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THIRD DIVISION

[G.R. No. 147615. January 20, 2003]

VIRGILIO SANTOS, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYNOPSIS

On the evening of May 10, 1987, private complainant was on her way to the store when grabbed by the petitioner and pulled into a vacant lot. Armed with a bladed weapon, petitioner attempted to rape private complainant which was interrupted only by the calling of the victim's mother-in-law. Thus, petitioner was found guilty by the trial court of attempted rape. Thereafter, however, private complainant and her witness filed affidavits of desistance.

The Court found no reason to reverse the conclusion reached by the trial court. The affidavits of desistance filed after petitioner's conviction are not reliable and merely afterthoughts. Also, the *barangay* and police blotters relied on by petitioner to prove his innocence of the crime charged were considered inaccurate or incomplete narration of facts. At any rate, nighttime as aggravating circumstance cannot be appreciated on the ground that the same was not specified in the Information.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY AFFIDAVIT OF DESISTANCE MADE AFTER CONVICTION.** — It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The affidavits of desistance filed by the private complainant and her witness were executed twelve (12) days after the promulgation of judgment of conviction, and are clearly mere afterthoughts. Hence, they cannot have the effect of negating a previous credible declaration.

2. **ID.; ID.; *BARANGAY* AND POLICE BLOTTERS; COMPLETENESS AND ACCURACY NOT RELIABLE.** — The

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entry in the *barangay* blotter merely states that private complainant was embraced ("*niyakap*") by the accused. This may be attributed to inaccurate reporting or to the victim's incomplete narration of events, whether or not intentionally done. Well-known is the Filipina trait of being shy and coy, "not readily prone to reveal any violation against her private person such as rape due to concomitant shame and embarrassment." There might have also been a lack of fair opportunity for the victim to narrate her full story. The incompleteness and inaccuracy of reports in the *barangay* and police blotters inspired our ruling in the case of *Santiago vs. Court of Appeals*, *viz*: "x x x [T]he entries in the police blotter should not be given significance or probative value, as they do not constitute conclusive proof of the truth thereof. These entries are usually incomplete and inaccurate, as '[s]ometimes they are taken from either partial suggestion or inaccurate reporting and are hearsay, untested in the crucible of a trial on the merits."

3. **ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR DISCREPANCIES IN TESTIMONY.** — Not all kinds of discrepancies and inconsistencies in testimonies have the effect of discrediting a witness. On the contrary, some discrepancies may actually strengthen the witness' credibility as they erase the suspicion of a rehearsed testimony. These are the discrepancies and inconsistencies which refer to minor details outside the essential elements of the crime charged. In the case at bar, the alleged discrepancies and inconsistencies refer to the time and place when the private complainant met and told her mother-in-law about the incident. These are mere collateral matters inconsequential in the determination of the criminal liability of the accused. More important is the spontaneous, categorical and straightforward testimony of the private complainant on the violation against her person. She never faltered in her narration of the essential elements of the subject offense, whether before the investigating judge or prosecutor, or the trial judge.

4. **ID.; ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED.** — Rudimentary is the rule that matters of assessing and assigning values to the testimonies of witnesses is best and most competently performed by a trial judge who has the unique opportunity to observe the behavior, demeanor and conduct of the witness at the stand. Thus, absent any showing that

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the trial court has overlooked some material facts or gravely abused its discretion, this Court will not interfere with its assessment of the credibility of the witnesses.

5. **ID.; ID.; ALIBI; MUST PRECLUDE DOUBT ON PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME OR ITS VICINITY.** — For alibi to prosper, it must preclude any doubt on the physical impossibility of the presence of the accused at the scene of the crime or its vicinity.

6. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; NIGHTTIME; NOT APPRECIATED AS THE SAME NOT ALLEGED IN THE INFORMATION.** — Anent the aggravating circumstances of nighttime, we note that this is not even alleged in the information. According to Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, any circumstance that would qualify or aggravate the crime charged must be specified in the information. Following the established rule that a penal statute, whether substantive or procedural, shall be given a retroactive effect if favorable to the accused, we hold that the aforequoted provisions are applicable to this case, and accordingly, rule that the aggravating circumstance of nighttime cannot be appreciated.

