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EN BANC

[G.R. No. 138725. September 23, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALBERTO OLIVAR** *y* **JAVIER,** *appellant.*

SYNOPSIS

Appellant was found guilty by the Regional Trial Court of Sorsogon, Branch 52, of raping his own daughter. He was sentenced to death and hence, this automatic review.

Except for the penalty, the Court found no reason to reverse the ruling of the trial court. The testimony of the victim passed the test of credibility, establishing therein the essential elements of the crime of rape. Thus, as against the positive testimonies of the victim, appellant's defenses of alibi and denial cannot prevail. Nonetheless, as the qualifying circumstance of the victim's minority was not sufficiently established, appellant was held guilty of simple rape only, punishable by *reclusion perpetua.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— The rule is well-settled that the trial court's assessment of the credibility of witnesses is accorded the highest degree of weight and respect, if not finality, for the reason that the trial judge has the unique opportunity to observe the demeanor of witnesses while testifying. Appellate courts will not generally disturb the trial court's findings in this respect unless there is a showing that the trial judge overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would affect the outcome of case.

2. ID.; ID.; ID.; TESTIMONY OF YOUNG RAPE VICTIM UPHELD AS AGAINST APPELLANT'S FLIMSY REASONING.— According to the appellant, Almera filed the criminal case out of anger since he always scolded her for frequently leaving their house to dance and go on bicycle rides. Such flimsy

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reasoning is certainly not enough to discredit the strong evidence of the prosecution establishing the guilt of the appellant beyond reasonable doubt. We believe that the victim, a young innocent girl who grew up in a rural area, was incapable of such wickedness. It would be the height of moral and psychological depravity for a young daughter, even if consumed by a desire for revenge, to fabricate a sordid tale of sexual molestation in the hands of her own father, a crime which could cost him his life or at least put him behind bars for the rest of his life, if the charge were not true. The accusation furthermore exposed herself and her family to scandal and shame.

3. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES.— The defense of denial by the appellant deserves scant consideration. As the trial court aptly found, denials and alibis that are unsubstantiated by clear and convincing evidence are negative and self-serving. They deserve no weight in law and cannot be given greater evidentiary weight than the testimonies of credible witnesses who testified on affirmative matters. The appellant's defenses of alibi and denial cannot be believed because of the positive identification by a credible witness of the appellant as the perpetrator of the crime. Courts generally view the defenses of denial and alibi with disfavor on account of the aridity and facility with which an accused can concoct them to suit his defense.

4. CRIMINAL LAW; RAPE; DEATH PENALTY WHEN IMPOSED.— Article 335 of the Revised Penal Code provides that: Art. 335 *When and how rape is committed.* Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age or is demented. The crime of rape shall be punished by *reclusion perpetua.* xxx The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. xxx

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5. ID.; ID.; QUALIFYING CIRCUMSTANCES; AGE OF THE VICTIM; GUIDELINE.— In the recent case of *People vs. Pruna,* this Court reconciled the apparently conflicting jurisprudence on how to prove the age of a rape victim. The case provided for a guideline in appreciating age, either as an element of the crime or as a qualifying circumstance: 1.The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: A. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; B. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; C. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. *4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.* 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him. *The trial court should always make a categorical finding as to the age of the victim.*

6. ID.; ID.; PROPER PENALTY WHERE MINORITY OF THE VICTIM NOT SUFFICIENTLY ESTABLISHED.— The records show that the appellant did not expressly and clearly admit Almera's testimony that she was 13 years of age when she was raped in 1997. The exacting standard that the admission by the appellant concerning the victim's age must be clear and categorical, was not met. As minority is a qualifying circumstance, it must be

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proved with equal certainty and clarity as the crime itself. Considering that the test outlined in *Pruna* was not complied with, the doubt as to the victim's exact age remains. Hence, the appellant must be held guilty of simple rape only and accordingly sentenced to *reclusion perpetua.*

7. ID.; ID.; CIVIL PENALTIES; PROPER CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES AWARDED IN CASE AT BAR.— With respect to the civil liability of the appellant, the civil indemnity of ₱50,000 awarded by the trial court is affirmed. Also, based on prevailing jurisprudence, the amount of ₱50,000 is awarded to the victim as moral damages without the need of pleading or proof, since the mental, physical and psychological trauma suffered by the victim is obvious. We likewise affirm the award of exemplary damages in the amount of ₱10,000. Exemplary damages is imposed when the crime is committed with one or more aggravating circumstances. We appreciate as a generic aggravating circumstance the father-daughter relationship between the appellant and the victim.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CORONA, *J.*:

For automatic review is the decision[1] dated February 4, 1999 of the Regional Trial Court of Sorsogon, Branch 52, convicting accused Alberto Olivar *y* Javier of the crime of rape and sentencing him to death.

