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ACCORDINGLY, the petition for *habeas corpus* is hereby dismissed without prejudice to its refiling should there be substantial proof that Rolan "Levi" Ybañez is under the custody of any person or entity. The respondents and all concerned in the Armed Forces of the Philippines are directed to exert utmost efforts in locating Rolan "Levi" Ybañez.

Let a copy of this Resolution be furnished the Commission on Human Rights for appropriate action.

SO ORDERED.

SECOND DIVISION

[G.R. No. 73463. October 28, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELEUTERIO C. GAMBOA, JR.,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ACCUSED IDENTIFIED WITH CERTAINTY.— It is not difficult, however, to accept and believe the testimony of Gemma Micua that she recognized the accused, Eleuterio Gamboa, as the one who raped her. Appellant himself stress the fact that there was a moon that evening. Complainant could thus identify appellant as the one who raped her even if only because there was moon light at that time. Considering also that prior to the act of rape the accused had ran after her and grasped her right shoulder, these preceding incidents would afford sufficient opportunity for Gemma Micua to realize who was molesting her. When after being boxed and regaining her consciousness, Gemma noticed that the accused was on top of her doing the sexual act, their proximity at that moment and the complainant's familiarity with the accused who was then her teacher in school leaves no doubt in the mind of the Court that the offended party identified with certainty and correctly, the person who harmed and molested her.

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2. **ID.; ID.; COURT CAN TAKE JUDICIAL NOTICE THAT INCIDENTS THEREOF HAVE BEEN COMMITTED IN PLACES WHERE PEOPLE GATHER.**— Appellant's insistence that it would be highly improbable for the rape to have been committed because of the beauty contest then taking place inside the school premises with people converging in said area, is untenable. While the rape was committed within the school premises the scene of the crime appears to be at some distance away from where the actual festivities were going on. It was in fact according to the sketch about twenty (20) meters away. Furthermore, the Court can take judicial notice that rape incidents have been committed even in vicinities or places where people gather, such as parks or by the road side or in the Rizal Park or even within the school premises where people congregate (*People vs. Aragona,* L-43752, September 19, 1985, SCRA 569). There would be less hindrance to a rape being committed in the place mentioned by the complainant which was dark, unlighted and surrounded by tall ornamental and banana plants.

3. **ID.; ID.; ABSENCE OF EFFECTIVE RESISTANCE BELIED BY VICTIM'S TESTIMONY.**— Appellant points out that in complainant's narration of the incident, she simply states that the accused pressed his forehead against her forehead and held her hands in order to consummate sexual intercourse. Complainant insinuates that Gemma Micua apparently offered no effective resistance to free herself from the accused when the latter was on top of her. The allegation of absence of any force employed against the offended party is absolutely without merit. What transpired at the very beginning after Gemma Micua was misled by appellant to proceed to the Grade II room was recounted by the said offended party and from her declarations, it is clearly manifest that appellant used physical force after overtaking Gemma in order to consummate his lustful desires, to the extent that the latter even lost her consciousness. Appellant succeeded in his lustful desires after rendering Gemma unconscious. He continued applying pressure on her body when she regained consciousness. Appellant's claim that Gemma offered no effective resistance is certainly untenable. Complainant even demonstrated during the trial how she was abused and how she struggled and was violated.

4. **ID.; ID.; TESTIMONY OF RAPE VICTIM, WHEN SUFFICIENT.**— The Court has repeatedly held that the testimony of a rape victim which is credible, clear, free from

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serious contradiction, and marked by sincerity and candor, is sufficient to sustain a verdict of conviction (*People vs. Ervas*, L-51549-51, May 11, 1984, 129 SCRA 200; *People vs. Ramos*, L-50450, March 16, 1984, 128 SCRA 266; *People vs. Salfaison*, 110 Phil. 889).

