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WHEREFORE, the present petition is *DENIED* for lack of merit and the assailed decision of the Court of Appeals is, in light of the foregoing reasons, hereby *AFFIRMED*.

SO ORDERED.

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

Corona, J., is on official leave.

EN BANC

[G.R. Nos. 136742-43. September 30, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DANILO ALFARO *y* YALUNG,** *appellant.*

SYNOPSIS

Thirteen-year old Marilou M. Alfaro charged her father Danilo Alfaro of sexually abusing her through force and intimidation on January 15, 1996 and February 14, 1996. Accused denied the charges against him and proffered the defense of alibi. The trial court, however, rejected accused's defense and found complainant's declarations more credible. It therefore found accused guilty of two counts of rape and imposed upon him the penalty of death. Hence, this automatic review where appellant assailed the credibility of the complainant.

The Supreme Court agreed with the trial court that appellant was guilty as charged. Complainant testified in a straightforward, candid and convincing manner, which leaves no room for doubt that she was in fact ravished twice by her own father. She positively identified him as her rapist. Her testimony was corroborated by medical findings of healed hymenal lacerations. It is settled jurisprudence that testimonies of child-victims are given full weight and credit. Moreover, complainant never wavered in her testimony even after it was explained to her

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that her father could be meted the death penalty if found guilty. If it was true that she merely made up the charge, she should have been bothered by her conscience at the sight of her father in prisoner's garb at the detention cell. It certainly would take a most senseless kind of depravity for a young daughter to concoct a story of rape which would consign her own father to the supreme penalty of death if the same were not the truth. Likewise, appellant's argument that the delay in reporting the incidents rendered the charges against him doubtful should fail. The delay in these cases could be attributed to the victim's tender age and appellant's threat to kill her and her mother if she would tell anyone what he did to her. It was, therefore, easy to see why the victim oftentimes moved by fear rather than by reason. Appellant was found guilty of two (2) counts of incestuous rape and sentenced to death for each count of rape.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO PERSON WOULD BE WILLING TO UNDERGO THE HUMILIATION OF A PUBLIC TRIAL AND TO TESTIFY ON THE DETAILS OF HER ORDEAL WERE IT NOT TO CONDEMN AN INJUSTICE; CASE AT BAR.**— Marilou testified in a straightforward, candid and convincing manner, which leaves no room for doubt that she was in fact ravished twice by her own father. She positively identified him as her rapist. She testified as follows: x x x. The said testimony vividly describes Marilou's harrowing experience in the hands of her own father. It bears emphasis that appellant resorted to force, threat and intimidation to consummate his lust. In her *Sinumpaang Salaysay*, Marilou stated: *"pinagsamantalahan (ginahasa) niya po ako ng puwersahan na may halong pananakot at pagbabantang ako ay papatayin."* Marilou categorically affirmed such declaration when she testified in court. Courts usually give credence to such testimony, particularly if it constitutes incestuous rape, because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice.

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2. **ID.; ID.; ID.; WHEN A WOMAN, MORE SO IF SHE IS A MINOR, SAYS THAT SHE HAS BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE WAS COMMITTED.**— It is a settled jurisprudence that testimonies of child-victims are given full weight and credit. When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity. Young as she was then, Marilou withstood all the rigors of the case, such as the initial police interrogation, the medical examination, the formal charge, the public trial and the cross-examination. And she never wavered in her testimony even after it was explained to her that her father could be meted the death penalty if found guilty. If it was true that she merely made up the charge, she should have been bothered by her conscience at the sight of her father in a prisoner's garb at the detention cell. It certainly would take a most senseless kind of depravity for a young daughter to concoct a story of rape which would consign her own father to the supreme penalty of death if the same were not the truth.

3. **ID.; ID.; ID.; DELAY IN REPORTING A RAPE INCIDENT IS NOT NECESSARILY AN INDICATION THAT THE CHARGE IS FABRICATED.**— Appellant's argument that the delay in reporting the incidents renders the charges against him doubtful should also fail. Delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated. In these cases, the delay could be attributed to Marilou's tender age and appellant's threat to kill her and her mother if she would tell anyone what he did to her. It is therefore, easy to see why Marilou kept her silence. Indeed, a rape victim's actions are oftentimes moved by fear rather than by reason. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.

4. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST PROVE HE WAS IN ANOTHER PLACE AND IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE *LOCUS CRIMINIS*.**— As against Marilou's positive and categorical testimony, appellant could only proffer the defense of alibi. In a chain of cases, we ruled that for alibi to prosper, it must be proven that during the commission of the crime, the accused was in another

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place and that it was physically impossible for him to be at the *locus criminis*. This is not so in the present case. Appellant admitted in his testimony that he was at home with his family in San Simon, Pampanga on January 15, 1996 when the crime took place. It must be recalled that the rape was committed in the evening of that day at San Nicolas of the same town. We can safely conclude, therefore, that it was physically possible for appellant to be at the scene of the crime during its commission.

5. **CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP MUST BE SPECIFICALLY ALLEGED AND DULY PROVED WITH EQUAL CERTAINTY AS THE CRIME ITSELF TO JUSTIFY THE IMPOSITION OF DEATH PENALTY; CASE AT BAR.**— Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, applicable to these cases, provides: x x x. To justify the imposition of the death penalty, pursuant to the above provisions, the qualifying circumstances of *minority* and *relationship* must be specifically alleged in the Information and duly proved during the trial with equal certainty as the crime itself. Here, Marilou's Certificate of Live birth shows that she was born on September 14, 1983. She was thus twelve years and five months old when she was raped by her father on January 15 and February 14, 1996. Likewise, there is no doubt that appellant is her biological father. Aside from the entry in the Certificate of Live Birth attesting to such fact, appellant himself admitted in open court that he is the father of the victim, thus: x x x. Clearly, the concurrence of the minority of Marilou and her relationship to appellant, alleged in the Information and sufficiently proved by the prosecution, justifies the imposition of the death penalty upon him for each count of rape.

6. **CIVIL LAW; DAMAGES; INDEMNITY *EX DELICTO*; AWARD THEREOF IS MANDATORY UPON FINDING OF THE FACT OF RAPE.**— With respect to the civil liability of appellant, the prevailing jurisprudence is that where, as here, the death penalty is imposed, the victim is entitled to an indemnity *ex delicto* in the sum of ₱75,000.00 for each count of rape, instead of ₱100,000.00 awarded by the trial court. Such award is mandatory upon the finding of the fact of rape.

7. **ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES, PROPER.**— We likewise award the victim moral damages in the amount of ₱75,000.00 in each case, without need of pleading

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or proof of basis thereof. This is so because the anguish and the pain she has to endure are evident. In addition, the victim should be awarded ₱25,000.00 as exemplary damages for each count of rape to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their daughters.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

Incestuous rape is at all times despicable and ultimately reprehensible as its sordidness is beyond the understanding and imagination of any normal human being. As one of the most perverted forms of sexual aberration, it deserves this society's condemnation without any compassion.

For automatic review is the Decision[1] dated October 23, 1998 of the Regional Trial Court, Branch 55, Macabebe, Pampanga in Criminal Cases Nos. 97-1887-M and 97-1888-M finding Danilo Y. Alfaro, appellant herein, guilty of two counts of rape and imposing upon him the supreme penalty of death.

Appellant was charged with rape in two Informations[2] which, except for the dates of its commission, similarly read as follows:

"That on or about the [15th day of January 1996[3] and 14th day of February 1996[4]], in Barangay San Nicolas, Municipality of San Simon, Province of Pampanga, Philippines and within the jurisdiction of

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[1] Penned by Judge Reynaldo V. Roura.

[2] Records, Criminal Case No. 97-1887 at 1; Records, Criminal Case No. 97-1888 at 1.

[3] In Criminal Case No. 97-1887-M.

[4] In Criminal Case No. 97-1888-M.

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this Honorable Court, the above-named accused, DANILO ALFARO *Y* YALUNG *alias* DAN/DANNY, with lewd design, taking advantage of superior strength and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with *her daughter*, Marilou M. Alfaro, *13 years old*, against her will and without her consent.

"Contrary to law."

