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[G.R. No. 144595. August 6, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DANTE ILAGAN,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of qualified rape for sexually abusing his sixteen-year old daughter. He was sentenced to suffer the extreme penalty of death: Hence, this automatic review of the case.

The Supreme Court ruled that a conviction for rape may be made on the testimony of the victim herself, as long as such testimony is credible. When a woman says that she had been raped, she says in effect all that is necessary to show that she had been raped, and if her testimony meets the test of credibility, the accused may be convicted on the basis of the victim's testimony. A rape victim would not publicly disclose that she had been raped and undergo the troubles and humiliation of a public trial if her motive was not to bring to justice the person who abused her. Moreover, the Court ruled that the task of taking on the issue of credibility is a function properly lodged with the trial court, whose findings are entitled to great weight and accorded the highest respect by the reviewing courts, unless certain facts of substance and value were overlooked or misappreciated such as would alter the conviction of the appellant. There was no such fact of substance and value in this case.

The Court likewise held that the qualifying circumstances of minority and relationship must concur. They must be both alleged and proved in order to qualify the crime of rape and warrant the imposition of the death penalty. For the failure of the prosecution to prove the age of the victim, the Court found appellant guilty only of simple rape and the death penalty imposed on him by the trial court was reduced to *reclusion perpetua.*

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, IF CREDIBLE, MAY BE THE BASIS OF CONVICTION.**— [A] conviction for rape may be made even on the testimony of the victim herself, as long as such testimony is credible. It is likewise settled that when a woman says that she had been raped, she says in effect all that is necessary to show that she had been raped, and if her testimony meets the test of credibility, the accused may be convicted on the basis of the victim's testimony. A rape victim would not publicly disclose that she had been raped and undergo the troubles and humiliation of a public trial if her motive was not to bring to justice the person who abused her. ... When the testimony of the victim is simple and straightforward, the same must be given full faith and credit. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be easily dismissed as mere concoction. It is highly inconceivable for a daughter to publicly accuse her father of rape if it were not true. Indeed, it is highly against human nature to fabricate a story that would expose herself as well as her family to a lifetime of dishonor, especially when her charge could mean the death of her own father.

2. **ID.; ID.; ID.; GUIDING PRINCIPLES IN ASSESSING RAPE VICTIM'S CREDIBILITY.**— [T]he issues in a rape case boil down to the credibility of the victim. In assessing her credibility, courts are guided by the following principles: (1) As accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution, and; (3) The evidence of the prosecution stands or falls on its own merits and can not be allowed to draw strength from the weakness of the defense.

3. **CRIMINAL LAW; RAPE; PHYSICAL RESISTANCE; NEED NOT BE ESTABLISHED IN RAPE WHEN INTIMIDATION IS EXERCISED UPON THE VICTIM HERSELF.**— Physical

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resistance need not be established in rape when intimidation is exercised upon the victim herself. As held in *People v. Las Pinas, Jr.*, the test is whether the intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. When resistance would be futile, offering none at all does not amount to consent to sexual assault. The law does not impose upon a rape victim the burden of proving resistance.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY DELAY AND INITIAL RELUCTANCE OF RAPE VICTIM TO MAKE PUBLIC THE SEXUAL ASSAULT.**— [D]elay and the initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon. Rape is a traumatic experience, and the shock concomitant with it may linger for a while. Oftentimes, the victim would rather bear the ignominy and the pain in private, rather than reveal her shame to the world or risk the rapist's carrying out his threat to harm her.

5. **ID.; ID.; ID.; FINDINGS THEREON BY TRIAL COURT, GENERALLY ENTITLED TO GREAT WEIGHT ON APPEAL.**— [T]he task of taking on the issue of credibility is a function properly lodged with the trial court, whose findings are entitled to great weight and accorded the highest respect by the reviewing courts, unless certain facts of substance and value were overlooked or misappreciated such as would alter the conviction of the appellant. There is no such fact of substance and value in this case.

6. **ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF PROSECUTION WITNESSES THAT ACCUSED COMMITTED THE CRIME.**— An intrinsically weak defense, denial must be buttressed by strong evidence of non-culpability in order to merit credibility. It is a negative self-serving assertion that has no weight in law if unsubstantiated by clear and convincing evidenoe. Since denial and alibi are so easy to concoct and fabricate, the same cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.