Accused Alberto Olivar was charged with rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of RA 7659, in an Information that read:

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[1] Penned by Judge Honesto Villamor; *Rollo*, pp. 18-22.

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INFORMATION

The undersigned Assistant Provincial Prosecutor accuses Alberto Olivar *y* Javier of Brgy. Rizal, Sorsogon, Sorsogon of RAPE, defined and penalized under Article 335 of the Revised Penal Code, as amended by Sec. 11 of RA 7659, committed as follows:

That for countless times, since ALMERA OLIVAR *Y* JAMON was merely 10 years old, up to March 19, 1997 when she was already 13 years old, at Brgy. Rizal, Sorsogon, Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the natural father of the said child, willfully, unlawfully and feloniously, thru force and intimidation, with physical abuse and maltreatment and unduly taking advantage of his moral ascendancy, had habitual and repeated sexual intercourse with his own child, Almera Olivar *y* Jamon, against her will and consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the father and ascendant of the victim.

CONTRARY TO LAW.[2]

Arraigned on July 1, 1997, the accused, with the assistance of counsel, pleaded not guilty. Trial ensued on September 22, 1997.

The evidence of the prosecution showed that, prior to the filing of the complaint for rape, victim Almera Olivar (hereafter Almera) lived with her father, appellant Alberto Olivar, and two younger sisters, Arlene and Alona, in Barangay Rizal, Sorsogon, Sorsogon. Almera's mother worked as a manicurist in Manila. On March 19, 1997, at about 10:00 p.m., Almera was already sleeping when the appellant crawled to her bed. He mounted Almera and kissed her cheeks and lips. Thereafter, he removed her shorts and panty, and forcibly inserted his penis into her vagina. Almera tried to resist by pushing and kicking him but her efforts proved futile as the accused pinned her down. After consummating his lustful desires, the accused kicked Almera out of the bed, causing her to fall down on the floor. She attempted to wake up her sisters but she was too weak

[2] *Rollo*, p. 9.

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to rouse them from their sleep. Her father then threatened her that, if ever she complained to anyone, "he (would) finish her off."[3]

The next day, Almera went to school to practice for her graduation rites. She revealed to her teacher, Mrs. Nympha Liwanag, that her father sexually abused her. Mrs. Liwanag immediately brought her to the office of the Department of Social Welfare and Development (DSWD).[4]

The victim also claimed that, even prior to the March 19, 1997 rape, the accused had sexually abused her several times. When she was in Grade 5, she confided these incidents to her friend, May-Anne Macalia, through letters. Almera also wrote several times to her mother but decided not to send the letters to her because she had a heart ailment.[5] The victim alleged that she was first raped when she was 10 years old.[6]

At the trial on September 22, 1997, Almera testified that she was 13 years old and had no menstruation yet.[7] On cross-examination, she stated that, after the March 19, 1997 rape, her mother visited her at the DSWD office. She told her mother about the incidents but she did not believe her. She also testified that, when her father raped her, the lights were off. On re-direct examination, she explained that she recognized the appellant as the person who abused her because, after consummating his incestuous act, he switched on the light.[8]

Dr. Liduvina Dorion interviewed and examined Almera. Almera confided to her that the accused raped her on several occasions. She physically examined the victim and concluded that she was

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[3] TSN, September 22, 1997, p. 7.

[4] TSN, September 22, 1997, p. 7.

[5] TSN, September 22, 1997, pp. 4-6; TSN, February 10, 1998, pp. 1-4.

[6] TSN, September 22, 1997, p. 7.

[7] TSN, September 22, 1997, p. 7.

[8] TSN, September 22, 1997, pp. 10-11.

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of a tender age when she had carnal intercourse. Dr. Dorion's medical findings, as reported in the medical certification she executed, were:

> General: ambulatory, shy, pubertal female child, showing signs of anxiety;
> HEENT: no significant findings;
> Chest/backs beginning breast buds
> Abdomen: soft, flat, non-tender; no palpable masses;
> Pelvic Exam: beginning pubic hair, pubescent vulva, shallowed-out vestibule, flattened fourchet, with slight whitish, mucoid vaginal discharge; It shows the introitus easily admits one finger; there is an old healed scar, about 3-4 mm, at 6 o'clock;
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> Extremities: no significant findings.
>
> Mental Status: coherent, oriented to all spheres, appropriate affect, fluent and appropriate responses; no thinking disorder; apprehensive mannerisms. Because of the trauma this child has been subjected to, a complete psychological evaluation is highly recommended with subsequent rehabilitation.
>
> Impression: Findings consistent with carnal knowledge.[9]

The appellant denied the charge. He claimed that, on March 19, 1997, he went to work as an electrician in SORECO II. When he returned home at about 10:00 p.m., only Arlene and Alona were in the house. He asked them where their sister Almera was and they replied that she went with Mrs. Nympha Liwanag, her teacher. He did not bother to go to Mrs. Liwanag's house because he had no means of transportation. Almera did not return home that night. When the appellant returned from work in the afternoon the next day, he found out that Almera

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[9] Exhibit "C", Regional Trial Court Records, p. 6.