APPEARANCES OF COUNSEL

Mark C. Arcilla for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PUNO, *J.*:

Before us is a Petition for Review of the Court of Appeals[1] Decision dated October 19, 2000, in CA-G.R. CR No. 18994, which found the accused, Virgilio Santos, guilty beyond reasonable doubt of the crime of Attempted Rape.

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[1] Special Eleventh Division composed of *J.* Bernardo P. Abesamis, *ponente*; *J.* Godardo A. Jacinto, chairman, and *J.* Rebecca De Guia-Salvador, member. The decision affirmed the Decision dated June 6, 1995 of the RTC of Malolos, Bulacan.

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On November 22, 1988, Transuelo de Jesus filed with the Regional Trial Court of Malolos, Bulacan a Criminal Complaint against Virgilio Santos, charging him with Attempted Rape committed as follows:

"That on or about the 10th day of May, 1987, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously commence the commission of rape directly by overt acts, by then and there forcing one Transuelo Paguinto de Jesus to have sexual intercourse with him by dragging her to an uninhabited place and by means of force and violence; embracing and kissing her, touching her private parts and even undressing her with intent of having carnal knowledge of her; and if the accused was not able to accomplish his purpose, that is, to have carnal knowledge of the said Transuelo Peguinto de Jesus, it was not because of his voluntary desistance but because of the intervention of a third party.

Contrary to law."[2]

On January 9, 1989, the accused was arraigned, and pleaded not guilty. Trial ensued.

The prosecution established the following facts:

On May 10, 1987, between 8:00 and 9:00 in the evening, the private complainant, Transuelo P. de Jesus, an eighteen-year old housewife, was on her way to buy a mosquito coil or "*katol*" from the store of Marina Ablaza when she was grabbed by the accused, Virgilio Santos, and pulled into a vacant lot. The accused covered her mouth, and then started embracing and kissing her. He also touched her private parts. After forcibly raising the victim's skirt and removing her underwear, the accused lowered his own pants and briefs, and began "poking" the victim's vagina with his penis. Transuelo could only beg for mercy. She could not shout for help as the accused was holding a bladed weapon. At this point, they heard Transuelo's mother-in-law, Emeteria de Jesus, calling her name. The accused immediately

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[2] Original Records, p. 1.

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stood up and warned the victim not to tell anyone about what happened, otherwise, he would kill her. Still holding the bladed weapon, the accused left.

Transuelo got up and headed home. She met her mother-in-law about 5 meters away from the place of the incident. When the latter asked where she came from, Transuelo replied that she went to buy "*katol*" but the store was already closed.

The following morning, Transuelo decided to tell her mother-in-law about the incident. She refused to tell her husband for fear that he would kill the accused. She did tell him, however, two days after the incident. On the same day, she was accompanied by her mother-in-law and reported the incident to the chairman of the *barangay*. She also filed a complaint with the Municipal Trial Court of Hagonoy, Bulacan, which, however, dismissed said complaint for lack of probable cause. Private complainant appealed the dismissal to the Provincial Prosecutor of Bulacan who likewise dismissed the complaint. Unfazed, the private complainant elevated her complaint to the Secretary of the Department of Justice who reversed the earlier rulings and issued an Order directing the Provincial Prosecutor of Bulacan to file an appropriate case against the accused.

In defense, the accused claims that from 4:00 to 6:00 p.m. on the day of the incident, he played *mahjong* with Marina Ablaza and two other persons in Ablaza's store. Then, he went home to his mother-in-law's house, located "just opposite the store."[3] At 6:30 in the evening, he returned to the store to pay for his *merienda*, then went back home after thirty minutes, and never left again that evening.

The accused avers that the complaint was filed by Transuelo because of a rumor circulating in their neighborhood that he embraced the latter. A misunderstanding between the wife of the accused and Transuelo's mother-in-law developed. He presented witnesses — storeowner Marina Ablaza and neighbor Teodora Gonzales — to corroborate his testimony.[4]

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[3] TSN dated August 15, 1990, p. 14.

[4] TSN dated September 21, 1990 and October 17, 1990.