Upon arraignment, appellant, assisted by counsel, pleaded "not guilty" to both charges.[5] Thereafter, the two cases were jointly heard. The prosecution presented three witnesses, namely: Marilou Alfaro, the victim; Maria Luisa Alfaro, the victim's mother; and Dr. Marie Antoinette Golding who examined the victim. Their testimonies established the following:

Marilou was born on September 14, 1983 to appellant and Maria Luisa as shown by her Certificate of Live Birth.[6] They live in San Nicolas, San Simon, Pampanga. On January 15, 1996, at around 10:00 o'clock in the evening, while Marilou was sleeping in their house, she was suddenly roused from sleep by appellant when he removed her panty and placed himself on top of her.[7] She felt terrible pain as he inserted his penis in her vagina. He continued molesting her sexually until he was able to satisfy his bestial lust.[8] After that harrowing incident, Marilou noticed a white sticky substance in her private part. Then she wore her panty and slept.

Again, on February 14, 1996, at around 11:00 o'clock in the evening, while Marilou and her two brothers were sleeping in their house, she was awakened by appellant as he undressed her and placed himself on top of her, inserting his penis into her vagina.[9] She cried because it was painful. Thereafter, she found a white sticky substance in her private part.[10]

[5] Records, Criminal Case No. 97-1887 at 67.

[6] Exhibit "A", Records at 93.

[7] TSN, April 13, 1998 at 4-6.

[8] *Id.* at 6.

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

[10] *Id.* at 9.

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Marilou did not immediately tell the incidents to anybody because appellant threatened to kill her and her mother if she would do so.[11]

Maria Luisa testified that in the evening of April 23, 1997, she caught appellant stooping over their sleeping daughter Marilou and kissing her genitalia.[12] Surprised by his wife's presence, he immediately went out with his penis protruding out of his shorts.[13] He warned her to keep quiet or else he would kill her. This incident prompted Marilou to inform her mother that appellant sexually molested her on January 15 and February 14, 1996.

On April 25, 1997, Marilou, accompanied by her mother, was examined by Dr. Marie Antoinette Golding, resident physician of the Department of Obstetrics and Gynecology at the Jose B. Lingad Memorial Regional Hospital in Pampanga. On April 27, 1997, she issued a Medico-Legal O.B.-Gyne Report[14] stating that the victim's hymen has superficial healed lacerations at 3:00 o'clock and 9:00 o'clock positions which could have been caused by a man's erect organ[15] and by the rape incidents on January 15 and February 14, 1996. She also found that Marilou's introitus could admit two fingers with ease.

On April 26, 1997, Maria Luisa and her daughter Marilou went to the Apalit Police Station and reported the incidents. Marilou executed a "*Sinumpaang Salaysay*," marked as Exhibit "B",[16] partly quoted as follows:

"T-09: *Bakit mo gustong ireklamo ang iyong tatay na si Danilo Alfaro?*

S: *Dahil po pinagsamantalahan (ginahasa) niya po ako ng* ***puwersahan na may halong pananakot at pagbabantang ako ay papatayin.***

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[11] TSN, April 28, 1998 at 12.

[12] *Id.* at 13-18.

[13] *Id.*

[14] Exhibit "D", Records at 97.

[15] TSN, July 15, 1998 at 5-6.

[16] Exhibit "B", Records at 94-95.

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T-10: *Ilan beses ka bang pinag-samantalahan o ginahasa ng iyong amang si Danilo?*

S: *Dalawang beses (2) po.*

T-11: *Kailan at saan naganap ang insidenteng ito na iyong binanggit?*

S: *Noon pong January 15, 1996 mga bandang alas 9:00 ng gabi at February 14, 1996 humigit-kumulang alas 11:00 ng gabi rin na nangyari sa may aming bahay sa San Nicolas, San Simon, Pampanga.*

T-12: *Noong una kang pinag-samantalahan ng iyong amang si Danilo Alfaro, wala ba ang iyong ina na si Maria Luisa Manlapaz-Alfaro sa inyong bahay noon?*

S: *Wala po siya at nasa trabaho po.*

T-13: *Nang pangalawa kang pag-samantalahan ng iyong tatay, wala rin ba ang iyong nanay sa inyong bahay noon?*

