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WHEREFORE, the decision of the Regional Trial Court, Branch 29, of Cabanatuan City, in Criminal Case No. 5899-AF, finding, appellant Cirilo Magalona *GUILTY* beyond reasonable doubt of the complex crime of murder with double frustrated murder and double attempted murder and sentencing him to suffer the penalty of death is hereby *AFFIRMED* with modification. Appellant is ordered to pay the heirs of the victim, Resty Arimbuyutan, civil indemnity in the amount of Fifty Thousand Pesos (₱50,000); temperate damages in the amount of Fifteen Thousand Pesos (₱15,000) and moral damages in the amount of Fifty Thousand Pesos (₱50,000). Appellant is also ordered to pay the spouses Rosendo and Rosario Arimbuyutan actual damages in the amount of Six Thousand Nine Hundred Pesos and Five Centavos (₱6,900.05).

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this Decision, let the records of this case be forwarded to the Office of the President for possible exercise of the pardoning power.

Costs *de oficio*.

SO ORDERED.

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

Quisumbing and *Sandoval-Gutierrez, JJ.*, on official leave.

FIRST DIVISION

[G.R. No. 146590. July 17, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DOMINGO OPERARIO *y* GORIMO,** *appellant.*

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SYNOPSIS

Appellant was convicted of statutory rape and sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

The Court upheld the credibility of the young rape victim, ruling that the inconsistencies in her testimony were immaterial. There was no improper motive found to charge appellant of rape whose denial thereof cannot prevail as against the positive testimonies of the complainant and other witnesses. On the alleged lack of lacerated wounds on the victim's genitalia, the same did not negate rape. As to the insufficient allegation of the date of commission of the crime, the same was ruled irrelevant. At any rate, appellant was held guilty only of simple rape as the victim's age was not sufficiently established. Nevertheless, the proper penalty remains to be *reclusion perpetua* with ₱50,000 civil indemnity and ₱50,000 moral damages payable to the victim.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES.** – The trial court firmly believed that "the crime charged was perpetrated by the accused against the complainant as the testimony of Janice Cristino appears to be very credible despite minor inconsistencies." Besides, an ample margin of inaccuracies should be accorded to a child witness who was obviously gripped with tension on the witness stand.

2. **ID.; ID.; ID.; TESTIMONIES OF CHILD RAPE VICTIM, UPHELD.** – Well-settled is the rule that a conviction for rape may be based solely on the testimony of the victim, as long as the same is competent and credible. This is primarily because the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present. Besides, no woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full faith and credit, since when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed

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committed. Youth and immaturity are generally badges of truth and sincerity.

3. ID.; ID.; ID.; UPHELD IN THE ABSENCE OF ILL-MOTIVE. – Appellant alleges that complainant concocted the charge of rape against him because he shouted and scolded at her. This motive is too inconsequential *vis-à-vis* the grave nature of the accusation of rape. Likewise, his submission that his wife's relatives had gripes against him fails to persuade. The rule is that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full credence.

4. ID.; ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES. – Between the positive and categorical testimony of a rape victim, on one hand, and appellant's bare denial, on the other, the former generally prevails. Universally accepted is the rule that a denial is self-serving and cannot prevail over the declaration of a credible witness who testifies on affirmative matters.

5. CRIMINAL LAW; RAPE; NOT NEGATED BY LACK OF LACERATED WOUNDS IN THE WOMAN'S GENITALIA. – Corollarily, the lack of lacerated wounds does not negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape. For rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the *labia.* It suffices that there is proof of the entrance of the male organ with the *labia* of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. To repeat, the rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape. Nevertheless, in crimes against chastity, the medical examination of the victim's genitalia is not an indispensable element for the successful prosecution of a rape case. The medical examination and medical certificate are merely corroborative in character.

6. ID.; ID.; ELEMENTS; DATE OF COMMISSION OF RAPE; NOT MATERIAL. – The allegation in the information that

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the rape was committed on or about September 30, 1997 but was eventually proved to have been actually committed on October 1, 1997, would not materially affect the disposition and outcome of the instant case. The date of commission is not a material element of the crime of rape. When the information alleged that the crime was committed "on or about September 30, 1997," it sufficiently apprised appellant of the charges against him. The allegation provided the parameters necessary for the accused to intelligently and completely prepare his defense.

7. **ID.; ID.; STATUTORY RAPE NOT PRESENT WHERE MINORITY OF THE VICTIM NOT ESTABLISHED.** – We are unable to agree with the trial court that the crime committed was statutory rape. Notably, while the information alleged that Janice was a minor, eight years of age, at the time of the commission of the crime, the prosecution failed to present complainant's birth certificate or other similar authenticated documents such as her baptismal certificate and school records.

