came to see him on 17 December 1994, not on 18 December 1994, to report the rape incident. Soledad could not, at the time, identify her assailant, and he thus merely entered the complaint in the *Barangay* Logbook. Rosario Colantes, a boarder at Mrs. Aydoc's house, stated that on 17 December 1994 Soledad had asked whether she knew anyone by the name of "Ricardo." Mrs.

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Aydoc informed her that Soledad was raped. Corazon Manuel Gumnad, the live-in partner of Labiano, declared that the latter was with her, and that he never left their house on 17 December 1994.

When the trial concluded, the court *a quo* convicted Zaldy Labiano of the crime for which he was indicted. The trial court held that Soledad's positive identification of her defiler, with whom she had come face to face, deserved credence. It also opined that the sperm cells found in Soledad's vagina bolstered her claim of sexual abuse. The dispositive portions of the decision read:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered convicting the accused Zaldy Labiano of the crime of rape as charged and hereby sentences him after taking into consideration Art. 63 of the Revised Penal Code to suffer the penalty of *reclusion perpetua.*

"With respect to the civil aspect, the accused is hereby ordered to indemnify private complainant Soledad [Dilem] in the amount of ₱75,000.00 and further to pay said private complainant the amount of ₱50,000.00 as moral damages."[2]

The convicted accused, now appellant, seeks the reversal of his conviction. He raises two simple issues: (a) whether or not he is guilty of the crime charged, and (b) whether or not he is liable for damages.[3] Appellant argues that the trial court has erred in appreciating the testimony of Soledad.

As has so often been stated by this Court, the issue of credibility is a matter best addressed by the trial court which gets a good chance, unlike that of an appellate court, to observe the demeanor of the declarant at the witness stand, and that, in the absence of any fact or circumstance of substance that has apparently been overlooked, its findings on the reliability of the testimony given before it are not thus disturbed on appeal.[4] The records

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[2] *Rollo*, p. 81.

[3] *Rollo*, p. 62.

[4] *People vs. Ricafranca*, G.R. No. 124384-86, 28 January 2000 (323 SCRA 652).

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in this case yield no evident trace that any such significant fact or circumstance has been missed out. Soledad has testified thusly:

"Q Now, you stated that you noticed while you were sleeping that your plastic curtain beside your bed was moving?

"A Yes, sir.

"Q When you saw that the plastic curtain beside your bed was moving, what did you do?

"A I looked around, sir.

"Q By the way, was your room lighted at that time?

"A There [was] no light then but there [was] a light coming from outside, sir.

"Q There was a light coming from outside?

"A Yes, sir, caused by the full moon because it was a full moon at that time.

"Q You said that you looked around, what did you see?

"A I saw a man, sir.

"Q And when you saw a man, could you tell the Honorable Court what did you do?

"A I tried to [get up] but the man immediately [held] my both hands, sir.

"Q So you are telling the Honorable Court that when you saw the man, you were still lying on your bed?

"A Yes, sir.

"Q And you said that a man, you said that the man held your hands?

"A Yes, sir.

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"Q In what hands did he hold [you]?

"A Both hands, sir.

"Q When this man held your both hands and you said that you were still lying on your bed, what did you do?

"A I shouted, sir.

"Q And for the record, would you mind telling this Honorable Court what you shouted?

"A '*Mama, sino ka, bakit ka nandito*?'

"Q How many times did you shout '*mama, sino ka, bakit ka nandito*?'

"A About 5 times, sir.

"Q And when you shouted '*mama, sino ka, bakit ka nandito*' for about 5 times, what transpired next if you can still recall?

"A The man poked a knife at my neck and told me . . .

"Q And when the man poked a knife at your neck what did he say? If you can still recall?

"A He said 'sorry *ka na lang*.'

"Q Sorry *ka na lang*. When the man said '*sorry ka na lang*,' what did you tell him?

"A I repeatedly shouted, sir.

"Q What did you shout when you repeatedly shouted?

"A I repeated the first, sir, '*Mama, sino ka, bakit ka nandito*?'

"Q And despite the fact that you shouted '*mama, sino ka, bakit ka nandito*' and the knife was poked at your neck, what did you do or what did this man do if you recall?

"A He started removing my short pants and panty, sir.

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"Q Now I would like to ask you. He started removing your short pants and your?

"A Panty, sir.

"Q Panty. Now I would like to ask you that you said that this man held your hand, poked a knife at your neck, and could you describe how the man held your hands?

"A He put my hands like this, sir. (INTERPRETER: Witness demonstrating by stretching her hands over her head, Your Honor).

"Q Where is that man in relation to you at that time?

"A He was on top of me, sir.

"Q On top of you holding your hands?

"A Yes, sir.