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7. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST PROVE THAT AT THE TIME OF THE COMMISSION OF THE OFFENSE CHARGED, HE WAS IN A PLACE OTHER THAN THE *SITUS CRIMINIS*, SUCH THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE COMMITTED THE CRIME CHARGED.**— [F]or the defense of alibi to prosper, the requirement of time and place must be strictly met. It is, therefore, incumbent upon appellant to prove with clear and convincing evidence that at the time of the commission of the offense charged, he was in a place other than the *situs criminis* or immediate vicinity thereof, such that it was physically impossible for him to have committed the crime charged.

8. **CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE ALLEGED IN THE INFORMATION AND PROVED DURING TRIAL TO WARRANT THE IMPOSITION OF DEATH PENALTY.**— The qualifying circumstances of minority and relationship must concur. More importantly, they must be both alleged and proved, in order to qualify the crime of Rape and warrant the imposition of the death penalty. Hence, in addition to the requirement that the qualifying and aggravating circumstance must be specifically alleged in the information, it must be established with certainty that the victim was below eighteen (18) years of age or that she was a minor at the time of the commission of the crime. It must be stressed that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offense aptly subject to the most exacting rules of procedure and evidence.

9. **REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN APPRECIATING AGE, EITHER AS ELEMENT OF RAPE OR AS A QUALIFYING CIRCUMSTANCE.**— In *People v. Pruna,* it was held: "In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines 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

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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."

10. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.**— [T]he amount of civil indemnity awarded by the trial court should accordingly be reduced to ₱50,000.00. The amount of ₱75,000.00 as civil indemnity is mandatory only in cases involving qualified rape where the death penalty is imposed. In cases of simple rape, the amount of civil indemnity shall be ₱50,000.00. As regards the award of moral damages, the same should likewise be reduced to ₱50,000.00, consistently with controlling jurisprudence. Moral damages are awarded in rape cases without need of pleading or proof.

APPEARANCES OF COUNSEL

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

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DECISION

YNARES-SANTIAGO, *J.*:

For automatic review is the decision of the Regional Trial Court of Malolos, Bulacan, Branch 21, in Criminal Case No. 1246-M-99, convicting appellant Dante Ilagan of Qualified Rape and sentencing him to suffer the extreme penalty of death and to pay the offended party, Mylene Ilagan, the sums of ₱75,000.00 as civil indemnity and ₱100,000.00 as moral damages.[1]

The information for Rape against appellant reads:

> That on or about the 19th day of May, 1998, in the municipality of Norzagaray, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with lewd designs, by means of force and intimidation, have carnal knowledge of his daughter Mylene Ilagan, 16 years old, against her will and consent.
>
> Contrary to law.[2]

During the arraignment, appellant pleaded not guilty to the charge.[3] Thereafter, the trial of the case ensued.

The facts of the case as established by the prosecution are as follows:

The offended party, Mylene Ilagan, lived with her father, appellant Dante Ilagan, and her siblings at Barangay Bulalo, Norzagaray, Bulacan. Her mother, Marietta, had gone off to live with another man.[4]

On May 18, 1998, Mylene's elder sister went with her paternal grandmother, Nenita Ilagan, to Meycauayan to attend the birthday celebration of their eldest sister. Later that evening, while Mylene was asleep beside her other siblings, accused woke her up and

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[1] Penned by Judge Cesar M. Solis; Record, pp. 84–90.

[2] Record, p. 1.

[3] *Id.*, p. 12–13.

[4] TSN, November 17, 1999, pp. 3–5; TSN, November 19, 1999, p 3.

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told her that they would sleep in her grandmother Nenita's house, located some fifteen meters away,[5] leaving behind her other siblings in their own house.