8. **ID.; ID.; MINORITY; GUIDELINES.** – In *People v. Invencion*, citing *People v. Pruna*, the following guidelines in appreciating age as an element of the crime or as a qualifying circumstance was laid down, to wit: 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. 4. In the absence of a certificate

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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. 6. The trial court should always make a categorical finding as to the age of the victim.

9. **ID.; ID.; FORCE AND INTIMIDATION; APPRECIATED IN THE PRESENCE OF THREAT AND MORAL ASCENDANCY.** – The element of force or intimidation was established beyond reasonable doubt by the prosecution. More specifically, it was proved that appellant threatened to harm her if she did not transfer to his bedroom. He also warned her to stop crying or else he will slap her. Considering that he exercised moral ascendancy over complainant because she regarded him as her own father, appellant's acts were sufficient to create fear in the mind of the victim which compelled her to submit to his sexual abuses. Verily, force and intimidation were employed by appellant to consummate the act of rape on complainant.

10. **ID.; ID.; PROPER PENALTY AND CIVIL DAMAGES.** – Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which was the law in effect at the time of commission of the crime in the instant case, provided in pertinent part: *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 and intimidation; x x x. The crime of rape shall be punished by *reclusion perpetua.* x x x . Hence, the trial court correctly imposed upon appellant the penalty of *reclusion perpetua.* Likewise, it correctly awarded the amount of ₱50,000.00 as civil indemnity. However, the award of ₱30,000.00 as moral damages should be increased to ₱50,000.00 in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Badando, Encinas & Garcia for accused-appellant.

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DECISION

YNARES-SANTIAGO, *J.*:

Appellant Domingo Operario y Gorimo was charged with rape in an Information that reads:

> That on or about the 30th day of September 1997 in Quezon City, Philippines, the said accused by means of force and intimidation to wit: by then and there willfully, unlawfully and feloniously remove the shorts and panty of the complainant, a minor, 8 years of age and thereafter inserted his penis inside the vagina of said complainant and thereafter have carnal knowledge of her against her will and without her consent.
>
> CONTRARY TO LAW.[1]

On arraignment, appellant pleaded "not guilty." Trial on the merits thereafter followed.

After her father died, eight (8)-year old Janice Cristino moved in with her Aunt Norma and her husband, appellant Domingo Operario, at their house at Bayanihan Street, Barangay Commonwealth, Quezon City. Complainant was then a Grade 2 pupil at the Fairview Elementary School. After her classes in the morning, she would help her aunt tend their rolling store on Dahlia Street, Quezon City.

On September 30, 1997, at 7:00 p.m., complainant went home with her Aunt Norma and cousins Daday and Tata. They found appellant drinking gin. Norma berated her husband and they had a heated argument. After dinner, Norma slept in the living room while appellant slept in their bedroom. Janice slept in the other bedroom with Daday and Tata.

The following morning, Norma, Daday and Tata left for the store. Complainant and appellant were left alone in the house. When complainant woke up, appellant ordered her to transfer to his room. He threatened to hurt her if she did not obey him.

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[1] Criminal Case No. Q-97-73333; Records, p. 1.

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When complainant entered the bedroom, appellant forcefully removed her shorts, t-shirt and panties. Then he took off his clothes and lay on top of complainant. She cried in pain as appellant's penis penetrated her organ. He inserted his middle finger into her vagina which caused her more pain. After sexually abusing her, he gave complainant money and ordered her to dress up.

Complainant narrated her ordeal to her cousin Michelle who, in turn, informed her grandmother, Teodorica del Rosario. Together, they accompanied complainant to the police station to report the incident. Dr. Ma. Cristina Freyra of the PNP Crime Laboratory examined complainant and found that her private organ indicated a "congested and abraded *labia minora*, abraded posterior fourchette xxx and congested but intact hymen." The doctor concluded that Janice was still "in virgin state physically."[2] She explained that the word "congested" signifies "discoloration on the area affected brought about by rubbing of a hard object like an erect penis."[3]

In his defense, appellant denied the charges and claimed that there was never any opportunity for him to rape his niece on the night of September 30, 1997. He alleged that at the time of the incident, complainant slept inside a room together with her two cousins, while he slept inside his bedroom.

Norma corroborated her husband's testimony, saying that after their quarrel, appellant went to the bedroom to sleep. The next morning, she woke up Janice at 5:00 a.m. and gave her a bath. Norma testified that she had been personally bathing Janice because she had been complaining that her private parts were itchy. Norma then brought Janice to school.

On November 29, 2000 the Regional Trial Court of Quezon City, Branch 86, rendered a decision[4] convicting appellant of rape. The dispositive portion reads:

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[2] Exhibit "A", Records, p. 9.

[3] Decision, Records, p. 21.

[4] Penned by Judge Teodoro A. Bay; *Rollo*, pp. 17-27.

