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EN BANC

[G.R. No. 143125. June 10, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DIOSDADO CORIAL *y* REQUIEZ,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of qualified rape for sexual abusing his own minor granddaughter. He was sentenced to suffer the penalty of death. Hence, this automatic review of the case.

The Supreme Court ruled that when the victim's testimony is straightforward and unflawed by any major inconsistency or contradiction, the same must be given full faith and credit. In the case at bar, the Court found appellant guilty only of simple rape, not qualified rape, and sentenced him to suffer, instead of the death penalty, the penalty of *reclusion perpetua,* for the failure of the prosecution to present evidence proving the age of the victim. The Court ruled that the death penalty for the crime charged may be imposed only when the twin qualifying circumstances of relationship between the appellant and the victim and the latter's age are indubitably proven. The realtionship between appellant and the victim has been adequately established. The prosecution evidence has shown that appellant is the grandfather of the victim, a fact that appellant himself has likewise maintained. The same cannot, however, be said with respect to the age of the victim.

SYLLABUS

1. CRIMINAL LAW; RAPE; COMMITTED NOT EXCLUSIVELY IN SECLUSION.— [R]apists are not deterred from committing the odious act of sexual abuse by the mere presence nearby of people or even family members. Rape is committed not exclusively in seclusion; lust, it is said, respects neither time nor place.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN VICTIM'S TESTIMONY IS STRAIGHTFORWARD AND UNFLAWED BY ANY MAJOR INCONSISTENCY, THE SAME MUST BE GIVEN FULL FAITH AND CREDIT; CASE

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AT BAR.— The trial court has valued Maricar's testimony as being "spontaneous and straightforward." Indeed, when a victim's testimony is straightforward and unflawed by any major inconsistency or contradiction, the same must be given full faith and credit.

3. **ID.; ID.; ID.; TESTIMONY OF WITNESS IN COURT PREVAILS OVER AFFIDAVITS; CASE AT BAR.**— Appellant capitalizes on the so-called disparity between the declaration of Maricar in her testimony in court and her sworn statement. ... Not only is her assailed statement — that before the July 1998 incident she has also been subjected to sexual assault by appellant — inconsequential in a material point but it also does not necessarily take away her credibility at the witness stand. It is acknowledged that affidavits, usually taken *ex parte*, are often held unreliable for being incomplete and inaccurate.

4. **ID.; ID.; ID.; NOT EVERY WITNESS TO OR A VICTIM OF CRIME CAN BE SUPPOSED TO ALWAYS ACT IN CONFORMITY WITH THE USUAL EXPECTATIONS OF EVERYONE; CASE AT BAR.**— Maricar's failure to shout during the sexual assault is not all that strange. Not every witness to or victim of a crime can be supposed to always act in conformity with the usual expectations of everyone; in fact, there is no known and accepted standard therefor. Moreover, to attribute to her the sophistication of an adult woman would be to brush aside the fact that Maricar is just a young girl. Even then, it would be unreasonable to judge her actions on the traumatic experience by any norm of behavior that, if at all, may be expected from mature persons.

5. **ID.; ID.; PRESENTATION OF; THE PROSECUTION HAS THE PREROGATIVE TO DETERMINE WHICH EVIDENCE TO SUBMIT IN SUPPORT OF ITS OWN CASE.**— The prosecution is not bound to present any witness other than the victim herself, for as long as the testimony of the victim is credible, natural, convincing and otherwise consistent with human nature and the course of things, it may be the basis for a conviction. It is the prerogative of the prosecution, not much unlike that of the defense, to determine which evidence to submit in support of its own case.