At 3:00 in the morning of the following day, while Mylene was asleep, she was awakened by someone taking off her shorts and panties. She saw appellant, naked from the waist down, lying on top of her. Appellant inserted his penis into her vagina, causing her pain. She was unable to cry for fear that appellant might kill her since he had threatened to kill her before. Appellant stopped the sexual intrusion when a substance, which looked like phlegm, came out of his penis. He then got up and went to the kitchen to boil some water. He told Mylene to watch the pot and left the house.[6]

On December 10, 1998, while appellant was in Quezon Province, Mylene mustered the courage to tell her friend, Jocelyn, about the sexual assault by her father. They went to the Department of Social Welfare and Development (DSWD), which brought Mylene to the Norzagaray Police where she gave her sworn statement. Thereafter, she was brought to the Philippine National Police (PNP) Provincial Crime Laboratory in Malolos, Bulacan for physical examination.[7]

Dr. Manuel Aves, the PNP Medico-Legal Officer who examined Mylene, found multiple healed deep lacerations on her hymen. He concluded that Mylene was a non virgin at the time of the examination on December 15, 1998.[8]

On the same date, Mylene filed a complaint for Rape against appellant before the Norzagaray Municipal Trial Court.[9]

In his defense, appellant denied the charges and claimed that he was in Alabang, Muntinlupa City on the date that the alleged rape was committed, working at a project for Nipponville Home

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[5] TSN, November 17, 1999, pp. 5–6.

[6] *Id.*, pp. 6–9.

[7] *Id.*, pp. 8–12.

[8] TSN, November 24, 1999, pp. 3–4; Exhibit C.

[9] TSN, November 17, 1999, p. 12.

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Gallery. Moreover, as a furniture worker, he stayed in Manila for several days and went home to Bulacan only on weekends.[10] He alleged that Mylene had several boyfriends, and presented in court purported love letters sent by Mylene to Larry and Rudy, as well as letters she received from her male suitors, namely, Boy Bicol, Dondon Hernandez, Rab and Orly.[11] Her grandmother, Nenita Ilagan, and sister, Judith, corroborated appellant's testimony. They alleged that appellant frequently scolded Mylene for coming home late, and surmised that this may be the reason why she filed charges against her father.[12]

On June 9, 2000, the trial court rendered the appealed judgment, the dispositive portion of which reads:

WHEREFORE, ALL PREMISES CONSIDERED, this Court resolves that the prosecution has successfully undertaken his burden to prove the guilt of the accused beyond reasonable doubt. Accordingly, accused Dante Ilagan is hereby found GUILTY of the crime of RAPE from having violated the provisions of Article 266-B in relation to Article 266-A of the Revised Penal Code, as amended. Considering the presence of aggravating circumstances that the victim is under eighteen (18) years of age and the offender is a parent of the victim in this case, he is hereby sentenced to suffer the Supreme Penalty of DEATH by lethal injection.

One final word. The Court treats the imposition of the capital punishment upon the hereby accused as an unpleasant, if not an unenviable task. Nonetheless, the burden becomes lighter as we ponder on what the Supreme Court stated with regard to a case of Rape of this nature. Thus: "incestuous relations are abhorrent to the nature of man, not only to civilized men, but also to semi-civilized and barbarous people x x x and when a man perpetrates his lascivious desires on his own direct relative, he descends to a level lower than that of a beast. (*People vs. Mandap*, 244 SCRA 457)

Lastly, the accused is also ordered to indemnify Mylene Ilagan the sum of ₱75,000.00 and further amount of ₱100,000.00 as moral damages.

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[10] TSN, February 2, 2000, pp. 2–6.

[11] Exhs. "1" to "7".

[12] TSN, March 20, 2000, p. 6; TSN, April 12, 2000, pp. 2–12.

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With costs against the accused.

SO ORDERED.[13]

In his brief, appellant assigns the following errors:

I

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED AND SENTENCING HIM TO SUFFER THE DEATH PENALTY.

II

THE LOWER COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT MYLENE ILAGAN.[14]

Well-entrenched is the rule that a conviction for rape may be made even on the testimony of the victim herself, as long as such testimony is credible.[15] It is likewise settled that when a woman says that she had been raped, she says in effect all that is necessary to show that she had been raped, and if her testimony meets the test of credibility, the accused may be convicted on the basis of the victim's testimony. A rape victim would not publicly disclose that she had been raped and undergo the troubles and humiliation of a public trial if her motive was not to bring to justice the person who abused her.[16]

Consequently, the issues in a rape case boil down to the credibility of the victim. In assessing her credibility, courts are guided by the following principles:

(1) As accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;

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[13] *Rollo*, pp. 22–23.

[14] *Id.*, p. 47.

[15] *People v. Pascual*, G.R. Nos. 144495-96, 12 March 2002.

[16] *People v. Saldivia*, G.R. No. 55346, 203 SCRA 461, 471 [1991].