S: *Wala rin po siya at nasa trabaho po.*

T-14: *Sino ang iyong mga kasambahay nang mangyari ang bagay na ito sa iyo?*

S: *Wala rin po siya at nasa trabaho po.*

T-15: *Bakit hindi ka nagsumbong o nagtapat sa iyong nanay o mga kamag-anakan sa panggahasa sa iyo ng iyong amang si Danilo Alfaro?*

S: ***Dahil lagi po siyang nakamasid o nakabantay sa akin at nagbabanta na ako ay kanyang papatayin kapag ako ay nagsumbong sa aking nanay o kamag-anakan.***

T-16: *Kailan ka nakapag-sumbong at nakapag-tapat ng iyong naging karanasan o kapahamakan sa iyong amang si Danilo Alfaro na gumahasa sa iyo?*

S: *Noong pong gabi ng April 23, 1997 nang nahuli po sa akto ng aking nanay na si Maria Luisa Manlapaz-Alfaro ang aking ama na hinahalikan ang aking kaselanan (vagina) at siya ay masinsinang kinompronta at kanyang inaway at sa punto pong yun ay nakuha ko naring ipagtapat sa aking ina ang mga pinag-gagawa sa akin ng aking gahamang ama na sinira niya ang aking kinabukasan.*

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T-17: *Ano ang iyong nararamdaman sa iyong amang si Danilo sa kasalukuyan?*

S: *Galit na galit at namumuhi po ako sa kanya dahil sa ginawa niya sa akin."* (Italics ours)

Maria Luisa also executed an affidavit[17] stating that she caught appellant kissing Marilou's genital organ. Because of this incident, she came to know that he raped Marilou twice in the past.

Both Marilou and Maria Luisa confirmed the contents of their respective "*Sinumpaang Salaysay*" during the trial.

The defense presented appellant as its sole witness. He vehemently denied the charges, contending that on January 15, 1996, he was at home; and that on February 14, 1996, he was in Manila.[18] He claimed that in testifying against him, his wife and daughter were ill motivated because he abandoned them for nine years. Moreover, that it took them one year before reporting the incidents to the authorities engenders doubt on the veracity of the charges.

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[17] Exhibit "F", Records at 99.

"T-08: ***Bakit sa tagal ng panahon na nakalipas, ngayon lamang kayo nag-report dito sa aming himpilan ng Pulisya ng bayang ito hinggil sa kasong ito?***

S: *Kasi po noong Abril 23, 1997 humigit-kumulang alas 10:00 ng gabi sa aming tirahan ay nahuli ko mismo sa akto ang aking asawang si Danilo na hinahalikan ang kaselanan (vagina) ni Marilou na aking labis na ikinagulat at sa kabiglaanan ay napasigaw ako at kaagad kong kinompronta si Danilo sa kanyang ginagawang masama sa aming anak na kanya namang ikinaila pero sa puntong ito* ***ay nagtapat sa akin si Marilou at isinumbong ang mga naunang pinag-gagawa sa kanya ng kanyang ama na hindi lamang kaagad nagsumbong dahil siya ay tinatakot at pinag-babantaang papatayin ng kanyang tatay kung siya ay magsusumbong sa akin o kanino pa man.*** *Nang matuklasan ko ang mga bagay na ito ay kaagad na akong nagsumbong dito sa Pulisya para magsampa ng demanda laban kay Danilo."* (Emphasis and italics ours)

[18] TSN, August 5, 1998 at 9.

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On October 23, 1998, the trial court rendered its Decision convicting appellant of two counts of incestuous rape under Article 335 of the Revised Penal Code, thus:

"The acts committed by the accused against his daughter constitutes the abhorable (sic) crime of incestuous rape committed with the gravest abuse of parental authority. *The accused had the moral ascendancy and influence that substitutes for the violence or intimidation required in rape cases. His act of having sexual intercourse with his daughter who was then at the tender age of thirteen (13) years old may be considered to have the effect of statutory rape. The Court also believes that strong force and intimidation by implication existed during the sexual molestation committed by the accused Danilo Alfaro against his daughter Marilou M. Alfaro.* His defense of alibi that he was elsewhere at the time, and his explanation that he did not do it as he loves his family and blamed his parents-in-law as those who were responsible in bringing about the accusation against him because they were mad at him, is totally rejected as they are unbelievable.