6. **CRIMINAL LAW; RAPE; DEATH PENALTY; IMPOSED WHEN THE QUALIFYING CIRCUMSTANCES OF RELATIONSHIP**

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BETWEEN ACCUSED AND VICTIM AND THE LATTER'S AGE ARE INDUBITABLY PROVEN.— The death penalty for the crime herein charged may be imposed only when the twin qualifying circumstances of relationship between the appellant and the victim and the latter's age are indubitably proven; otherwise, the appellant can only be held liable for the crime of simple rape penalized by *reclusion perpetua.* The relationship between appellant and the victim has been adequately established. The prosecution evidence has shown that appellant is the grandfather of the victim, a fact that appellant himself has likewise maintained. The same cannot, however, be said with respect to the age of the victim.

7. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN APPRECIATING AGE OF RAPE VICTIMS, EITHER AS ELEMENT OF RAPE OR AS A QUALIFYING CIRCUMSTANCE.— In *People vs. Pruna,* the Court, after noting the divergent rulings on proof of age of the victim in rape cases, has set out certain guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. The primary evidence of age of the victim is her birth certificate. Age may also be proven by such authentic documents as a baptismal certificate and school records only in the absence of a birth certificate. If the aforesaid documents are 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 but only 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. . . . 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 under the circumstances heretofore mentioned, the *complainant's sole testimony can suffice provided that it is expressly and clearly admitted by the accused;* to repeat, "*provided that it is expressly and clearly admitted by the accused.*"

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8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— In consonance with prevailing jurisprudence, appellant must be made to pay ₱50,000.00 civil indemnity, an award that is outrightly due the victim of rape by the mere fact of its commission, ₱50,000.00 moral damages which is deemed concomitant with and which necessarily results from this odious criminal offense, and ₱25,000.00 exemplary damages which are awarded under Article 2230 of the Civil Code when the crime is committed with one or more aggravating circumstances such as relationship between the offender and the victim.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VITUG, *J.*:

For automatic review is the decision of the Regional Trial Court of Pasay City, Branch 109,[1] imposing the death penalty on convicted appellant Diosdado Corial *y* Requiez for the crime of qualified rape,[2] said to have been committed, according to the indictment, against his own minor granddaughter Maricar Corial.

At his arraignment, appellant pleaded "not guilty" to the charge;[3] trial ensued shortly thereafter.

The Case for the Prosecution. —

Maricar Corial was born to Marietta Corial, appellant's daughter, but she did not come to know her father (now said to be deceased). Maricar had two maternal sisters who lived with their mother and her "stepfather" in Balagtas, Bulacan. Maricar lived with her

[1] Presided by Judge Lilia C. Lopez.
[2] Information, Records, p. 9.
[3] Records, p. 16.

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grandparents, herein appellant and his wife Carmelita, in Pasay City.

One afternoon in July 1998, Maricar and appellant were left alone in the house. She was wearing a duster when her grandfather forced himself on her. He first inserted his penis into her private part, and then into her mouth and, finally, into her anus. When her mother, Marietta, arrived for Christmas in 1998, Maricar revealed the sexual abuse she had suffered from her grandfather. Maricar went first to the *barangay* hall where she lodged a complaint against appellant and then to the Philippine General Hospital where Maricar was physically examined. Still later, they repaired to the Pasay City Police station where Maricar executed a sworn statement (*salaysay*).

According to barangay captain Policarpio Tawat, Marietta and Maricar went to see him on the morning of 29 December 1998 at the *barangay* hall to seek assistance about the sexual assault. Along with a barangay *kagawad*, Tawat went to invite appellant to the *barangay* hall and then had a medical examination conducted on Maricar. When the medical examination proved positive for rape, Tawat turned appellant over to the Pasay City Police station.

The Provisional Medical Certificate,[4] dated 29 December 1998, showed the following findings of Dr. Mariella Sugue-Castillo; *viz*:

"GENITAL EXAMINATION:
External genitalia: normal
Hymen: crescentic hymen, no discharge seen, (+) mound at 7 o'clock position, (+) attenuation of posterior hymen
Anus: normal findings

"IMPRESSION
Disclosure of sexual abuse.
Genital finding of posterior hymen attenuation is suspicious for prior penetration injury"[5]

On the afternoon of 29 December 1998, SPO3 Milagros Carrasco was at the Women and Children Desk of the Pasay

[4] Exh. B.