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WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused Domingo Operario *y* Gorimo guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 and the Court hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the private complainant, Janice Cristino, the amount of ₱50,000.00 as civil indemnity and moral damages in the amount of ₱30,000.00.

SO ORDERED.[5]

Appellant appealed the decision on the following assignment of errors:

1. The trial court erred in rendering a decision of conviction based upon an accusation which was later on declared by no less than the alleged victim, Janice Cristino, that it did not happen at all because during the alleged dates of occurrence of the imputed crime, the accused did not even have the opportunity to get near her;

2. The trial court erred in making an unfounded conclusion that the itchiness of the genitals of the victim indicates that she was sexually abused not far from the date when she filed the complaint and in declaring that it is inconceivable that an eight year old child would fabricate or concoct a story of defloration against the person she considered as her parents, if there is no truth to her allegation, without considering the unrebutted circumstances that there was no evidence of molestation as admitted by no less than the young girl Janice Cristino, and because itchiness of the vagina is not an evidence that a girl or woman had been sexually molested.[6]

Appellant basically anchors his defense on Janice's admission during cross-examination that there was no opportunity for her and appellant to get near each other either on September 30, 1997 or on October 1, 1997.[7] Nonetheless, we are fully cognizant that leading questions during cross-examination, while designed to test the credibility of the witness and her testimony, traps complainant into answering either with a "yes" or a "no." By

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[5] *Id.*, at pp. 26-27.

[6] *Id.*, p. 50.

[7] TSN, February 4, 1998, pp. 10-11.

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its very nature, leading questions are suggestive. The complainant in this case was of a very young age and was vulnerable to suggestion. It is, therefore, not surprising that she answered all the leading questions propounded on her in the affirmative.

The trial court firmly believed that "the crime charged was perpetrated by the accused against the complainant as the testimony of Janice Cristino appears to be very credible despite minor inconsistencies."[8] Besides, an ample margin of inaccuracies should be accorded to a child witness who was obviously gripped with tension on the witness stand.[9]

Moreover, the trial court found that Norma's testimony to the effect that she personally brought Janice to school on October 1, 1997 before proceeding to the market, was inconsistent with the testimony of another defense witness, Evelyn Silbosa, who testified that nobody accompanied complainant to school on October 1, 1997. As correctly observed by the trial court, "their apparently biased testimony could not overcome the straightforward, sincere and honest testimony of Janice who could not have fabricated or concocted the charges to the prejudice of her own benefactor who had been acting as her second parent and who had considered her as his own daughter."

In her direct examination, Janice testified thus:

FISCAL SANTOS:

Q. What happened when you were left alone with Domingo?
A. When I woke up, he wanted me to transfer to his room.

Q. Did you transfer to the room of Domingo?
A. He just called for me and told me that if I will not follow his orders he will hurt me, sir.

Q. So, you transferred to the room of Domingo?
A. Yes, sir.

Q. What happened there?
A. He undressed me, sir.

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[8] Decision, Records, p. 215.

[9] *People v. Iluis*, G.R. No. 145995, 20 March 2003.

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Q. What were you wearing at that time?
A. I was wearing shorts and t-shirt.

Q. What about panty?
A. Yes, sir. I was wearing panty.

Q. What apparel did Domingo remove from you?
A. My short pants.

Q. What about the panty?
A. Yes, sir. Also the panty.

Q. What happened after that?
A. He also removed his short pants and his brief.

Q. Then, what transpired?
A. He forcibly tried to insert his penis on my vagina, sir.

Q. What did you feel, if any?
A. It hurt me, sir, and I was crying.

Q. What happened after that?
A. He told me that if I will continue to cry, he will slap me and then, he inserted his finger on my vagina.

Q. What finger?
A. His middle finger, sir.

Q. What did you feel?
A. I just kept on crying because it hurt me.

Q. What happened after that?
A. He asked me to wear my clothes again and then he gave me money, sir.

Q. After that, what happened?
A. He asked me to transfer to the living room sir.[10]

Well-settled is the rule that a conviction for rape may be based solely on the testimony of the victim, as long as the same is competent and credible. This is primarily because the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.[11]

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[10] TSN, January 6, 1998, pp. 13-15.

[11] *People v. Antonio*, G.R. No. 145726, 26 March 2003.

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Besides, no woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full faith and credit, since when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.[12]

Appellant alleges that complainant concocted the charge of rape against him because he shouted and scolded at her on the night of September 30, 1997. However, we find this motive too inconsequential *vis-à-vis* the grave nature of the accusation of rape. Likewise, his submission that his wife's relatives had gripes against him fails to persuade. The rule is that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full credence.[13]

Between the positive and categorical testimony of a rape victim, on one hand, and appellant's bare denial, on the other, the former generally prevails. Universally accepted is the rule that a denial is self-serving and cannot prevail over the declaration of a credible witness who testifies on affirmative matters.[14]

Appellant further submits that the itchiness in Janice's sexual organ is not an indication that she was raped. He cites the findings in the Medico-Legal report indicating a reddening or a discoloration of the *labia minora* and stating that Janice was in a virgin state. He also points to Dr. Freyra's testimony to the effect that she was not sure what kind of hard object may have caused the discoloration or abraded state of complainant's *labia minora*.[15]

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[12] *People v. Serado*, G.R. No. 138664, 6 August 2002.