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of two (2) counts of rape and as a consequence of which and pursuant to Art. 335 of the Revised Penal Code, he is hereby sentenced to the corresponding mandatory penalty of death and he is likewise ordered to indemnify the offended party the sum of ₱100,000.00."[19]

Hence, this appeal, appellant ascribing to the trial court the following assignments of error:

"I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE WITNESSES FOR THE PROSECUTION DESPITE THE EXISTENCE OF ILL-MOTIVE ON THEIR PART AND THE INCREDIBLE LENGTH OF TIME IT TOOK THE COMPLAINANT TO REPORT THE CRIME.

"II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF RAPE."[20]

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[19] *Rollo* at 15.

[20] *Id.* at 34.

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The Solicitor General counters that if indeed appellant's wife and daughter were ill motivated, then they should have charged him earlier considering that he abandoned them for nine years. Likewise, Marilou failed to report the incidents to the authorities immediately because he threatened to kill her and her mother.

After a careful review and evaluation of the entire record, we agree with the trial court that appellant is guilty as charged.

Marilou testified in a straightforward, candid and convincing manner, which leaves no room for doubt that she was in fact ravished twice by her own father. She positively identified him as her rapist. She testified as follows:

"FISCAL DATU
Questioning

Do you know the accused in these cases?

WITNESS
Answering

Yes, sir.

Q *Why do you know him?*

WITNESS
Answering

He is my father, sir.

FISCAL DATU
Questioning

Will you please point to the accused your father?

A *There he is, sir.*

INTERPRETER

Witness pointed to a person inside the courtroom who when asked gave his name as Danilo Alfaro.[21]

x x x x x x x x x

[21] TSN, April 13, 1998 at 3-4.

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Q Do you recall where were you on January 15, 1996 at about 9:00 o'clock in the evening?
A I was in our house then, sir.

Q And where is your house situated?
A In San Nicolas, San Simon, Pampanga, sir.

Q What were you doing then at that particular date and time?
A I was sleeping then, sir.

Q What time did you wake up?
A 10:00 o'clock, sir.

Q 10:00 o'clock of January 15, 1996?
A Yes, sir.

Q And what made you to wake up at 10:00 o'clock in the evening of January 15, 1996?
A Because my father went upstairs, sir.

Q *When you said your father, you are referring to the accused Danilo Alfaro?*
A *Yes, sir.*

Q *You said that you woke up when your father went upstairs, what happened next?*
A *He removed my panty and then he removed his shorts, sir.*

Q What did you do when the accused removed your panty?
A None, sir.

FISCAL DATU
Questioning

And then what happened next?

WITNESS
Answering

He placed himself on top of me, sir.

Q When he placed himself on top of you, what did you do, if you did anything?
A None, sir.

Q *What about him, what did he do next?*
A *He inserted his penis into my vagina, sir.*

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Q *What did you feel when the accused inserted his penis into your vagina?*
A *It hurts, sir.*

Q *How long did that take place?*
A *For one hour, sir.*

Q *After the accused inserted his penis into your vagina, what did he do next?*

A *He stood up, sir.*[22]

x x x x x x x x x

FISCAL DATU
Questioning

How many times was the accused your father able to penetrate his penis into your vagina on January 15, 1996?

WITNESS
Answering

Only once, sir.

Q Do you recall where were you on February 14, 1996 at about 11:00 o'clock in the evening?
A Yes, sir.

Q Where were you then?
A I was in our house then, sir.

Q Who were with you at that time?
A I was with my two brothers then, sir.

Q What were you and your brothers doing then?
A We were sleeping then, sir.

Q What time did you wake up on February 14, 1996?
A I woke up when my father came near me, sir.

Q What time?
A I do not know, sir.

Q *What made you woke up?*
A *When my father laid down near me, sir.*

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[22] *Id.* at 3-9.

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Q *When your father laid down near you, what happened next?*
A *He again removed my panty, sir.*

Q *What about him, what did he do?*
A *He also removed his shorts, sir.*

Q *And then what happened next?*
A *He again placed himself on top of me, sir.*

Q *What did you do when he placed himself on top of you?*

WITNESS
Answering

None, sir, I just cried.