[5] Records, p. 3.

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City Police station when Barangay Captain Tawat, Marietta, young Maricar, and Marietta's father arrived. After hearing the story, SPO3 Carrasco contacted social worker Erlinda Aguila to assist her in conducting the interview with Maricar. The child claimed that her maternal grandfather had sexually abused her. When confronted by SPO3 Carrasco, appellant remarked in Tagalog that he was just having a "taste" of the child (*tinitikman niya lang*).

The Case for the Defense. —

Testifying for her father, Nelly Corial stated that the 59-year-old appellant had six children, all of them female, by his wife Carmelita. He was a mason and construction worker employed by D. M. Consunji while her mother was a dressmaker. Her father was a responsible person with no vices. Her parents first took custody of Maricar because the latter's father, Francisco Amado and live-in partner of Marietta, would often inflict physical harm upon the child. After Francisco's death, Marietta resided in Balagtas, Bulacan, with yet another live-in partner, Rene Malinao, who both for a while took Maricar into their custody. Maricar was soon brought back to her grandparent's residence in Pasay City because of the maltreatment she had been getting from Malinao. According to Nelly, her parents loved Maricar, provided for her needs, and had her take up schooling at the Pio del Pilar Elementary School. After the case against appellant was filed, Marietta confided to Nelly her regrets (*nagsisisi*) for having filed the case. Marietta became "mentally deranged" and would harm herself for no reason at all. She concluded that Marietta's complaint was fabricated (*gawa-gawa lamang niya iyun*). Menchu, another daughter of appellant, also testified for him. Her residence in Pasay City was separated from appellant's house only by a wall. She confirmed that Maricar was brought to San Pedro, Laguna, at the instance of appellant who had wanted the child to have a vacation there.

Appellant denied having raped Maricar. He took the child away from her parents because they were unable to properly care for her. After Francisco's death, he took custody of Marietta

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and her child but only for four months when Marietta started to live with another partner in Bulacan. Marietta was a good daughter and a good mother but she was mentally ill and hardheaded (*suwail*). Marietta instigated the case against him because he had refused to allow her to live in their house in Pasay City. From Monday to Saturday, he would leave the house at six o'clock in the morning and return from work at seven o'clock in the evening. On Sundays, Nelly would always be at home.

The Assailed Decision. —

The trial court debunked the defense of denial interposed by appellant and the assertion that the rape case was only trumped-up by his daughter Marietta. It instead gave credence to what it so described as the "spontaneous and straightforward" testimony of Maricar Corial. The trial court adjudged:

"In view of all the foregoing, the Court opines that the prosecution has proven the guilt of the accused, Diosdado Corial *y* Requiez for rape as defined and penalized under Art. 266-A and 266-B of RA 8353 as amended, and the Court hereby sentences the accused, Diosdado Corial *y* Requiez to death and to indemnify the complainant in the amount of ₱75,000.00 and moral and exemplary damages in the amount of ₱50,000.00."[6]

Appellant, in this Court's review of his case, would consider erroneous his conviction for there was no opportunity for him and his granddaughter to be alone in their residence, particularly on Sundays when all the members of the household stayed home, and for Maricar's failure to make an outcry during the alleged sexual assault that could have easily attracted the attention of close kins whose house was only adjacent to theirs.

Quite often, this Court has held that rapists are not deterred from committing the odious act of sexual abuse by the mere presence nearby of people or even family members. Rape is committed not exclusively in seclusion;[7] lust, it is said, respects

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[6] *Rollo*, p. 33.

[7] *People vs. Cantuba*, G.R. No. 137454, 18 November 2002.