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On February 10, 1993, judgment was rendered by Judge Amante M. Laforteza of the Regional Trial Court of Malolos, Bulacan, Branch 20, finding the accused guilty beyond reasonable doubt of the crime of attempted rape. The dispositive portion of the Decision states:

"WHEREFORE, judgment is hereby rendered finding the accused Virgilio Santos guilty beyond a (*sic*) reasonable doubt of attempted rape with the aggravating circumstance of nighttime and hereby sentences him to suffer an indeterminate penalty of imprisonment of SIX (6) MONTHS AND ONE (1) DAY, as minimum, to TEN (10) YEARS and ONE (1) DAY, as maximum, and to indemnify the complainant Transuelo de Jesus the sum of ONE THOUSAND THREE HUNDRED TWENTY (₱1,320.00) PESOS, Philippine Currency, as actual expenses, and the sum of SEVEN THOUSAND (₱7,000.00) PESOS, Philippine Currency, as attorney's fees

Costs against the accused.

SO ORDERED."[5]

On February 22, 1993, the accused filed a Motion for New Trial or Reconsideration. Four days later, he filed a Supplemental Motion for New Trial or Reconsideration, with attached "Sinumpaang Salaysay" or Sworn Statements of private complainant Transuelo de Jesus and witness Emeteria de Jesus. On April 21, 1993, the Regional Trial Court, through pairing judge, Judge Cesar M. Solis, granted the motion and set aside the February 10, 1993 Decision, *viz*:

"The Motion for New Trial with the Provincial Prosecutor interposing 'No Objection' has been found to be tenable. In view thereof, the evidence received in the proceedings of March 5, 1993 shall be taken and considered together with the evidence already on record. Accordingly, the decision promulgated on February 10, 1993 is hereby set aside for a new judgment to be rendered therein.

SO ORDERED."[6]

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[5] Original Records, pp. 212-213.

[6] *Id.*, p. 268.

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On November 4, 1994, Judge Oscar C. Herrera of the RTC of Malolos, Bulacan, Branch 20, issued the following Order respecting the pending case:

"Pursuant to the Administrative Circular No. 14-94 of the Honorable Chief Justice Andres R. Narvasa, dated September 14, 1994, authorizing Assisting Judges assigned to the Regional Trial Courts of the National Capital Judicial Region and holding office at Judiciary Planning Development and Implementation Office (JPDIO), Supreme Court, to assist in the resolution of 'inherited cases' in Regions III, IV and V, and the communication to the Court dated September 28, 1994 of Justice Oscar R. Victoriano, Consultant/National Coordinator, JPDIO, Supreme Court that the records of the 'inherited cases' in this *sala* be forwarded to the said office, let the complete records of the above-entitled case, together with the transcripts of stenographic notes (TSNs) and the exhibits, be forwarded to the Judiciary Planning Development Implementation Office, Supreme Court, Manila for resolution/decision.

SO ORDERED."[7]

Assisting Judge Recaredo P. Barte then rendered a Decision, dated June 6, 1995, on the "inherited case," the dispositive portion of which states, thus:

WHEREFORE, judgment is hereby rendered finding the accused VIRGILIO SANTOS, guilty beyond reasonable doubt of the crime of Attempted Rape and sentences him to suffer an indeterminate prison term of from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum, to ten (10) years and one (1) day of *prision mayor* as maximum, the same being fixed in its maximum period considering the attendance of the aggravating circumstance of nighttime, in the absence of any mitigating circumstance, and to indemnify the offended party Transuelo de Jesus, the sum of ₱1,320.00 as actual expenses, and ₱7,000.00 for attorney's fees and to pay the costs.

SO ORDERED."[8]

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[7] *Id.*, p. 271.

[8] *Id.*, pp. 298-299.

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On appeal, the RTC Decision was affirmed *in toto* by the Court of Appeals. The accused moved to reconsider but his motion was denied. Hence, this appeal where he raises the following assignments of error:

"A. The Honorable Court of Appeals erred in not giving due credence to the affidavit of desistance of the private complainant and her witness;

B. The Honorable Court of Appeals erred in disregarding the entries in the *barangay* blotter of Carillo, Hagonoy, Bulacan, as well as the Police Blotter of PNP-Hagonoy, Bulacan;

C. The Honorable Court of Appeals erred in ruling in favor of the appellee as to effect of the material discrepancies in the sworn statements of the private complainant and her witnesses;

D. The Honorable Court of Appeals erred in disregarding the reason for the dismissal of the same case at the Municipal Trial Court and the Provincial Prosecutor's Office;

E. The Honorable Court of Appeals erred in appreciating nighttime as aggravating circumstance."[9]

The appeal is partly meritorious.