Q Why did you cry?
A *Because he again did it for the second time, sir.*

Q *What do you mean when you said he did it for the second time?*
A *It was painful on my part, sir.*

Q And what is painful on your part?
A It is painful on my part because I am his daughter, sir.

Q Anyway, what did your father Danilo Alfaro do when you said that it was painful on your part on February 14, 1996?
A My father asked me if I enjoyed what he was doing to me, sir.

Q Are you referring to the incident that took place on January 15, 1996 wherein your father inserted his penis into your vagina?
A Yes, sir.

Q When your father asked you if you enjoyed what he was doing to you, what did you answer him?
A I did not answer him, sir.

Q *For the second time, when your father inserted his penis into your vagina, what did you feel?*
A *It was painful, sir.*

Q *Did you try examining your private parts after the incident?*
A *Yes, sir.*

Q *What did you find out?*
A *I found a white sticky substance, sir.*

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Q *After that what happened next?*
A *No more, sir.* [23]

x x x x x x x x x

Q Do you recall having executed a *Sinumpaang Salaysay* in connection with these two cases of rape you filed against Danilo Alfaro?
A Yes, sir.

Q To whom did you give that *Sinumpaang Salaysay*?
A At Apalit Police Station, sir.

Q If you will see that *Sinumpaang Salaysay*, will you be able to identify the same?
A Yes, sir.

Q I am showing to you a ***Sinumpaang Salaysay*** *dated April 26, 1997* taken by the Philippine National Police of San Simon, Pampanga consisting of two (2) pages, please go over the same and tell us if this is the Sinumpaang Salaysay you are referring to?
A *Yes, sir, this is the one.*

Q There appears a signature on the front page, whose signature is this?
A *This is my signature, sir.*

Q How about the signature on the second page, is that your signature?
A *This is my signature also, sir.*

FISCAL DATU

May I request, Your Honor, that this ***Sinumpaang Salaysay*** consisting of two (2) pages be marked as *Exhibit "B"* and *"B-1"* respectively and the signatures of Marilou Bonifacio as "B-2" and "B-3".

COURT

Mark them accordingly.

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[23] *Id.* at 7-9.

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FISCAL DATU
Questioning

> *Do you affirm and confirm all your statements contained in this* ***Sinumpaang Salaysay****?*

WITNESS
Answering

> *Yes, sir.*"[24] (Italics ours)

The above testimony vividly describes Marilou's harrowing experience in the hands of her own father. It bears emphasis that appellant resorted to force, threat and intimidation to consummate his lust. In her *Sinumpaang Salaysay*,[25] Marilou stated: *"pinagsamantalahan (ginahasa) niya po* ako ng ***puwersahan na may halong pananakot at pagbabantang ako ay papatayin."*** Marilou categorically affirmed such declaration when she testified in court.[26] Courts usually give credence to such testimony, particularly if it constitutes incestuous rape, because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice.[27]

It is a settled jurisprudence that testimonies of child-victims are given full weight and credit. When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[28] Youth and immaturity are generally badges of truth and sincerity.[29]

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[24] *Id.* at 9-10.

[25] Exh. "B", Records at 94-95.

[26] TSN, April 13, 1998 at 9-10.

[27] *People vs. Lusa*, G.R. No. 122246, March 27, 1998, 288 SCRA 296, citing *People vs. Adora*, G.R. Nos. 116528-31, July 14, 1997, 275 SCRA 441.

[28] *Id.*, citing *People vs. Gabayron*, G.R. No. 102018, August 21, 1997, 278 SCRA 78.

[29] *Id.*, citing *People vs. Escober*, G.R. Nos. 122980-81, November 6, 1997, 281 SCRA 498.

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Young as she was then, Marilou withstood all the rigors of the case, such as the initial police interrogation, the medical examination, the formal charge, the public trial and the cross-examination. And she never wavered in her testimony even after it was explained to her that her father could be meted the death penalty if found guilty.[30] If it was true that she merely made up the charge, she should have been bothered by her conscience at the sight of her father in a prisoner's garb at the detention cell. It certainly would take a most senseless kind of depravity for a young daughter to concoct a story of rape which would consign her own father to the supreme penalty of death if the same were not the truth.[31]

Moreover, Marilou's testimony is corroborated by the findings of Dr. Golding that the lacerations on her hymen were compatible with the incidents of rape on January 15 and February 14, 1996. According to Dr. Golding, the multiple healed hymenal lacerations at 3:00 o'clock and 9:00 o'clock positions could have been caused by an erect organ of a man[32] and that her introitus could admit two fingers with ease.