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neither time nor place. The trial court has valued Maricar's testimony as being "spontaneous and straightforward." Indeed, when a victim's testimony is straightforward and unflawed by any major inconsistency or contradiction, the same must be given full faith and credit.[8] Appellant capitalizes on the so-called disparity between the declaration of Maricar in her testimony in court and her sworn statement. He quotes a portion of her salaysay; *viz.*

> "06. *T*: *Natatandaan mo ba kung kailan at kung saan nangyari ang mga ginawa na sinasabi ng lolo mo sa iyo?*
> *S*: *Opo, simula po ng Grade II ako. Tapos naulit po nuong July 1998 at nauulit po pag araw ng Linggo pag wala ang lola ko at ang tita ko sa bahay namin. Kasi nagtratrabaho si Lolo ng Lunes hanggang Sabado. Pero pag wala siyang pasok ay ginagalaw din niya ako. Sa bahay namin sa Dolores, Pasay.* [9]

He then labels it as being inconsistent with her testimony on cross-examination; *viz*:

> "Atty. Casas:
> Now, it was in July 1998 which is finally the alleged (sic) contained in the information that you claimed you have been sexually molested, is that correct?
> "A: Yes, sir.
>
> "Q: And you told the Court in your direct examination that it was the first time that the same was committed?
> "A: Yes, sir."[10]

Not only is her assailed statement — that before the July 1998 incident she has also been subjected to sexual assault by appellant — inconsequential in a material point but it also does not necessarily take away her credibility at the witness stand. It is acknowledged that affidavits, usually taken *ex parte*, are often held unreliable for being incomplete and inaccurate.[11]

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[8] *People vs. Galigao*, G.R. Nos. 140961-63, 14 January 2003.

[9] Exh. C, Records, p. 7.

[10] TSN, 8 March 1999, p. 17.

[11] *People vs. Quillosa*, G.R. No. 115687, 17 February 2000, 325 SCRA 747.

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Maricar's failure to shout during the sexual assault is not all that strange. Not every witness to or victim of a crime can be supposed to always act in conformity with the usual expectations of everyone;[12] in fact, there is no known and accepted standard therefor. Moreover, to attribute to her the sophistication of an adult woman would be to brush aside the fact that Maricar is just a young girl. Even then, it would be unreasonable to judge her actions on the traumatic experience by any norm of behavior that, if at all, may be expected from mature persons.[13]

The Court is not persuaded by the claim of appellant that Marietta, the victim's mother, has fabricated the charge simply because appellant did not allow her to stay with him. It just is not a convincing tale. It is difficult to believe that Marietta would send his own father to jail, even to the gallows, sacrifice the honor and dignity of their family and subject her own child to untold humiliation and disgrace if she were motivated by any desire other than to bring to justice the person responsible for defiling her child.[14]

Appellant's claim that Marietta is deranged lacks unbiased evidentiary support. In any event, it hardly has any bearing on the credibility of her own daughter. Nor would the failure of the prosecution to present Marietta at the witness stand adversely affect the outcome of the case. The prosecution is not bound to present any witness other than the victim herself, for as long as the testimony of the victim is credible, natural, convincing and otherwise consistent with human nature and the course of things,[15] it may be the basis for a conviction. It is the prerogative of the prosecution, not much unlike that of the defense, to determine which evidence to submit in support of its own case.[16]

Maricar, on direct examination, testified thusly:

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[12] *People vs. Cabel*, 347 Phil. 82.

[13] *People vs. Razonable*, G.R. Nos. 128085-87, 12 April 2000, 330 SCRA 562.

[14] *People vs. Pruna*, G.R. No. 138471, 10 October 2002.

[15] *People vs. Silvano*, G.R. No. 141105-11, 8 March 2002.

[16] *People vs. Amamangpang*, 353 Phil. 815, 828 (1998).

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"Q: In the information filed to (sic) this Honorable Court, state that you are complaining for rape perpetrated by your Lolo Diosdado Corial that happened in July 1998. Do you still recall the date in July when this incident, the alleged incident happened?
"A: It was in July but I do not know or remember the date, sir.

"Q: But could you still recall if that was in the morning or lunch time or evening of July 1998?
"A: It was in the afternoon of July 1998.