"Q And would you mind telling this Court where was the knife poked at your neck?

"A This one, sir. (Witness pointing to her right portion of the neck, Your Honor)."[5]

"Q And after the man poked the knife at your neck, you said, *sorry ka na lang*, do you recall having stated that?

"A Yes, sir.

"Q Now, when this man poked the knife at your neck, did you say something to him?

"A None, sir.

"Q Could you tell us the reason why you did not say something to him?

"A I was already afraid, sir.

[5] TSN, 16 November 1998, pp. 14-17.

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"Q Why were you afraid?

"A Because the knife was poked at my right side of my neck.

"Q While the man poked the knife at your neck, what happened next?

"A I did not talk, sir.

"Q When you did not talk, what happened next?

"A He started removing my short pants and panty, sir.

"Q He started removing your short pants and your panty?

"A Yes, sir.

"Q Would you mind telling this Honorable Court what were you wearing at that time you went to sleep on December 18, 1994 in the evening?

"A I [was] wearing garterized short pants and sleeveless dress, sir.

"ATTY. VILLANUEVA:

May we know from the victim if she wanted to exclude the public or not.

"PROS. BANTA:

Your Honor please, considering [what] the witness will be testifying on, may we pray for the exclusion of the public.

"COURT:

All right, exclude the public, only the accused will remain.

"ATTY. VILLANUEVA:

May we just request to put on record that the witness now is crying.

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"COURT:

Proceed.

"ATTY. VILLANUEVA:

You said that he started removing your shorts and your panty, would you tell this Honorable Court how did he start removing your shorts?

"A His left hand holding the knife pointed at my neck and he used his right hand pulling down my short pants.

"Q How do you know that he was pointing the knife at your neck at that time that he was removing your shorts and your panty?

"A Because before he pointed the knife at my neck I have seen the knife because it was bright during that night, sir.

"Q After he pulled down your shorts and your panty, what happened next?

"A He was able to pull down my short pants and panty below my knees and used his feet in completely removing my short pants and panty.

"Q You said that he was able to pull down your panty and shorts and using his feet in completely pulling down your shorts and panty, could you demonstrate to this Honorable Court how he was able to pull down your shorts and panty?

"A Yes, sir.

"Q Could you stand up and show? Now, assuming Madam witness that this was the bed, will you go and lie down and show us how he was able to pull down your shorts and your panty? (At this juncture, the witness step[ped] down from the witness stand and lying down and the complainant lying down on her back).

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"ATTY. VILLANUEVA:

"Q In that position Madam witness, could you tell us where was the accused at that time in relation to you while you were lying down?

"A He [was] on top of me, sir.

"Q Now how was he able to pull down your shorts and your panty?

"A While his left hand holding the knife at my neck he used his right hand in pulling down my shorts and panty at my left side.

"Q And was he able to pull down your shorts and panty at that time?

"A No, sir, until below my knees.

"Q When your shorts and panty was x x x below your knee, what did the accused do next?

"A He used his feet in completely removing my panty, sir.

"ATTY. VILLANUEVA:

Alright, Madam witness would you mind going back to the witness stand.

"Q While he was removing or pulling down your shorts and panty, what did you do if you can recall?

"A My left hand pushing him and my right hand was holding my short pants at my right side.

"Q And while you were pushing him and your right hand was pulling up your panty, and shorts, what did this man do?

"A He warned to kill me if I [were to] resist.

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"Q What exact words did he tell you?

"A He said, *vulva* of your mother, I will stab you if you will resist and I will kill you if you will not stop.

"Q Now, when he said that and he said that he threatened . . . to kill you, how did you feel?

"A I became more nervous and afraid, sir.

"Q Why [did] you [become] nervous and afraid?

"A Because he might stab me at my neck, sir.

"Q When he said that and he threatened you, what happened?

"A He unbuttoned and pulled down his pants using his right hand, sir.

"Q He unbuttoned his pants?

"A Yes, sir.

"Q Using his right hand?

"A Yes, sir.

"Q While he was pulling down his pants, what did you do?

"A I [could not] do anything, sir.

"Q Could you tell us the reason why you [could not] do anything?

"A Because I [was] so nervous and he did not remove the knife at my neck, sir.

"Q Now, was he able to unbutton his pants and [pull] down his pants?

"A Yes, sir.

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"Q And because you were trembling and because you became nervous because of the knife that was pointed at your neck, what did you do next?

"A He started inserting his penis in my vagina.

"Q When he was starting to insert his penis to your vagina, what did you do?

"A I forced myself to move my buttocks so that his penis [would] not enter in my vagina, sir.

"Q You started moving you buttocks, what do you mean by that?

"A I [was] moving my buttocks sideways, sir.