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(2) In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution, and;

(3) The evidence of the prosecution stands or falls on its own merits and can not be allowed to draw strength from the weakness of the defense.[17]

In the case at bar, complainant recounted her harrowing experience in the hands of appellant in this wise:

Q: My question is, where were you on May 1998 at around 3 o'clock early in the morning?

A: I was in the house of my grandmother, sir. My father asked me to undress and remove my panty.

Q: You said that you were then at the house of your grandmother, what is the name of your grandmother?

A: Her name is Aida Ilagan, sir.

Q: Where is this house located?

A: Near our house in Norzagaray, Bulacan, sir.

Q: What is the exact place in Norzagay where your *lola's* house is located?

A: Bulalo, Norzagaray, sir.

Q: Who were with you in the house of your *lola* at that time?

A: My father, sir.

Q: What about your *lola*?

A: She was in Meycauayan, Bulacan, sir together with my *ate*.

Q: How about your other siblings? Where were they at that time?

A: They were in our house, sir.

Q: Why did you decide to sleep at the house of your *lola*?

A: I was sleeping there in our house, but my father asked me to go with him and sleep at the house of my *lola* because nobody was there, sir.

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[17] *People v. Cepeda*, 381 Phil. 300, 307 [2000].

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Q: After your panty was removed by your father, what happened next?

A: I was molested (*ginalaw*) sir.

Q: Tell me exactly what do you mean by "*ginalaw*"?

A: He placed his body on top of me and inserted his private organ on my private organ, sir.

Q: You said your clothes and panty were removed by your father. Are you saying that you were totally naked when your father placed on top of you?

Court:

By the way, did the witness say that it was not only her panty but also her clothes were removed?

Q: Just to clarify this, your honor. What was removed by your father from your body?

A: My shorts and panty, sir.

Court:

Was it your father or yourself who removed your shorts and panty?

A: My father, your honor.

Court: Proceed.

Q: What were you wearing on your upper apparel?

A: T-shirt, sir.

Q: What did you feel when your father inserted his private organ into yours?

A: It was painful, sir.

Q: How long did your father placed himself on top of you?

A: Half an hour, sir.

Q: While your father was on top of you, what was he doing?

A: He forcibly inserted his penis into my private organ, sir.

Q: Did you feel anything from the private organ of your father?

A: Yes, sir.

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Q: What was that, that you felt came out from the private organ if your father?

A: As if phlegm (*sipon*), sir.[18]

The aforequoted testimony of the victim is marked by spontaneity, honesty, and sincerity. When the testimony of the victim is simple and straightforward, the same must be given full faith and credit.[19] A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be easily dismissed as mere concoction. It is highly inconceivable for a daughter to publicly accuse her father of rape if it were not true. Indeed, it is highly against human nature to fabricate a story that would expose herself as well as her family to a lifetime of dishonor, especially when her charge could mean the death of her own father.[20]

Appellant claims that the victim's failure to resist the assault and the delay in reporting the case to the authorities are sufficient to impair her credibility. We disagree. Physical resistance need not be established in rape when intimidation is exercised upon the victim herself. As held in *People v. Las Piñas, Jr.*[21] the test is whether the intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. When resistance would be futile, offering none at all does not amount to consent to sexual assault. The law does not impose upon a rape victim the burden of proving resistance.

Anent the delay in reporting the case to the authorities, suffice it to state that delay and the initial reluctance of a rape victim to make public the assault on her virtue is neither unknown or uncommon.[22] Rape is a traumatic experience, and the shock

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[18] TSN, November 17, 1999, pp. 1–10.

[19] *People v. Brondial*, G.R. No. 135517, 343 SCRA 600, 607–608.

[20] *People v. Manlod*, G.R. Nos. 142901-02, 23 July 2002.

[21] G.R. No. 133444, 20 February 2002.

[22] *People v. Cabana*, 387 Phil. 585, 598-99 [2000].

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concomitant with it may linger for a while. Oftentimes, the victim would rather bear the ignominy and the pain in private, rather than reveal her shame to the world or risk the rapist's carrying out his threat to harm her.[23]

We find no sufficient basis for disregarding, let alone overturning, the factual assessment made by the court *a quo*. Once again, we must reiterate the familiar rule that the task of taking on the issue of credibility is a function properly lodged with the trial court, whose findings are entitled to great weight and accorded the highest respect by the reviewing courts, unless certain facts of substance and value were overlooked or misappreciated such as would alter the conviction of the appellant.[24] There is no such fact of substance and value in this case.