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had returned home but left again. For the second straight night, she did not sleep in their house. She likewise failed to return home the next day, March 21, 1997.

Almera's absence started to bother the appellant. He went to see the principal of Rizal Elementary School where Almera was studying to determine the whereabouts of his daughter. The principal told him that Almera was in good hands and that her teacher was taking care of her. Thereafter, two policemen arrived and invited the appellant to the police station in connection with a complaint for rape against him. Surprised, he went with the police officers to the station where he learned that his own daughter Almera filed rape charges against him.[10]

According to the appellant, Almera charged him with rape because she was very angry at him. He recalled that he used to scold her for frequently leaving the house to dance and go on bicycle rides.[11]

On cross-examination, the appellant testified that the victim was his eldest daughter and that she was still in her tender years the last time she lived with him. He claimed that, in 1996, she was only 10 ½ years old.[12]

The defense presented witness Shirley Javier who testified that her house was near the appellant's. In the morning of March 19, 1997, she was washing clothes beside the deep well when Almera passed by. She appeared normal. When Javier told her that she (Almera) was already late for school, the latter just smiled and said nothing. Later, between 5:00 and 6:00 p.m. that day, Javier, who was then at the *barangay* hall, saw Almera again with some companions on board a tricycle heading towards Sorsogon. Javier admitted that her husband was the cousin of the appellant. She also testified on his good reputation. She had heard rumors about the alleged rape in their *barangay*.[13]

[10] TSN, March 17, 1998, pp. 3-11.

[11] TSN, March 17, 1998, pp. 13, 18.

[12] TSN, March 17, 1998, pp. 17-18.

[13] TSN, May 25, 1998, pp. 2-5.

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Defense witness Socorro Jarilla, on the other hand, testified that the appellant was not capable of committing the crime of rape against his own daughter. According to her, the appellant treated his family well. She frequently saw him scolding Almera who always left their house without permission. This, according to her, could have been the reason why Almera filed the rape case against her father, the appellant.[14]

On February 4, 1999, the trial court rendered a decision, the dispositive portion of which read:

> WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of Rape under Art. 335 as amended by Sec. 11, R.A. 7659 and hereby sentences him the maximum penalty of death by lethal injection and to pay the offended party the amount of ₱50,000.00 as civil indemnity; and to pay the amount of ₱10,000.00 as moral damages and the amount of ₱10,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency and to pay the cost.
>
> With cost *de oficio*.
>
> SO ORDERED.[15]

The trial court was convinced that the appellant indeed raped Almera on the night of March 19, 1997. After a thorough examination of the victim, the trial court found her testimony to be "candid, spontaneous and consistent x x x. Her testimony (was) fortright, clear and free from serious contradictions."[16] Thus, her testimony was sufficient to prove the guilt of the appellant beyond reasonable doubt. On the other hand, the appellant relied solely on bare denial — a defense that is weak and not enough to overcome a credible eyewitness account. Because Almera was the daughter of the appellant, the trial court imposed on him the penalty of death in accordance with

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[14] TSN, September 3, 1998, pp. 3-10.

[15] *Rollo*, p. 21.

[16] *Rollo*, p. 20.

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Article 335 of The Revised Penal Code.[17] The trial court acquitted the appellant of the other alleged sexual abuses prior to March 19, 1997 for insufficiency of evidence.

In this automatic review, the appellant raises the following assignments of error:

I

THE COURT *A QUO* MANIFESTLY ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE INCREDIBLE, UNRELIABLE AND INCONGRUOUS TESTIMONY OF PRIVATE COMPLAINANT ANENT THE ALLEGED RAPE INCIDENT IN QUESTION.

II

THE COURT *A QUO* MANIFESTLY ERRED IN NOT ACCORDING FULL FAITH AND CREDENCE TO THE DEFENSE PUT UP BY ACCUSED-APPELLANT.