"ATTY. VILLANUEVA:

"Q Could you tell us the reason why you [were] moving your buttocks sideways?

"A So that he [would] not enter his penis into my vagina, sir.

"Q For how long did you keep or moving your buttocks sideways?

"A Around 15 to 20 seconds, sir.

"Q While you were moving your buttocks sideways around 15 to 20 seconds, what happened thereafter?

"A Because he was on top of me and he [was] very heavy and the knife was still at my neck so he was able to insert his penis into my vagina, sir.

"Q Now, when he was able to enter his penis into your vagina, could you tell us what did you feel at that time?

"A I felt pain.

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"Q Could you tell us the reason why you felt pain?

"A Because his penis [was] big.

"Q After he had inserted his penis into your vagina and you felt pain because his penis was big, what did this man do next?

"A He started moving up and downwards, *agkinod kinod idiay rabaw ko.*

"ATTY. VILLANUEVA:

"Q You said *agkinod kinod idiay rabaw mo*, for how long he made that pumping?

"A More or less ten minutes, sir.

"Q While he was pumping because his penis was inserted into your vagina, what did you do?

"A Because I was already helpless and tired and I felt that I [was] weak already, I did not do anything, sir.

"Q While he was pumping on you because his penis was inserted into your vagina, and you said that you [were] already tired and helpless, what did you do?

"A I focused my eyes on his face, sir.

"Q Could you tell us the reason why you focused your eyes into his face?

"A To identify and recognize him clearly, sir.

"Q Now you said he pumped, *agkinod*, and that was more or less ten minutes, after ten minutes what happened?

"A He x x x already ejaculated.

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[6] TSN, 18 November 1998, pp. 211.

[7] *People vs. Llamo*, G.R. No. 13-2138, 28 January 2000 (323 SCRA 791).

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"Q After he ejaculated, could you tell us what did you feel?

"A I felt something warm inside my vagina."[6]

The testimony given was sufficiently straightforward. Nothing was shown to indicate that Soledad harbored any ill-motive that would have prompted and urged her to falsely accuse appellant.[7] It would indeed be unthinkable for the young woman to charge a man she barely knew with so grave a crime as rape and to then unnecessarily open herself to public scrutiny if she was not really subjected to the sexual indignity complained of.

The defense of *alibi* is unavailing to disprove the occurrence of the crime. For this asseveration to prosper, it is not enough to establish that the person charged has been at some other place during the commission of the crime but that it would have also been impossible for him to at all be at the *locus criminis* at the time.[8] It remains undisputed that appellant and Soledad have then been both staying at the Sanitary Camp. *Alibi*, verily a weak defense, would almost invariably be likewise ignored in the face of a positive identification made by an eyewitness.

Under Article 335 of the Revised Penal Code, as so amended by Section 11 of Republic Act No. 7659,[9] rape is committed by having carnal knowledge of a woman by, among other circumstances, using force and intimidation.[10] The records bear the fact that appellant has used a knife to cow Soledad into submission to his beastly desires and to force her to undergo the sexual ordeal. When the crime is committed with the use of a deadly weapon, the penalty prescribed is *reclusion perpetua* to death.[11]

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[8] *People vs. Suitos*, G.R. No. 125280, 31 March 2000 (329 SCRA 440).

[9] The law in effect at the time the crime was committed.

[10] Article 335(1).

[11] Article 335 of the Revised Penal Code, as amended.

[12] Article 63, Revised Penal Code.

[13] *People vs. Gonzales*, G.R. No. 140676, 31 July 2002.

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Since neither mitigating nor aggravating circumstance is shown to have attended the commission of the crime, the penalty that can here be imposed is *reclusion perpetua*.[12] With respect to the award of damages, the prevailing jurisprudence sanctions a civil indemnity of ₱50,000.00 in addition to moral damages for a like amount.[13]

WHEREFORE, the assailed decision of the trial court is AFFIRMED with modification only with respect to the amount of civil indemnity which is reduced from ₱75,000.00 to ₱50,000.00. Costs against appellant.

SO ORDERED.

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

EN BANC

[Administrative Case. No. 4738. June 10, 2003]

VIOLETA FLORES ALITAGTAG, *complainant, vs.* **ATTY. VIRGILIO R. GARCIA,** *respondent.*

SYNOPSIS

For alleged participation in the falsification of the subject deed of donation, the Supreme Court in its resolution dated February 6, 2002 found respondent guilty of grave misconduct and was ordered disbarred from the practice of law. Hence, this motion for reconsideration of the said resolution.

The Supreme Court reconsidered the penalty imposed on respondent and reinstated him as a member of the bar, ruling: that in disbarment proceedings, the burden of proof rests upon the complainant, and for the Court to exercise its disciplinary powers, the case against respondent must be established by