We will jointly resolve the first, second and fourth assignments of error. The accused contends that credence should be given to the affidavits of desistance of the private complainant and her witness even though filed after his conviction. The affidavits of desistance allegedly cast serious doubt on his criminal liability, especially when taken in conjunction with the private complainant's initial complaint entered in the *barangay* and the police blotters, which contains no allegation of attempted rape. He also stressed the dismissal of the complaint during the preliminary investigation by the municipal trial judge, and subsequently, by the provincial prosecutor.

We are not convinced. It is settled that an affidavit of desistance made by a witness after conviction of the accused

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[9] *Rollo*, p. 7.

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is not reliable, and deserves only scant attention.[10] The affidavits of desistance filed by the private complainant and her witness were executed twelve (12) days after the promulgation of judgment of conviction, and are clearly mere afterthoughts. Hence, they cannot have the effect of negating a previous credible declaration. As we held in the case of *People vs. Dalabajan*:[11]

"A recantation does not necessarily cancel an earlier declaration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and especially the demeanor of the witness on the stand. Moreover, it should be received with caution as otherwise it could 'make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses.' [*People vs. Davatos*, 229 SCRA 647 (1994)]

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We have previously held that mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. [*People vs. Dulay*, 217 SCRA 103 (1993)] The Court looks with disfavor upon retractions of testimonies previously given in court. The *rationale* for the rule is obvious: Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated. [*Lopez vs. Court of Appeals*, 239 SCRA 562 (1994)]"[12]

Rationalizing its unwillingness to give weight to the belated affidavits, the trial court aptly held, *viz:*

"Besides, the affidavits of retraction of both the offended party and her mother-in-law, Emeteria de Jesus, had not been subjected to an exhaustive and probing cross-examination, if only to discover the motives that prompted complainant to repudiate her open court declarations and previous written statement executed before Municipal Judge Jose Torres. Had the desistance of offended party come at a

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[10] *Villanueva vs. People*, 330 SCRA 695, 703 (2000), citing *Molina vs. People*, 259 SCRA 138, 157 (1996).

[11] 280 SCRA 696 (1997).

[12] *Id.*, pp. 706-707.

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seasonable time at least before she had told everything on the witness stand that convinced the trial judge and this Court of her sincerity, or had the accused thought of and earnestly sought the cooperation of offended party before the full dress presentation of prosecution evidence, it would have been less difficult for the court to set aside its judgment of conviction. But here lies already before the Court, a quantum of evidence supportive of the accused's guilt that is beyond obliteration or capable of being expunged from the court's record, without committing a miscarriage of justice or judicial anomaly."[13]

The accused contends that the entries of Transuelo's complaint in the *barangay* and the police blotters prove the innocence of the accused of the crime charged.

The entry in the *barangay* blotter provides, *viz*:

"Si Bebot ay nagreklamo sa punong barangay na siya ay ***niyakap*** *ni Ver noong Linggo ng gabi sa pagitan ng alas 8:00 at alas 9:00 ng gabi, Mayo 10, 1987."*[14]

On the other hand, the certification of the entry in the police blotter provides the following:

"'ACT OF LASCIVIOUSNESS' The person of Mrs. Transuelo de Jesus, 19 years old, married, of Bgy. Carillo, this [municipality] complained to this [Headquarters] one @ Ver Santos of Bgy. Iba, this [municipality], for Act of Lasciviousness. According to reportee, suspect *forcibly touch (sic) the different parts of her body and threaten (sic) her to kill (sic).* Incident happened at Bgy. Iba, this [municipality] on 10 May '87, between the hour (*sic*) of 2000H and 2100H.

(SGD.) TRANSUELO DE JESUS

RECORDED BY:

PAT. ROLANDO B. RONQUILLO INP
Desk Officer"[15]

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[13] RTC Decision dated June 6, 1995, p. 12; Original Records, p. 296.

[14] Annex "J" to the Motion for New Trial; Original Records, p. 246.

[15] Annex "L" to the Motion for New Trial; Original Records, p. 251.