5. **ID.; ID.; MEDICAL EXAMINATION, MERELY CORROBORATIVE.**— The alleged conflict in the medical findings as to the condition of the hymen of Gemma Micua have no appreciable value. The consummation of the crime of rape has been established satisfactorily and beyond doubt by the testimony of the complainant herself. In this regard, it was stated in the case of *People vs. Aragona*, (L-43752, Sept. 19, 1985, 138 SCRA 569) that: "x x x In previous cases, medical examination was held to be merely corroborative." Independent therefore of the medical certificates, the crime of rape has been fully established. In People vs. Monteverde, G.R. No. 60962, July 11, 1986, this Court ruled: "x x x The fact that the medical certificate shows no external signs of physical injuries and spermatozoa on the victim does not negate the commission of rape. x x x." While the medical certificate as well as the questioned extrajudicial confession may be incomplete or defective neither is indispensable to prove the crime of rape. In previous cases, medical examination was held to be merely corroborative. x x x In a prosecution for rape, the accused may be convicted even on the sole basis of the complainant's testimony, if credible x x x."

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL JUDGE AFFORDED HIGHEST DEGREE OF RESPECT; EXCEPTION.**— On the matter of credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial judge unless there is proof of his misappreciation of evidence (*People vs. Mesias, Jr.*, L-40318-20, February 28, 1984, 127 SCRA 792; *People vs. Balbuena*, L-44859-60, April 27, 1984, 129 SCRA p. 10).

7. **ID.; ID.; WEAK DENIALS CANNOT PREVAIL OVER POSITIVE TESTIMONY.**— It is significant to note that the trial court in assessing the evidence stressed that "the weak denials of the defendant cannot prevail over the clear and positive testimony of Gemma Micua"; that " it is satisfied that Gemma's testimony is worthy of credence"; and that her description of

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the ordeal she suffered in the hands of the accused is clear and convincing.

8. ID.; ID.; SUPPOSED MOTIVATION, REJECTED AS FANCIFUL AND ILLOGICAL; IMPUTATION OF MOTIVE A DESPERATE ATTEMPT AT SEEKING EXCULPATION.— Appellant's submission of an alleged contrived fabrication behind the charge of rape, appears altogether far-fetched and simply a vain effort of appellant to weaken the accusation against him. It is extremely difficult to even conceive that a thirteen-year old school girl would initiate a false and serious charge against appellant without any direct benefit whatsoever to her or to her family and in the process undergo humiliation and scandal that could ruin her honor and future. It is highly improbable that the parents of Gemma Micua would consent to have their daughter suffer the inevitable embarrassment and rigors of an investigation and trial simply to accommodate a relative who desire to help another relative. Even the alleged professional jealousy or rivalry between the appellant and another teacher is hardly a motivation sufficient to stir up or promote a malicious and false accusation of an offense carrying capital punishment. The Court's appreciation of human values rejects the supposed motivation as fanciful and illogical. Suffice it for the Court to reiterate what We stated in the case of *People vs. Malate,* L-40791, Sept. 11, 1982, 116 SCRA 487, which are equally applicable to the case at bar. Therein We stated: "The imputation of motive is obviously a desperate, albeit, vain attempt, at seeking exculpation by the defense. But assuming there was such resentment, the same could not have sufficiently impelled the victim's father to falsely and maliciously fabricate a charge of rape against Lucio Malate's son, herein appellant. The girl's father would not have gone as far as subjecting not only his daughter of tender age to the rigors and ordeals of a public trial and thereafter suffer the consequent social humiliation, but his whole family as well. Indeed, only a desire to bring the offender to justice for his bestial act could have moved Rafael Lustina to rightly press the charges against appellant."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Sinforoso G. Gomez for defendant-appellant.

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DECISION

ALAMPAY, *J.*:

Accused Eleuterio C. Gamboa, Jr. appeals from the decision rendered on October 18, 1985, by the Regional Trial Court of Pangasinan, Branch XLV, finding him guilty of the crime of rape and sentencing him "to suffer imprisonment of *reclusion perpetua* and to indemnify complainant Gemma L. Micua in the amount of Twenty Thousand (P20,000.00) Pesos, and to pay the costs." (Decision in Criminal Case No. U-2030, *Rollo*, pp. 44-45).