[13] *People v. Invencion*, G.R. No. 131636; 5 March 2003.

[14] *People v. Briones*, G.R. No. 140640, 15 October 2002.

[15] TSN, January 13, 1998, p. 16.

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Appellant's submissions were debunked by the testimony of Dr. Freyra on cross-examination, saying that if the reddening of complainant's organ was caused by her scratching, then the congestion and abrasion would have been found on the outer part, or *labia majora*, and not the *labia minora*.

Corollarily, the lack of lacerated wounds does not negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape.[16] For rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the *labia*. It suffices that there is proof of the entrance of the male organ with the *labia* of the *pudendum* of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. To repeat, the rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape.[17]

Nevertheless, in crimes against chastity, the medical examination of the victim's genitalia is not an indispensable element for the successful prosecution of a rape case. The medical examination and medical certificate are merely corroborative in character.[18] These are only meant to strengthen the prosecution evidence but are not the decisive factor in the successful prosecution of a rape case.

The allegation in the information that the rape was committed on or about September 30, 1997 but was eventually proved to have been actually committed on October 1, 1997, would not materially affect the disposition and outcome of the instant case. The date of commission is not a material element of the crime of rape. When the information alleged that the crime was committed "on or about September 30, 1997,"[19] it sufficiently

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[16] *People v. Dy*, G.R. Nos. 115236-37, 29 January 2002.

[17] *People v. Dy, supra.*

[18] *People v. Iluis, supra.*

[19] *Op. cit.*, note 1.

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apprised appellant of the charges against him. The allegation provided the parameters necessary for the accused to intelligently and completely prepare his defense.

However, we are unable to agree with the trial court that the crime committed was statutory rape. Notably, while the information alleged that Janice was a minor, eight years of age, at the time of the commission of the crime, the prosecution failed to present complainant's birth certificate or other similar authenticated documents such as her baptismal certificate and school records.

In *People v. Invencion*,[20] citing *People v. Pruna*, the following guidelines in appreciating age as an element of the crime or as a qualifying circumstance was laid down, to wit:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

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

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

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

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[20] G.R. No. 131636, 5 March 2003.

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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.

6. The trial court should always make a categorical finding as to the age of the victim.

This notwithstanding, Janice's age is no longer significant as the element of force or intimidation was established beyond reasonable doubt by the prosecution. More specifically, it was proved that appellant threatened to harm her if he did not transfer to his bedroom. He also warned her to stop crying or else he will slap her. Considering that he exercised moral ascendancy over complainant because she regarded him as her own father, appellant's acts were sufficient to create fear in the mind of the victim which compelled her to submit to his sexual abuses. Verily, force and intimidation were employed by appellant to consummate the act of rape on complainant.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which was the law in effect at the time of commission of the crime in the instant case, provided in pertinent part:

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 and intimidation;

xxx xxx xxx

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

xxx xxx xxx

Hence, the trial court correctly imposed upon appellant the penalty of *reclusion perpetua.* Likewise, it correctly awarded

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the amount of ₱50,000.00 as civil indemnity. However, the award of ₱30,000.00 as moral damages should be increased to ₱50,000.00 in line with prevailing jurisprudence.[21]

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Quezon City, Branch 86, in Criminal Case No. Q-97-73333, finding appellant guilty beyond reasonable doubt of the crime of rape, is *AFFIRMED* with *MODIFICATION*. Appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the victim the amount of ₱50,000.00 as civil indemnity and the increased amount of ₱50,000.00 as moral damages.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C. J., Vitug, Carpio, and *Azcuna, JJ.*, concur.

SECOND DIVISION

[G.R. No. 114951. July 18, 2003]

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, EX-OFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF VALENZUELA, METRO MANILA, CLERK OF COURT AND EX-OFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF PASIG, METRO MANILA and JUDGE TEOFILO GUADIZ, JR., Presiding Judge, Regional Trial Court of Makati, Metro Manila, Branch 147, *petitioners, vs.* **COURT OF APPEALS, LEY CONSTRUCTION & DEVELOPMENT CORP., LC BUILDERS & DEVELOPERS, INC., METRO CONTAINER CORP., MANUEL T. LEY and JANET C. LEY,** *respondents.*

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[21] *People v. Rullepa*, G.R. No. 131516, 5 March 2003.