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The above reports may be wanting in details of the incident, but they do not negate the charge of attempted rape. The entry in the *barangay* blotter merely states that private complainant was embraced ("*niyakap*") by the accused. This may be attributed to inaccurate reporting or to the victim's incomplete narration of events, whether or not intentionally done. Well-known is the Filipina trait of being shy and coy, "not readily prone to reveal any violation against her private person such as rape due to concomitant shame and embarrassment."[16] There might have also been a lack of fair opportunity for the victim to narrate her full story. The incompleteness and inaccuracy of reports in the *barangay* and police blotters inspired our ruling in the case of *Santiago vs. Court of Appeals,*[17] *viz*:

"x x x [T]he entries in the police blotter should not be given significance or probative value, as they do not constitute conclusive proof of the truth thereof. These entries are usually incomplete and inaccurate, as '[s]ometimes they are taken from either partial suggestion or inaccurate reporting and are hearsay, untested in the crucible of a trial on the merits."[18]

Next, the accused argues that the dismissal of the complaint by the municipal trial court, and subsequently, by the provincial prosecutor, during its preliminary investigation, should be taken into account in determining whether the accused is criminally liable. The appellate court dismissed the contention with the following ruling, *viz*:

"It may be stated that although the instant case had been earlier dismissed during its preliminary investigation and said dismissal was later sustained by the provincial prosecutor, said case however was allowed to be refiled by the Department of Justice upon appeal of the dismissal of the case thereto.

The previous dismissal of the case during its preliminary investigation stage before the fiscal is immaterial for the records

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[16] *People vs. Limon*, 306 SCRA 367, 376 (1999).

[17] 295 SCRA 334 (1998).

[18] *Id.*, p. 354; citations omitted.

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gathered therein do not even form part of the present records of the present case. *Section 8, Rule 112 of the Rules on Criminal Procedure* provides:

> 'Sec. 8 Record of preliminary investigation — The record of preliminary investigation whether conducted by a judge or a fiscal shall not form part of the record of the case in the Regional Trial Court. However, the said court, on its own initiative or that of any party may order the production of the record or any part thereof whenever the same shall be necessary in the resolution of the case or any incident therein, or shall be introduced as evidence by the party requesting for its production.'"[19]

In the case of *People vs. Crispin*,[20] this Court held that the record of the preliminary investigation does not form part of the regional trial court records unless introduced as evidence during the trial. Absent such introduction, the records of preliminary investigation cannot be treated as evidence in court; neither may the trial court be compelled to take judicial notice of the same.[21] A careful review of the records of this case, however, will show that the accused presented, and formally offered as evidence,[22] the records of the preliminary investigation. Nonetheless, we remain unconvinced that these records will exculpate the accused. The dismissal of the case by the investigating municipal trial judge and by the provincial prosecutor was based on the report in the *barangay* blotter which we earlier held as highly unreliable and undeserving of any probative value. For good reasons, the dismissal of the case was reversed by the Secretary of Justice.

On the second assignment of error, the accused contends that the material discrepancies in the sworn statements of the private complainant and her mother-in-law, Emeteria de Jesus,

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[19] Court of Appeals Decision, p. 19; *Rollo*, p. 31.

[20] 327 SCRA 167 (2000).

[21] *Id.*, p. 178, citing Sec. 8, Rule 112 of the Rules on Criminal Procedure, *supra*, and *People vs. dela Iglesia*, 241 SCRA 718 (1995).

[22] See Original Records, pp. 161-165.

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erode their credibility. He alleges that in their sworn statements before Patrolman Mario Reyes of the Hagonoy Police Station and in their answer to the inquiry of the municipal trial judge during the preliminary investigation, both the private complainant and her mother-in-law claimed that it was on the day after the incident that the private complainant revealed to her mother-in-law about the incident. However, in their sworn statements before the provincial prosecutor, they claimed that the private complainant told her mother-in-law about the incident right after it occurred. Also, the statements made by Emeteria de Jesus before the police officer in Hagonoy and the investigating judge were to the effect that she met her daughter-in-law on the street, coming from the vacant lot where the incident happened. She declared before the provincial prosecutor, however, that she found her daughter-in-law in the place where "she also saw the accused emerge."[23]

Time and again, we hold that not all kinds of discrepancies and inconsistencies in testimonies have the effect of discrediting a witness. On the contrary, some discrepancies may actually strengthen the witness' credibility as they erase the suspicion of a rehearsed testimony.[24] These are the discrepancies and inconsistencies which refer to minor details outside the essential elements of the crime charged.[25]

In the case at bar, the alleged discrepancies and inconsistencies refer to the time and place when the private complainant met and told her mother-in-law about the incident. These are mere collateral matters inconsequential in the determination of the criminal liability of the accused. More important is the spontaneous, categorical and straightforward testimony of the private complainant on the violation against her person. She

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[23] *Rollo*, pp. 28-29; Original Records, p. 216.