"Q: And in what place where this incident happened regarding the complaint (sic) that you were sexually molested by your grandfather Diosdado Corial?
"A: The incident happened at 164 Dolores Street, Pasay City.

"Q: Was it inside your house?
"A: Yes, sir.

"Q: You earlier stated that the alleged rape happened in the afternoon, sometime in July 1998 inside your house at No. 164 Dolores Street, Pasay City. My question is, who were actually present inside your house when the incident happened?
"A: My grandmother was there, but she left.

"Q: And who was left behind in the afternoon of July 1998 when the incident happened?
"A: I and my grandfather was (sic) left inside the house.

"Q: And what actually were you doing in that afternoon of July 1998 when you were inside your house?
"A: None, sir.

"Q: What were you wearing then?
"A: I was wearing a duster, sir.

"Q: And so was there any unusual incident that happened in the month of July 1998? When you were left by your *Lola* inside your house and left with your *Lolo*?
"A: Yes, there was.

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"Q: Would you kindly tell to this Honorable Court, what happened to you on that month of July 1998?
"A: I was raped by my grandfather, sir.

"Q: Will you further explain to this Honorable Court, how were you raped by your grandfather?
"A: He inserted his penis into my private part, sir.

"Q: And what did you feel when your grandfather inserted his penis inside your private part?
"A: I felt pain, sir.

"Fiscal Barrera:
Besides inserting his penis at your private part, what else did your *Lolo* do to you?
"A: He was requesting me to suck his penis.

"Q: And did he actually put his penis inside your mouth?
"A: Yes, sir.

"Q: And what happen(ed) after he inserted his penis inside your mouth?
"A: He requested me to suck it, sir.

"Q: And what else happened aside (from) inserting his penis at your private part, and putting his penis inside your mouth sometime in the month of July 1998?
"A: He inserted his penis inside my anus.

"Q: What did you feel when he inserted his penis inside your anus in the month of July 1998?
"A: It was painful, sir.

"Q: What else happened besides inserting his penis inside your anus or "*Puwet*"?
"A: No more, sir.

"Q: And so after that, what did you do?

"A: When my mother arrived last Christmas, I told her what my grandfather did to me.

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"Q: You mean that was last Christmas 1998?
"A: Yes, sir.

"Q: And so what actually did you tell your mother Marietta Corial?
"A: I told her that my grandfather put his penis inside my vagina.[17]

On cross examination, she recounted:

"Q: You specifically mentioned the word rape when you were asked any unusual incident that happened on June 1998, is that correct?
"A: Yes, sir.

"Q: Who told you or how did you learn the word rape?
"A: Nobody told me, sir.

"Court:

Pero alam mo ba ang meaning nang rape? Alam mo ba ang ibig sabihin nang rape?
"A: Rape means '*Pang gagahasa.*'

"xxx xxx xxx

"Q: And because the penis of your *Lolo* was inserted inside your vagina, you felt pain?
"A: Yes, sir.

"Q: But you did not shout, is that correct?
"A: I was boxing him.

"xxx xxx xxx

"Atty. Casas:

You also mentioned that your *Lolo* raped you by placing his penis inside your mouth, is that correct?
"A: Yes, sir.

[17] TSN, 8 March 1999, pp. 5-7.

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"Q: Definitely, you did not like that idea or actuation by your *Lolo*?
"A: Yes, sir.

"xxx xxx xxx

"Q: By the way, Maricar, do you love your *Lolo* and *Lola*?
"A: I love my grandmother.

"Q: How about your grandfather, do you love him?
"A: I don't love him.

"Q: Why do you not love your grandfather?
"A: Because, he did something wrong to me."[18]

The trial court has found appellant guilty of having violated Sections 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 (Anti-Rape Law of 1997),[19] that read:

"Article 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.

"2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

"Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

"x x x xxx xxx

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[18] TSN, 8 March 1999, pp. 16-21.
[19] 94 O.G. 1507.