III

THE COURT *A QUO* MANIFESTLY ERRED IN RENDERING A VERDICT OF CONVICTION NOTWITHSTANDING FAILURE OF THE PROSECUTION TO HURDLE THE EXACTING TEST OF MORAL CERTAINTY.[18]

The appellant claims that Almera's testimony was insufficient to sustain a verdict of conviction. First, the rape incident was not established as Almera admitted that she was fast asleep when the alleged rape took place. Second, there was nothing in her testimony to show that she was awakened when someone crawled towards her, kissed her, went on top of her and inserted his penis into her vagina. The questions propounded by the prosecution were anchored on assumptions and speculations, wanting in clear and precise follow-up queries. For instance, the prosecutor did not ask whether the act complained of was committed while Almera and the appellant were standing or whether the accused succeeded in penetrating her vagina or whether her underwear was removed by the appellant during

[17] *Rollo*, pp. 19-21.

[18] *Rollo*, p. 45.

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the commission of the offense. Third, Almera could not have recognized her assailant for the reason that the room was dark.

We find no reason to reverse the trial court's finding that the appellant raped the victim.

The rule is well-settled that the trial court's assessment of the credibility of witnesses is accorded the highest degree of weight and respect, if not finality, for the reason that the trial judge has the unique opportunity to observe the demeanor of witnesses while testifying. Appellate courts will not generally disturb the trial court's findings in this respect unless there is a showing that the trial judge overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would affect the outcome of case.[19]

After a careful review of the records, we affirm the trial court's conclusion that, indeed, the testimony of the victim passed the test of credibility. She narrated her harrowing experience at the hands of the appellant candidly, spontaneously and consistently. She was overcome by motion while testifying before the trial court.

We hold that the trial court correctly convicted the accused of rape on the basis of Almera's declarations clearly establishing the essential elements of the crime. Her testimony showed that the appellant had carnal knowledge of her with the use of force. As borne by the records, at about 10:00 p.m. on March 19, 1997, while Almera was sleeping, the appellant crept towards her and kissed her cheeks and lips. The appellant then removed her shorts and panty, and forced his organ into hers. The victim tried to resist by kicking and pushing him but the latter pinned her down while embracing her. After the appellant satiated his lust, he pushed and kicked her to the floor.

Based on the established facts, the prosecution evidence, as held by the trial court, was sufficient to convict the appellant. The specifics of the criminal act — that is, whether the rape

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[19] *People vs. de los Santos*, 355 SCRA 301 [2001]; *People vs. Osing*, 349 SCRA 310 [2001].

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was committed while the victim and the appellant were standing; whether the appellant succeeded in penetrating the victim's vagina and whether her underwear was removed during the commission of the offense — need not even be discussed because Almera's account revealed no serious flaws and inconsistencies. A clarification of the details was not necessary because her testimony was completely consistent, clear and unwavering in all material points. To embellish the facts with unnecessary details would have needlessly aggravated the psychological pain of the victim. We take note of the fact that Almera cried and was so overpowered by her emotions as she related how her own father ravaged her.

The appellant claims that Almera could not have recognized her rapist because the lights were turned off during the rape. But this was in fact clarified by the victim on re-direct examination that she recognized the appellant as the person who abused her because, after committing the crime, he switched on the light.[20]

According to the appellant, Almera filed the criminal case out of anger since he always scolded her for frequently leaving their house to dance and go on bicycle rides. Such flimsy reasoning is certainly not enough to discredit the strong evidence of the prosecution establishing the guilt of the appellant beyond reasonable doubt. We believe that the victim, a young innocent girl who grew up in a rural area, was incapable of such wickedness. It would be the height of moral and psychological depravity for a young daughter, even if consumed by a desire for revenge, to fabricate a sordid tale of sexual molestation in the hands of her own father, a crime which could cost him his life or at least put him behind bars for the rest of his life, if the charge were not true. The accusation furthermore exposed herself and her family to scandal and shame.[21]

The defense of denial by the appellant deserves scant consideration. As the trial court aptly found, denials and alibis

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[20] TSN, September 22, 1997, pp. 10-11.

[21] *People vs. Alipar*, 354 SCRA 590 [2001].

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that are unsubstantiated by clear and convincing evidence are negative and self-serving. They deserve no weight in law and cannot be given greater evidentiary weight than the testimonies of credible witnesses who testified on affirmative matters.[22] The appellant's defenses of alibi and denial cannot be believed because of the positive identification by a credible witness of the appellant as the perpetrator of the crime.[23] Courts generally view the defenses of denial and alibi with disfavor on account of the aridity and facility with which an accused can concoct them to suit his defense.[24]

In this case, there were no witnesses to corroborate the claim of the appellant that, on the night of the incident, Almera stayed and slept at her teacher's house. Neighbors Socorro Jarilla and Shirley Javier merely testified on the good reputation of the appellant and the circumstances *after* the rape incident. But they failed to corroborate the statement of the appellant that he could not have raped his daughter on the night of March 19, 1997 because she allegedly spent the night in her teacher's house. His bare denial could not prevail over his positive identification by the victim.