[24] *People vs. Bergonio, Jr.*, 340 SCRA 269, 282 (2000); *People vs. Villar*, 322 SCRA 393, 401 (2000); *People vs. Dando*, 325 SCRA 406, 424 (2000).

[25] *People vs. Quillosa*, 325 SCRA 747, 754 (2000); *People vs. Mercado*, 346 SCRA 256, 280 (2000).

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never faltered in her narration of the essential elements of the subject offense, whether before the investigating judge or prosecutor, or the trial judge.

We quote the pertinent portions of the private complainant's testimony during the trial of the case, to wit:

"DIRECT EXAMINATION OF THE WITNESS BY ATTY. KLIATCHKO:

Q. Mrs. De Jesus, do you know the accused in this case, Virgilio Santos?
A. Yes, sir.

Q. If he is in Court now, will you please point to him?
A. He is there, sir.
(Witness pointing to a person who responded by the name Virgilio Santos.)

Q. Why do you know the accused in this case, Virgilio Santos?
A. Because our house is near their house, sir.

Q. Do you know this accused Virgilio Santos already on May 10, 1987?
A. Yes, sir.

Q. On May 10, 1987, between the hours of 8:00 to 9:00 in the evening, where were you?
A. I was then on a path going towards the store of Marina Ablaza, sir.

Q. Where is the store of Marina Ablaza?
A. Iba, Hagonoy, Bulacan, sir.

Q. What is the relation of this Iba to Carillo, the place where you said of your (*sic*) you reside as you said a while ago?
A. These two places were near each other, sir.

Q. While you were [as] you said on the path leading towards the store of Marina Ablaza, was there anything unusual that happened?
A. While I was then walking on the path towards the store of Marina Ablaza, this Virgilio Santos suddenly grabbed me, touched my (*sic*) delicate parts of my body, kiss (*sic*) me, embraced me, and in doing so (*sic*) he removed his pants

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while he was removing his pant (*sic*) he was forecibly (*sic*) trying to insert his organ into mine, sir,

Q. When you said he removed his pants, what do you mean by that?

A. After removing his pants, he suddenly laid on top of me, sir.

Q. When you said that he was trying to lay (*sic*) on top of you, what was your position?

A. I was then leaning on the rice paddy, sir (*Pilapil*) (*sic*).

Q. Now, when he was trying to insert his private organ on (*sic*) your private organ, what was the condition of your dress?

A. My skirt was raised up, because it was raised up by him, sir.

Q. Now, when he was trying to insert his private organ on (*sic*) your private organ, what was the condition of his pants?

A. His pants was placed lower, sir.

Q. Up to what place of (*sic*) part of his body was his pants lowered?

A. On the thigh, sir.

Q. Now, you stated that you were kissed [,] on what part of your body were you kissed by the accused?

A. On the face, the lips and the neck, sir.

Q. You stated also that the accused touched your private parts [,] which private parts of your body were touched by the accused?

A. Breast, my nipple, and my private organ, sir.

Q. You stated that you were embraced by the accused, will you kindly illustrate or demonstrate to his (*sic*) Court how you were embraced by the accused?

A. We are (*sic*) both standing and while I was in front of the accused and my back towards him, he suddenly embraced me from behind then turned my right since (*sic*) towards hin (*sic*) and touched my private organ, sir.

Q. After you were embraced [,] touch (*sic*) on your private parts and kiss (sic) you in the way you have just demonstrated to this Honorable Court [,] after that what happened?

A. He threw (*Binuwal*) me to the rice paddy (*Pilapil*) where I was made to lean, sir.

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Q. After you were embraced, kissed and touched your (*sic*) private parts and then you were made to lean on the rice paddy then, what happened after that?
A. He laid on top of me and then after he removed his pants he put out (*sic*) his private organ poke (*sic*) (*Itinutok*) to my private organ, sir.