The facts of this case disclose that during the years 1978-79, the accused-appellant herein was a teacher of Bacag Central School, Villasis II, Villasis, Pangasinan. Aside from teaching Science and Music in Grade VI, he was also the trainer and baton leader of the Drum and Bugle Corps of the said school. Among appellant's pupils in the sixth grade was Gemma Micua. She was also a drummer and drum majorette of the drum and bugle corps being trained and led by appellant, Eleuterio Gamboa, Jr. Gemma Micua was then thirteen (13) years of age. She was born on May 20, 1966 (Exh. J, Tsn., p. 3, Hearing of August 4, 1982).

The version of the prosecution regarding the rape offense imputed to the herein accused was summarized in the Appellee's Brief as follows:

"On April 14, 1979 between the hours of 9:00 to 10:00 o'clock in the evening, Gemma Micua, together with her aunt Desideria Micua and cousin Linda Micua, went to Bacag Elementary School in Bacag, Villasis, Pangasinan to witness the last canvassing of the ballots in the beauty contest sponsored by the school which was being held at the school auditorium. Upon their arrival, Gemma lingered awhile in her aunt's place (south of the auditorium) where the latter was selling beer. Then she left for the auditorium and on her way thereto, she saw some of her classmates in the company of their teacher, Eleuterio Gamboa, Jr., near the principal's office (p. 4, tsn, January 13, 1981; pp. 13-14, tsn, March 11, 1981).

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"Later, Gemma returned to her aunt's place. After quite sometime, Gamboa arrived informing her that her classmates were waiting for her at the Grade II classroom and then left. Unsuspecting, she asked permission from her aunt and proceeded to the Grade II classroom. Gemma noticed that her classmates were not there except Gamboa standing in the room. Alarmed, Gemma tried to retrace her steps to her aunt's place but Gamboa immediately ran after her, grasped her right shoulder and boxed her in the stomach causing her to loss consciousness. When she regained consciousness, Gemma noticed that she was lying down face upwards, with Gamboa, naked, on top of her, doing the sexual act, even as he was mashing her nipples. Gemma pushed him with her hands and moved her lips from left to right to set her body free from his clutches but to no avail. When Gamboa spent himself, he stood up and put on his clothes. Before he left, he warned Gemma who was already crying, not to reveal the incident to anybody, otherwise, he will kill her. Although she was already weak, Gemma managed to run straight for home where she noticed bleeding from her private parts. (Tsn, January 13, 1981, pp. 8-18).

"For about two (2) months, Gemma kept mum about the incident for fear that Gamboa might make good his threat. However, when she could no longer bear the pain of the sexual onslaught on her, she broke down and reported the matter to her mother who, thereafter, brought her to the Urdaneta Emergency Hospital and later to the Pangasinan Provincial Hospital in Dagupan City (pp. 24-25, Tsn, January 13, 1981).

"At the Pangasinan Provincial Hospital, Gemma was examined by Dr. Fatima de Leon who came up with the following findings:

"- Conscious, ambulatory.
- Menarche - 13 years old.
- LMP - June 3-8, 1979.
- No sign of external physical injury.
- Internal Exam.:
  "-Vagina - Admits 2 fingers easily.
- Hymen - healed laceration at 3 & 11 o'clock position.
  - Cervix - closed.
  - Uterus - small
  - Adnexae - free.
  - Vaginal smear for spermatozoa - negative" (Exh. "A", Prosecution; Appellee's Brief, pp. 3-6)

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Thus on June 18, 1979, the corresponding complaint, duly sworn to by Gemma L. Micua, was filed with the Municipal Circuit Court of Villasis - Sto. Tomas, Pangasinan, charging Eleuterio C. Gamboa, Jr., with the crime of rape alleged to have been committed on April 14, 1979. The corresponding preliminary investigation of the case was thereafter conducted. Afterwards the case was elevated to the Court of First Instance of Pangasinan under the Information filed by the Provincial Fiscal's Office.

When arraigned, Eleuterio Gamboa, Jr. entered a plea of not guilty to the crime of rape charged against him. After trial of the case, the court below on October 18, 1985, rendered its decision which is now the subject of the present appeal.