As against Marilou's positive and categorical testimony, appellant could only proffer the defense of alibi. In a chain of cases, we ruled that for alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the *locus criminis*.[33] This is not so in the present case. Appellant admitted in his testimony[34] that he was at home with his family in San Simon, Pampanga on January 15, 1996 when the crime took place. It must be recalled that the rape was committed in the evening of that day at San Nicolas of the same town. We

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[30] TSN, April 28, 1998 at 6.

[31] *People vs. Rivera*, G.R. No. 130607, November 17, 1999, 318 SCRA 317.

[32] TSN, July 15, 1998 at 5-6.

[33] *People vs. Arillas*, G.R. No. 130593, June 19, 2000, 333 SCRA 765.

[34] TSN, August 5, 1998 at 6.

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can safely conclude, therefore, that it was physically possible for appellant to be at the scene of the crime during its commission.

Moreover, while appellant sought to establish that he went to Manila on February 14, 1996 when the second rape was committed, however, he could not categorically admit he really left for Manila. Instead, he declared that he went home at San Simon because it was Valentine's day, thus:

"FISCAL
Questioning

Mr. Witness, on January 15, 1996, you were at your house the whole day, did I get you right?

A Yes, sir.

Q So, the whole day of January 15, 1996, you were with your family?

A I was only at home at night because I worked as a farmer.

Q *When did you again leave for Manila as a mason?*

A In February, 1996, sir.

Q What date in February 1996, was it on February 14, 17 or 19?

A *February 14, sir.*

Q What time did you leave?

A At around 8:00 o'clock in the morning, I left for Manila.

Q What exact address did you go to Manila?

A Divisoria, sir.

Q Where in Divisoria?

A Ilaya, sir.

Q Did you perform masonry work in Ilaya, Divisoria?

A Yes, sir.

Q In whose house?

A At the house of the in-law of my compadre, sir.

Q *On February 14, 1996, being valentine's day, you went home at San Simon, is it not?*

A *Yes, sir.*

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Q *What time did you arrive in San Simon on February 14, 1996?*
A . . .

FISCAL

Your Honor please, may we manifest that the witness cannot answer a very simple question. . . .

COURT

Manifestation noted.

x x x x x x x x x." (Italics ours)

When his own counsel asked appellant on re-direct examination to clarify whether he was in Manila or at home on February 14, 1996, appellant could not answer, thus:

"ATTY. HERNANDEZ
Questioning

You stated you went home on February 14 but you stated earlier that on February 14, you were in Manila and you stated you stayed there for a week, how can you be home on February 14?

WITNESS

. . .

Q *Are you mistaken about the date?*
A . . .

Q *What date did you go to Manila?*
A . . .

FISCAL

We would like to manifest that the two previous questions propounded by counsel were not answered by the witness, Your Honor.

COURT

Noted."[35] (Italics ours)

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[35] *Id.* at 18-22.

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Obviously, appellant's testimony bears the badges of falsehood. His unsubstantiated defense of alibi must, therefore, fail.

Appellant's argument that the delay in reporting the incidents renders the charges against him doubtful should also fail. Delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated.[36] In these cases, the delay could be attributed to Marilou's tender age and appellant's threat to kill her and her mother if she would tell anyone what he did to her.[37] It is, therefore, easy to see why Marilou kept her silence. Indeed, a rape victim's actions are oftentimes moved by fear rather than by reason. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.[38]

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, applicable to these cases, provides:

"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;*

x x x x x x x x x

"The *death penalty* shall 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.

x x x x x x x x x" (Italics ours)

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[36] *People vs. Velasquez*, G.R. Nos. 132635 & 143872-75, February 21, 2001, 352 SCRA 455, citing *People vs. Casil*, G.R. No. 110836, February 13, 1995, 241 SCRA 285.

[37] TSN, April 13, 1998 at 9-12; Exhibit "B", Records at 94.