Q. Now, when you said he removed his pants which you have described here before the Honorable Court by putting down up (*sic*) to his thight (*sic*), what kind of pants was he wearing?
A. A hard pants (*sic*), sir.

Q. And how long is this hard pants?
A. Short pants, sir.

Q. Now, and after (*sic*) he was trying to poke or insert his private parts on (*sic*) your private part (*sic*) while you were on a leanning (*sic*) position on the rice paddy, what happened?

ATTY. LIWANAG:
Now, I will object to the word insert because there is no word "*ipinasok*" she said "*itinutok.*"

COURT:
Let the witness answer.

A. While he was trying to insert his organ upon (*sic*) my organ [,] I was asking mercy from him and then at that moment he heard a voice coming from my mother-in-law, sir.

Q. Why did you say that the accused heard (*sic*) the voice of your mother-in-law?
A. He suddenly released his hold upon (*sic*) my body and afterwards he even threatened me not to tell anybody because if I will do so he will kill me, sir."[26]

We also accord respect to the trial court's finding of credibility in the persons and testimonies of the private complainant and her witness. Rudimentary is the rule that matters of assessing and assigning values to the testimonies of witnesses is best and most competently performed by a trial judge who has the unique opportunity to observe the behavior, demeanor and

[26] TSN dated March 8, 1989, pp. 3-7.

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conduct of the witness at the stand.[27] Thus, absent any showing that the trial court has overlooked some material facts or gravely abused its discretion, this Court will not interfere with its assessment of the credibility of the witnesses.[28] Although it may be argued that this case was merely "inherited" by Judge Recaredo P. Barte, we note that his decision is in accord with that of the judge who originally tried this case, Judge Amante M. Laforteza.

Finally, we consider the defense of alibi. The accused claims to be in the house of his mother-in-law as early as 7:00 p.m. on the day of the incident, and that he never went out of the house again that evening. We find this alibi weak and unconvincing. For alibi to prosper, it must preclude any doubt on the physical impossibility of the presence of the accused at the scene of the crime or its vicinity.[29] In this case, the house of the accused's mother-in-law is "just opposite the store"[30] of Marina Ablaza, which is only about 8 to 12 meters away from the vacant lot where the incident happened.[31] The accused could have left the house of his mother-in-law sometime between 8:00 and 9:00 p.m., committed the crime (which according to the victim lasted for only about 5 minutes)[32] and returned to the house unnoticed.

Anent the aggravating circumstance of nighttime, we note that this is not even alleged in the information. Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure provide, thus:

"Sec. 8. *Designation of the Offense.* — The complaint or information shall state the designation of the offense given by the statute, aver

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[27] *People vs. Cantuba,* G.R. No. 126022, March 12, 2002.

[28] *Id.*, citing *People v. Daroy*, 336 SCRA 24, 37 (2000).

[29] *People vs. Mercado, supra* at 287.

[30] TSN dated August 15, 1990, p. 14; See also TSN dated September 21, 1990. p. 1.

[31] TSN dated June 26, 1989, pp. 4-5.

[32] *Id.*, p. 8.

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the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment."

According to the foregoing provisions, any circumstance that would qualify or aggravate the crime charged must be specified in the information. Following the established rule that a penal statute, whether substantive or procedural, shall be given a retroactive effect if favorable to the accused, [33] we hold that the aforequoted provisions are applicable to this case, and accordingly, rule that the aggravating circumstance of nighttime cannot be appreciated.

WHEREFORE, the assailed Decision of the Court of Appeals dated October 19, 2000, affirming the Decision dated June 6, 1995 of the Regional Trial Court of Malolos, Bulacan, Branch 20 which found the accused, Virgilio Santos, guilty beyond reasonable doubt of the crime of Attempted Rape, is hereby *AFFIRMED* with *MODIFICATION* that the accused is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* medium, as the minimum penalty, and eight (8) years and one (1) day of *prision mayor* medium, as the maximum penalty.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.*, concur.

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[33] *People vs. Alba,* G.R. No. 130523, January 29, 2002; *People vs. Suela,* G.R. Nos. 133570-71, January 15, 2002; *People vs. Moreno,* G.R. No. 140033, January 25, 2002.