The defense of the herein appellant rests on his denial of the accusations made by the complainant against him and his protestations that Gemma Micua's testimony as to how the rape incident happened is unworthy of belief. Appellant insists that there is no reliable evidence sufficient enough to establish his guilt beyond reasonable doubt and warrant his conviction. In Appellant's Brief, he states the following:

"For his part, Eleuterio C. Gamboa, Jr. set up mere denial as his defense. Testifying as the lone witness for the defense, He declared that he was present during the last canvassing held at the auditorium of the Bacag Central School that night of April 14, 1979. He was with Julian Lopez, Herminigildo Ramilo, Benjamin Gotie and Pedro Sales.

"He insisted that "a man with the right sense" could not have sexually abused Gemma Micua because the alleged place of the incident was well illuminated from the electric bulbs installed at the auditorium where the canvassing was taking place; that in fact the supposed particular spot of the incident which is the path going to the ladies toilet, was likewise lighted with a bulb; that from the auditorium one can easily see the vicinity of the ladies toilet which is 20 meters away because the place was lighted and there were no objects to obstruct it from view; that there being an occasion going on some people were roaming around reaching as far as the path leading to the ladies comfort room, and children were playing around.

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"At about 11:00 o'clock that night, while he and his aforementioned companions were seated under a *Mabolo* tree, Gemma approached him to borrow his flashlight. She returned it 10 to 15 minutes after. At midnight he saw Gemma with her friends still strolling around the auditorium. He left after the canvassing was over at around 4:00 or 5:00 o'clock in the morning.

"Gamboa insinuated that his innocence is further indicated by the fact that nothing unusual happened as things went on normally between him and Gemma. Two days after the canvassing, he had an occasion to see her again during the rehearsal of the drum and bugle corps in preparation for the fiesta. One time he conducted a house to house census in their place which included the house of Gemma Micua. When he reached the house of Gemma, he had to wait for a while because her mother from whom to extract pieces of information was not around at the time. Gemma then was with her sister-in-law. He only left the place after Gemma's mother arrived and he was supplied with the information he needed for the census.

"Finally, Gamboa theorized that this charge for rape against him was engineered by Sergio Micua to get concessions from him. He declared that on November 10, 1982, Sergio Micua, the uncle of Gemma, went to see him in his house. (He denied that he met Sergio Micua in Mr. Zarazate's house). He (Sergio Micua), informed him that the parents of Gemma were contemplating to file administrative and criminal charges against him. In support to that, Sergio Micua handed him copies of the affidavits (Exhibits "4", "5", and "6") executed by Gemma, her parents and Priscilla Micua. Furthermore, Sergio Micua told him that he can convince the parents of Gemma not to file the charges provided he will transfer to another school. Likewise, he was told that should he decide otherwise, he has to prepare himself for any legal matter that arises. The proposal was a blow to him because at that time he was aspiring for the position of Master Teacher I. Sergio Micua was persistent on the matter because Mrs. Narcisa Murillo, his own relative, was also vying for the position as one of the contenders. Murillo has been appointed to the position.

"Although informed of the filing of charges against him, Eleuterio Gamboa did not try to confer with Gemma on the matter because he surmised that doing so may incriminate him. Although there was a student-teacher rapport between them there was no move whatsoever from him as the situation called for it. He concluded that Gemma had already graduated, hence he lost jurisdiction over her person." (Appellant's Brief, pp. 7-10).

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It is significant to note that the above version submitted by the appellant is no less the reiteration of the summary of the evidence adduced by appellant Eleuterio C. Gamboa, Jr. during the trial as recited in the decision of the court below.

In his appeal to this Court, Eleuterio C. Gamboa, Jr. assigns as errors allegedly committed by the lower court, the following:

"I

"THE TRIAL COURT ERRED IN GIVING DUE WEIGHT AND CREDENCE TO THE UNRELIABLE UNNATURAL AND DOUBTFUL TESTIMONY OF THE COMPLAINING WITNESS GEMMA MICUA TO THE SERIOUS PREJUDICE OF THE APPELLANT'S SUBSTANTIAL RIGHTS.

"II

"THE TRIAL COURT ERRED IN NOT TAKING INTO ACCOUNT THE UNDUE DELAY OR REPORTING THE INCIDENT TO THE POLICE AUTHORITIES CREATED SERIOUS DOUBTS AS TO THE TRUTH THEREOF.