[38] *People vs. Sayao, Jr.*, G.R. No. 124297, February 21, 2001, 352 SCRA 390.

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There is no doubt that appellant *had carnal knowledge of Marilou through force and intimidation* on January 15, 1996 and February 14, 1996 as positively testified to by her.

To justify the imposition of the death penalty, pursuant to the above provisions, the qualifying circumstances of *minority* and *relationship* must be specifically alleged in the Information and duly proved during the trial with equal certainty as the crime itself.[39]

Here, Marilou's Certificate of Live Birth shows that she was born on September 14, 1983. She was thus twelve years and five months old when she was raped by her father on January 15 and February 14, 1996. Likewise, there is no doubt that appellant is her biological father. Aside from the entry[40] in the Certificate of Live Birth attesting to such fact, appellant himself admitted in open court that he is the father of the victim, thus:

"DIRECT EXAMINATION
ON DANILO ALFARO BY
ATTY. HERNANDO HERNANDEZ

ATTY. HERNANDEZ
Questioning

Mr. Witness, do you know the complainant Marilou Alfaro?

WITNESS

Yes, sir.

Q Why do you know her?
A *She is my daughter, sir.*

Q With whom is she your daughter?
A *With my wife Maria Luisa Alfaro, sir.*

x x x x x x x x x

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[39] *People vs. Padilla*, G.R. No. 137648, March 30, 2001, 355 SCRA 741.

[40] Exhibit "A-2", Records at 93.

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Q What was Marilou like as a daughter to you?
A Marilou is so close to me."[41] (Italics ours)

Clearly, the concurrence of the minority of Marilou and her relationship to appellant, alleged in the Information and sufficiently proved by the prosecution, justifies the imposition of the death penalty upon him for each count of rape.

We noticed, however, that the trial court imposed the death penalty upon appellant in both cases. We rectify this error by stressing that he should be meted out the penalty of death in each case considering that the two charges of rape are separate and distinct from each other.

With respect to the civil liability of appellant, the prevailing jurisprudence is that where, as here, the death penalty is imposed, the victim is entitled to an indemnity *ex delicto* in the sum of ₱75,000.00 for each count of rape, instead of ₱100,000.00 awarded by the trial court. Such award is mandatory upon the finding of the fact of rape.[42]

We likewise award the victim moral damages in the amount of ₱75,000.00 in each case, without need of pleading or proof of basis thereof.[43] This is so because the anguish and the pain she has to endure are evident.[44] In addition, the victim should be awarded ₱25,000.00 as exemplary damages for each count of rape to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their daughters.[45]

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[41] TSN, August 5, 1998 at 4-5, 17.

[42] *People vs. Escano*, G.R. Nos. 140218-23, February 13, 2002; *People vs. Arizapa*, G.R. No. 131814, March 15, 2000, 328 SCRA 214.

[43] *People vs. Soriano*, G.R. Nos. 142779-95, August 29, 2002; *People vs. Sambrano*, G.R. No. 143708, February 24, 2003.

[44] *People vs. Baway*, G.R. No. 130406, January 22, 2001, 350 SCRA 29; *People vs. Banela*, G.R. No. 124973, January 18, 1999, 301 SCRA 84.

[45] *People vs. Montemayor*, G.R. Nos. 124474 and 139972-78, January 28, 2003; *Belonghilot vs. RTC of Zamboanga City*, G.R. No. 128512, April 30, 2003; *People vs. Solmoro, Jr.*, G.R. Nos. 139187-94, November 27, 2002.

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Three (3) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray* that R.A. No. 7659, insofar as it prescribes the penalty of death is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 55, Macabebe, Pampanga in Criminal Cases Nos. 97-1887-M and 97-1888-M, finding appellant Danilo Alfaro *GUILTY* beyond reasonable doubt of two counts of incestuous rape is *AFFIRMED*, with the following *modifications*:

(1) Appellant is sentenced to *DEATH* for each count of rape; and

(2) In each count, he is ordered to pay the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

Let the records of this case, upon finality of this Decision, be forwarded to the Office of the President for the possible exercise of her pardoning power pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of RA 7659.

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., Azcuna, and *Tinga, JJ.*, concur.

Corona, J., on leave.