Premised on the complainant's testimony, there is sufficient foundation to conclude that appellant succeeded by force in having carpal knowledge of her own daughter on May 19, 1998. Against this backdrop of evidence and in stark contrast to complainant's convincing recital of facts is appellant's defense of denial and alibi. An intrinsically weak defense, denial must be buttressed by strong evidence of non-culpability in order to merit credibility. It is a negative self-serving assertion that has no weight in law if unsubstantiated by clear and convincing evidence.[25] Since denial and alibi are so easy to concoct and fabricate, the same cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.[26]

The rule is settled that for the defense of alibi to prosper, the requirement of time and place must be strictly met.[27] It is, therefore, incumbent upon appellant to prove with clear and convincing

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[23] *People v. Flores*, G.R. No. 141782, 14 December 2001, 372 SCRA 421, 436.

[24] *People v. Taño*, 387 Phil. 465, 484 [2000].

[25] *People v. Silvano*, 368 Phil. 676 [1999].

[26] *People v. Mendoza*, 354 Phil. 177 [1998].

[27] *People v. Dubria*, G.R. No. 138887, 26 September 2000, 341 SCRA 134.

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evidence that at the time of the commission of the offense charged, he was in a place other than the *situs criminis* or immediate vicinity thereof, such that it was physically impossible for him to have committed the crime charged.[28]

Thus, appellant's alibi and denial must necessarily fail. The defense of denial and alibi *per se*, if not substantiated by sufficient evidence, can not in any way diminish the credibility of the complainant or the weight of her testimony.

The pertinent provisions of Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as The Anti-Rape Law of 1997, state:

ART. 266-A. Rape, When and How Committed. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

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ART. 266-B. Penalties. —

x x x x x x x x x

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

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by

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[28] *Dela Cruz v. Court of Appeals*, 414 Phil. 171, 184 [2001].

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consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

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The qualifying circumstances of minority and relationship must concur. More importantly, they must be both alleged and proved, in order to qualify the crime of Rape and warrant the imposition of the death penalty.[29]

Hence, in addition to the requirement that the qualifying and aggravating circumstance must be specifically alleged in the information, it must be established with certainty that the victim was below eighteen (18) years of age or that she was a minor at the time of the commission of the crime. It must be stressed that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offense aptly subject to the most exacting rules of procedure and evidence.[30]

In the case at bar, the prosecution failed to present the birth certificate or similar authentic document, such as the school records or baptismal certificate of the victim to prove her age. Thus, the age of the victim cannot be determined with utmost certainty. In *People v. Pruna*,[31] it was held:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines 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.

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[29] *People v. Emperador*, G.R. No. 132669, 25 September 2002.

[30] *People v. Pruna*, G.R. No. 138471, 10 October 2002.

[31] *Supra*.

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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.

Hence, for failure of the prosecution to prove the age of the victim by any of the means set forth above, appellant can only be found guilty of Simple Rape and the death penalty imposed on him by the trial court shall be reduced to *reclusion perpetua*.

Consequently, the amount of civil indemnity awarded by the trial court should accordingly be reduced to ₱50,000.00. The amount of ₱75,000.00 as civil indemnity is mandatory only in cases involving qualified rape where the death penalty is imposed. In cases of simple rape, the amount of civil indemnity shall be ₱50,000.00.[32] As regards the award of moral damages, the same

[32] *People v. Tagud, Sr.*, G.R. No. 140733. 30 January 2002.

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should likewise be reduced to ₱50,000.00, consistently with controlling jurisprudence. Moral damages are awarded in rape cases without need of pleading or proof.[33]

WHEREFORE, in view of the foregoing, the judgment of the Regional Trial Court of Malolos, Bulacan, Branch 21, in Criminal Case No. 1246-M-99, finding appellant Dante Ilagan guilty beyond reasonable doubt of the crime of Rape, is *AFFIRMED with MODIFICATIONS*. Appellant is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay the private offended party, Mylene Ilagan, the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, and *Tinga, JJ.*, concur.

Callejo, Sr., J., on leave.

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[33] *People v. Amaquin*, G.R. No. 124975. 20 February 2002.