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

The death penalty for the crime herein charged may be imposed only when the twin qualifying circumstances of relationship between the appellant and the victim and the latter's age are indubitably proven; otherwise, the appellant can only be held liable for the crime of simple rape penalized by *reclusion perpetua*.[20] The relationship between appellant and the victim has been adequately established. The prosecution evidence has shown that appellant is the grandfather of the victim,[21] a fact that appellant himself has likewise maintained.[22] The same cannot, however, be said with respect to the age of the victim.

In *People vs. Pruna*,[23] the Court, after noting the divergent rulings on proof of age of the victim in rape cases, has set out certain guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. The primary evidence of age of the victim is her birth certificate. Age may also be proven by such authentic documents as a baptismal certificate and school records only in the absence of a birth certificate. If the aforesaid documents are 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 but*

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[20] *People vs. Flores*, G.R. No. 130713, 20 January 2000, 322 SCRA 779.

[21] TSN, 8 March 1999, p. 3.

[22] TSN, 10 May 1999, p. 10.

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

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only 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.

In the instant case, the prosecution did not offer the victim's certificate of live birth or any similar authentic document in evidence. The trial court, in convicting the appellant of the crime of rape and imposing upon him the death penalty even in the absence of the necessary documents, relied on the *sworn statemen*t of Marietta Corial, the mother of the victim, attesting to the fact that her daughter Maricar Corial was born on 26 May 1990.[24] Marietta Corial, however, did not testify in court. Such sworn statement was thus inadmissible in evidence under the hearsay rule,[25] and unless the affiant had been placed on the witness stand, the admission of the mere affidavit and the conviction of appellant on the basis thereof would violate the right of the accused to meet witness face to face.[26]

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 under the circumstances heretofore mentioned, the *complainant's sole testimony can suffice provided that it is expressly and clearly admitted by the accused;* to repeat, "*provided that it is expressly and clearly admitted by the accused.*"[27] There is no such declaration and admission on the part of appellant.

This Court cannot be overly strict as regards the proof of age of the victim particularly when, such as under Article 266-B of

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[24] *Rollo*, p. 83.

[25] *People vs. Alvarez*, G.R. No. 70446, 31 January 1989, 169 SCRA 730; *People vs. Santos*, G.R. No. L-62072, 11 November 1985, 139 SCRA 583; *People vs. Ramos*, 207 Phil. 269.

[26] *Id.*

[27] *Id.*

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the Revised Penal Code, as amended by Rep. Act No. 8353, age is an element of the crime that, if shown, would make it punishable by death. As so frequently expressed by the Court, the severity of the death penalty, which by its nature is irreversible when carried out, should behoove courts to apply the most exacting rules of procedure and evidence. The prosecution is not excused from discharging its burden even when the defense lets itself loose about it.

The trial court ordered appellant to "indemnify the complainant in the amount of ₱75,000.00 and moral and exemplary damages in the amount of ₱50,000.00." The award must be corrected. In consonance with prevailing jurisprudence, appellant must be made to pay ₱50,000.00 civil indemnity, an award that is outrightly due the victim of rape by the mere fact of its commission, ₱50,000.00 moral damages which is deemed concomitant with and which necessarily results from this odious criminal offense, and ₱25,000.00 exemplary damages which are awarded under Article 2230 of the Civil Code when the crime is committed with one or more aggravating circumstances[28] such as relationship between the offender and the victim.[29]

WHEREFORE, the judgment of the court *a quo* finding appellant Diosdado Corial *y* Requiez guilty of rape is AFFIRMED with MODIFICATION in that he is hereby only adjudged guilty of simple, not qualified, rape and sentenced to suffer, instead of the death penalty, the penalty of *reclusion perpetua*. The award of damages by the trial court is likewise modified by hereby ordering appellant to indemnify the victim the amounts of ₱50,000.00 civil indemnity, ₱50,000.00 moral damages and ₱25,000.00 exemplary damages. Costs *de officio*.

SO ORDERED.

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

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[28] *Id.*

[29] *People vs. Cabigting, supra.*