We now determine whether the trial court correctly imposed the death penalty on the appellant.

Article 335 of the Revised Penal Code provides that:

Art. 335 *when and how rape is committed.* Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

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[22] *People vs. Llamo*, 323 SCRA 791 [2000].

[23] *People vs. de la Cruz*, 326 SCRA 324 [2000].

[24] *People vs. Alib*, 322 SCRA 93 [2000].

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The crime of rape shall be punished by *reclusion perpetua*.

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The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

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Although we affirm the trial court's finding that the circumstance of relationship was sufficiently proven during the trial, we find that the age of the victim at the time of the commission of the crime was not established beyond reasonable doubt.

In the recent case of *People vs. Pruna*,[25] this Court reconciled the apparently conflicting jurisprudence on how to prove the age of a rape victim. The case provided for a guideline in appreciating age, either as an element of the crime or as a qualifying circumstance:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

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[25] G.R. No. 138471, October 10, 2002.

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A. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

B. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

C. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. *In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.*

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

The trial court should always make a categorical finding as to the age of the victim. (italics supplied)

Paragraphs 1 and 2 do not apply in the case at bar for the reason that no certificate of live birth or any other similar document was offered as evidence. Paragraph 3 does not apply either because the victim's mother or any relative qualified to testify on matters regarding pedigree was not presented as witness.

The issue now is whether the prosecution was able to prove Almera's age in accordance with paragraph 4. We rule in the negative.

The records show that the appellant did not expressly and clearly admit Almera's testimony that she was 13 years of age when she was raped in 1997. When asked how old the victim was in 1996, the appellant replied that she was 10½ years old, thereby implying that she was 11½ years old, and not 13 years old, in 1997. His testimony, therefore, did not confirm the victim's

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age as stated in the information and the victim's declaration. Likewise, his testimony to the effect that "(t)he last time she (Almera) lived with him, she was still (of) tender age," cannot be construed as a clear and categorical admission of his victim's age. The phrase "tender age" did not refer specifically to the exact age of 13 and could have possibly meant an age other than that. Clearly, the exacting standard that the admission by the appellant concerning the victim's age must be clear and categorical, was not met.

Moreover, *Pruna* required that "(t)he trial court should always make a categorical finding as to the age of the victim." No such finding was made by the trial court.

As minority is a qualifying circumstance, it must be proved with equal certainty and clarity as the crime itself.[26] Considering that the test outlined in *Pruna* was not complied with, the doubt as to the victim's exact age remains. Hence, the appellant must be held guilty of simple rape only and accordingly sentenced to *reclusion perpetua*.

With respect to the civil liability of the appellant, the civil indemnity of ₱50,000 awarded by the trial court is affirmed. Also, based on prevailing jurisprudence, the amount of ₱50,000 is awarded to the victim as moral damages without the need of pleading or proof, since the mental, physical and psychological trauma suffered by the victim is obvious.[27] We likewise affirm the award of exemplary damages in the amount of ₱10,000. Exemplary damages is imposed when the crime is committed with one or more aggravating circumstances.[28] We appreciate as a generic aggravating circumstance the father-daughter relationship between the appellant and the victim.

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[26] See *People vs. Alipar*, 354 SCRA 590 [2001] citing *People vs. Tabanggay*, 334 SCRA 575 [2000]; *People vs. Dizon*, 356 SCRA 69 [2001]; *People vs. Alvarado*, G.R. No. 145730, March 19, 2002.

[27] *People vs. Villanueva*, 339 SCRA 482, 503 [2000]; *People vs. Rebato*, 358 SCRA 230 [2001].

[28] Article 2230, Civil Code of the Philippines.

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WHEREFORE, the decision dated February 4, 1999 of the Regional Trial Court of Sorsogon, Branch 52, in Criminal Case No. 97-4410 is hereby *AFFIRMED* with the *MODIFICATION* that accused Alberto Olivar *y* Javier is found guilty beyond reasonable doubt of simple rape only, not qualified rape, and is sentenced to suffer the penalty of *reclusion perpetua*, with all the accessory penalties thereof. He is further ordered to pay the victim the sum of ₱50,000 as moral damages, in addition to ₱50,000 as civil indemnity and ₱10,000 as exemplary damages awarded by the trial court.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., and *Tinga, JJ.*, concur.

Azcuna, J., is on leave.