"III

"THE TRIAL COURT FINALLY ERRED IN NOT ACQUITTING THE APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT." (Appellant's Brief, p. 10)

Regarding the first assigned error, accused-appellant contends that his conviction was due to and based on the testimony given by the complainant Gemma Micua which was accorded credit by the trial court even if the same was unworthy of belief. Appellant submits that the place where the rape was allegedly committed was within the school compound where so many people converge; that the stated site of the crime was at the time well-lighted by an electric bulb placed on the post erected on the corner of two paths; that there was moonlight that evening; that on said occasion there was also a beauty contest going on and so the whole place was brightly lighted and attended by people of all ages.

On the above reasoning, appellant argues that the commission of the said crime that evening would hardly be possible as "even

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a hardened criminal or the most perverted one could not attempt to give vent to satisfy his lustful desire in said place"; that the alleged chase of Gemma Micua by the accused for five (5) meters and if indeed boxed by the accused, all these would have been seen or attracted the attention of even at least one or two people who were around. (Appellant's Brief, p. 13)

Appellant's averments which constitute the premises of his arguments are not, however, well established and are in fact, even refuted.

Sergio B. Micua who was then the barangay captain of Bacag, Villasis, Pangasinan disputed the claim of herein appellant that the site where the rape was committed was well-lighted. He testified that on the night of April 14, 1979, he was the guard in the school auditorium being the Chief Officer of the Barangay Tanod. He further declared as follows:

"FISCAL QUINIT:

"Q According to the accused the auditorium which was used in the canvassing of April 14, 1979 was lighted with six (6) electric bulbs and likewise the premises of the auditorium was also lighted with several electric bulbs, what can you say to that?

"A Only the dancing hall was lighted with electric bulbs and near the board of canvassers, Sir.

"Q How about the girl's comfort room?

"A There is no light, Sir.

"Q How about the path surrounding the auditorium?

"A It is not lighted also, Sir.

"Q From the auditorium considering that there was no light in the girl's comfort room can you view from the auditorium the girl's comfort room?

"A You cannot have a full view of the girls comfort room because it is blocked with ornamental plants like gumamela and bananas, Sir.

"Q How tall are the bananas and the gumamela that obstructed the view to the auditorium?

"A They are taller than me, Sir. (Witness is less than 5'2" in height)." (Tsn., Hearing on April 9, 1984, p. 7).

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Barangay Captain Sergio Micua's description of the place where the incident happened is confirmatory of the narrations of complainant Gemma Micua. On this same matter, she declared:.

"FISCAL VILLARIN:

"Q Will you describe the place where this incident happened?

"A The place has plenty of banana plants and it is near the ladies toilet.

"Q In what particular place did this incident happened?

"A It is near, Sir.

x x x x x x x x x

"A Around the toilet were ornamental plants and just behind the plants he abused me there.

x x x x x x x x x

"A The space between the toilet and ornamental plants was just near the plants was the place where he abused me, Sir.

x x x x x x x x x

"A About 3 or 4 meters away from the ladies toilet, Sir.

"Q Can you tell us how tall were those ornamental plants that were around the ladies toilet?

"A They were tall because those are ornamental plants.

"Q At the place where you were sexually abused were there lights on?

"A The place where he abused me was dark, Sir, because the light could not reach that place." (Tsn., Hearing on January 13, 1981, pp. 21-22)

It is not difficult, however, to accept and believe the testimony of Gemma Micua that she recognized the accused, Eleuterio Gamboa, as the one who raped her. Appellant himself stress the fact that there was a moon that evening. Complainant could thus identify appellant as the one who raped her (Tsn., p. 23, January 13, 1981) even if only because there was moon light at that time. Considering also that prior to the act of rape the accused had ran after her and grasped her right shoulder, these preceding incidents would afford sufficient opportunity for

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Gemma Micua to realize who was molesting her. When after being boxed and regaining her consciousness, Gemma noticed that the accused was on top of her doing the sexual act, their proximity at that moment and the complainant's familiarity with the accused who was then her teacher in school leaves no doubt in the mind of the Court that the offended party identified with certainty and correctly, the person who harmed and molested her.

Appellant's insistence that it would be highly improbable for the rape to have been committed because of the beauty contest then taking place inside the school premises with people converging in said area, is untenable. While the rape was committed within the school premises, the scene of the crime appears to be at some distance away from where the actual festivities were going on. It was in fact according to the sketch (Exh. "1") about twenty (20) meters away. Furthermore, the Court can take judicial notice that rape incidents have been committed even in vicinities or places where people gather, such as parks or by the road side or in the Rizal Park or even within the school premises where people congregate (*People vs. Aragona*, L-43752, September 19, 1985, 138 SCRA 569). There would be less hindrance to a rape being committed in the place mentioned by the complainant which was dark, unlighted and surrounded by tall ornamental and banana plants.

The other argument of the appellant is that the element of force as an indispensable element in the crime of rape was not established by the prosecution. Appellant points out that in complainant's narration of the incident, she simply states that the accused pressed his forehead against her forehead and held her hands in order to consummate sexual intercourse. Complainant insinuates that Gemma Micua apparently offered no effective resistance to free herself from the accused when the latter was on top of her. The allegation of absence of any force employed against the offended party is absolutely without merit. What transpired at the very beginning after Gemma Micua was misled by appellant to proceed to the Grade II room was recounted by the said offended party and these appear to be the following:

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"A I was not able to arrive in that room sir, because when I was very near the room I saw him alone standing there. So I turned back but he ran after me.

"Q Who is that 'he' who ran after you?

"A Mr. Gamboa, Sir.

"Q What happened when Gamboa ran after you?

"A *He ran after me and held me here.* (Witness pointing to her right shoulder.) *And he boxed me here.* (Witness pointing to her stomach).

"ATTY. BANAGA:

"Q What happened when you were boxed by Eleuterio Gamboa?

"A I lost consciousness, Sir.

"Q Did you ever regain consciousness?

"A When I regained consciousness Mr. Gamboa was already on top of me.

"Q Will you kindly tell the Court exactly what was the position of Eleuterio Gamboa on top of you?

"A The forehead of Mr. Gamboa was on top of my forehead and he was doing the push and pull on me sir." (Tsn., Hearing on January 13, 1981, pp. 10-11, Italics supplied)

"Q According to you Mr. Gamboa made push and pull movement of his body, was it his body he was pushing and pulling or which part of his body was he pushing and pulling?

"A His penis, Sir.

"Q In which direction was he pushing and in which direction was he pulling his penis?

"A To my vagina, Sir. (Tsn., *Ibid*, p. 23)

From the foregoing declarations, it is clearly manifest that appellant used physical force after overtaking Gemma in order to consummate his lustful desires, to the extent that the latter even list her consciousness. Appellant succeeded in his lustful desires after rendering Gemma unconscious. He continued applying pressure on her body when she regained consciousness. Appellant's claim that Gemma offered no effective resistance is certainly untenable. Complainant even demonstrated during

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the trial how she was abused and how she struggled and was violated. This can be noted in another portion of her testimony, which we hereunder quote:

"ATTY. BAUTISTA:

"Q How about the other hand what was it doing at the time?

"A When I struggled he will hold me with his right hand.

"COURT:

"Q How did you struggle?

"A I struggled but I cannot move because he was stronger than me, Sir.

"Q The question is, how did you struggle?

"A My body moved when I struggled, Sir.

"Q How did you move your body?

"A I exerted effort to move my body. I struggled but I cannot move.

"Q How did you move your body, sidewards, upwards or inwards?

"A I struggled like this, Sir. (*Witness moving her shoulders from left to right*) *And I pushed him with my hands.*

x x x x x x x x x

"ATTY. BANAGA:

"Q Did you move your hips when he was doing the push and pull?

"A I struggled, Sir. My body moved when I struggled.

"COURT:

"Q Yes, but the question is, your hips, did you move your hips or not?

"A Yes, sir.

"Q How did you move your hips?

"A I did like this, Sir. (Witness moving her hips from left to right). [Tsn., Hearing on January 13, 1981, pp. 12-13; Italics supplied]

The submission of accused Gamboa is that Gemma Micua failed to make an outcry although she could allegedly obtain help and, therefore, her accusation of rape is rendered dubious.

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We find this contention to be devoid of any factual basis. Evidence given credit by the trial court disclose that when Gemma reached the unlighted room of Bacag Elementary School where accused Eleuterio Gamboa, Jr. had enticed her to go, and when the latter saw that no one of her classmates were around she started to run and return to her aunt's place. When the accused Gamboa ran after her and when she shouted, appellant covered her mouth with his hands (Tsn., p. 23, March 11, 1981). When she regained consciousness and found the accused atop her body and raping her, she wanted to shout again, but she could not do so because of the pressure of the accused whose head was pressed against her. Thus, again We find the following testimony of the complainant:

"ATTY. DOMINGO:

"Q After regaining consciousness, what did you do?

"A I struggled but I cannot move, and I cannot struggle because he was stronger than I. I cannot free myself from him.

"Q So you made attempt to struggle to be free from the accused but you did not think of shouting?

"A I wanted to shout but his head was pressed against my forehead.

x x x x x x x x x

"Q For how long have you been on such situation with the accused pressing his forehead against your forehead?

"A Maybe more than one (1) minute.

"Q And after the lapse of one (1) minute what happened?

"A When he was already finished what he have done he stood and left me alone." (Tsn., Hearing on March 11, 1981, p. 24)

After the rape, the young girl Gemma Micua understandably was shocked by the experience she suffered. She also would not ask for help because of the fear she harbored on account of the threats of Eleuterio Gamboa that he will kill her if she recounts the incident to others. (*Ibid*, p. 25)

The Court has repeatedly held that the testimony of a rape victim which is credible, clear, free from serious contradiction, and marked by sincerity and candor, is sufficient to sustain a

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verdict of conviction. (*People vs. Ervas*, L-51549-51, May 11, 1984, 129 SCRA 200; *People vs. Ramos,* L-50450, March 16, 1984, 128 SCRA 266; *People vs. Salfaison*, 110 Phil. 889). Concomitant with the above pronouncements are rulings of this Court to the effect that on the matter of credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial Judge unless there is proof of his misappreciation of evidence — which is absent in this case at bar (*People vs. Mesias, Jr.*, L-40318-20, February 28, 1984, 127 SCRA 792; *People vs. Balbuena*, L-44859-60, April 27, 1984, 129 SCRA p. 10).

It is significant to note that the trial court in assessing the evidence stressed that "the weak denials of the defendant cannot prevail over the clear and positive testimony of Gemma Micua"; that "it is satisfied that Gemma's testimony is worthy of credence"; and that her description of the ordeal she suffered in the hands of the accused is clear and convincing (Decision, p. 11, *Rollo*, p. 44).

The alleged conflict in the medical findings as to the condition of the hymen of Gemma Micua have no appreciable value. Appellant's reliance on the medical certificate issued by the Municipal Health Officer of Villasis, Pangasinan, Dr. Francisco Barraquio, where no mention was made of any hymenal laceration is of no importance. More significant is the subsequent medical certificate issued by the Resident Physician of the Pangasinan Provincial Hospital, Dr. Fatima de Leon, who is an specialist in Obstetrics and Gynecology. The lady doctor testified in Court and swore to the truthfulness of her findings that she found hymenal lacerations on the complainant which could have been caused by insertion of a male organ into the vagina and that this could have occurred about two and one-half months before the date she examined Gemma. Such time would correspond to the date when Gemma Micua was raped by accused Eleuterio Gamboa as so testified to by said complainant. We see no error in the appreciation of the evidence by the trial Judge when he relied more on the certificate issued by Dr. Fatima de Leon. The consummation of the crime of rape has been established satisfactorily and beyond doubt by

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the testimony of the complainant herself. In this regard, it was stated in the case of *People vs. Aragona*, (L-43752, Sept. 19, 1985, 138 SCRA 569) that:

"x x x. In previous cases, medical examination was held to be merely corroborative."

Independent therefore of the medical certificates, the crime of rape has been fully established. In *People vs. Monteverde*, G.R. No. 60962, July 11, 1986, this Court ruled:

"x x x. The fact that the medical certificate shows no external signs of physical injuries and spermatozoa on the victim does not negate the commission of rape. x x x."

"While the medical certificate as well as the questioned extrajudicial confession may be incomplete or defective, neither is indispensable to prove the crime of rape. In previous cases, medical examination was held to be merely corroborative. x x x. In a prosecution for rape, the accused may be convicted even on the sole basis of the complainant's testimony, if credible x x x."

The narration of the complaining witness in her affidavit in support of her complaint for rape are basically the same matters declared to her in court. We find it understandable that her testimony during the trial would be more lengthy and detailed than the matters stated in the affidavit which she had initially executed. The extensive questioning to which complaint was exposed to during the trial can be expected to bring about more revelation and explanations as a result of her cross-examination and in answering questions addressed to her by the Court. The variance, if any, or the subsequent disclosures of matters not included in complainant's initial affidavit should not be considered against the complainant.

The Court finds it difficult to accept appellant's insinuation that the rape charge against him was fabricated upon the instigation of Sergio Micua who is complainant's uncle. Appellant attributes the filing of this case against him because of his alleged refusal to accede to the demand of Sergio Micua that the appellant herein transfer to another school to avoid a supposed professional rivalry for a promotion to a school position

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between him and a certain Mrs. Murillo, who is said to be a relative of Sergio Micua. Appellant's submission of an alleged contrived fabrication behind the charge of rape, appears altogether far-fetched and simply a vain effort of appellant to weaken the accusation against him. It is extremely difficult to even conceive that a thirteen-year old school girl would initiate a false and serious charge against appellant without any direct benefit whatsoever to her or to her family and in the process undergo humiliation and scandal that could ruin her honor and future. It is highly improbable that the parents of Gemma Micua would consent to have their daughter suffer the inevitable embarrassment and rigors of an investigation and trial simply to accommodate a relative who desire to help another relative. Even the alleged professional jealousy or rivalry between the appellant and another teacher is hardly a motivation sufficient to stir up or promote a malicious and false accusation of an offense carrying capital punishment. The Court's appreciation of human values rejects the supposed motivation as fanciful and illogical.

Suffice it for the Court to reiterate what We stated in the case of *People vs. Malate*, L-40791, Sept. 11, 1982, 116 SCRA 487, which are equally applicable to the case at bar. Therein We stated:

> "The imputation of motive is obviously a desperate, albeit, vain attempt, at seeking exculpation by the defense. But assuming there was such resentment, the same could not have sufficiently impelled the victim's father to falsely and maliciously fabricate a charge of rape against Lucio Malate's son, herein appellant. The girl's father would not have gone as far as subjecting not only his daughter of tender age to the rigors and ordeals of a public trial and thereafter suffer the consequent social humiliation, but his whole family as well. Indeed, only a desire to bring the offender to justice for his bestial act could have moved Rafael Lustina to rightly press the charges against appellant."

WHEREFORE, finding no reversible error in the judgment appealed from the same is hereby AFFIRMED.

SO ORDERED.

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Feria (Chairman), Fernan, Gutierrez, Jr., and *Paras, JJ.*, concur.

FIRST DIVISION

[G.R. No. 73669. October 28, 1986]

FEDERICO MISSION, APELINA NICOR and DEMOCRITO FORDAN, *petitioners, vs.* **THE HONORABLE INTERMEDIATE APPELLATE COURT (Second Special Cases Division), HONORABLE BENJAMIN M. ESTAÑOL, The Presiding Judge, RTC, Branch XVII, 12th Judicial Region (Kidapawan, Cotabato), and RICARDO JOSUE,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEALS; PETITION FOR EXTENSION OF TIME FILED WITHIN GRACE PERIOD; *HABALUYAS* CASE CITED (138 SCRA 48).— The rule set out in the original *Habaluyas* case that "The 15-days period for appealing or for filing a motion for reconsideration cannot be extended" was restated by this Court acting *en banc* in the same *Habaluyas* case on 30 May 1986 in the following manner: "1.) Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that *no motion for extension of time to file a motion for new trial or reconsideration* may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested." The Court resolved to mitigate, in the interest of justice, the impact of strict enforcement of the original *Habaluyas* rule by giving this rule prospective application only, beginning one month from the date of the clarifying resolution. In the present case, petitioners' *ex-parte*