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WHEREFORE, the decision of the Regional Trial Court, Apayao, Branch 26, in Criminal Case No. 9-98, is *AFFIRMED with MODIFICATION*. Appellant Gabriel Annibong *y* Inggao is declared guilty of murder, but his sentence is hereby reduced to *reclusion perpetua*. Further, he is ordered to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity, ₱1,620,000.00 for lost earnings, ₱10,000.00 as nominal damages, ₱50,000.00 as moral damages, and ₱20,000 as exemplary damages. Costs *de oficio*.

SO ORDERED.

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

EN BANC

[G.R. No. 140781. May 8, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDUARDO METIN,** *appellant.*

SYNOPSIS

For the act of bestiality committed by appellant against his fourteen-year old daughter, Emelyn, which resulted to the birth of a baby boy, he was convicted by the trial court of the crime of qualified rape and the penalty of death was imposed upon him. Hence, this automatic review.

The Court found no reason to doubt that private complainant was telling the truth when she declared that her father raped her. Her testimony fully inspired belief. No young girl, indeed,

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would concoct a sordid tale of so serious as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of public trial, if her motive were other than a fervent desire to seek justice.

However, the Court disagreed with the trial court on the penalty imposed. It imposed the death penalty following Article 335 of the Revised Penal Code, as amended by Section 11 by R.A. 7659, because private complainant was only fourteen (14) years old at the time of the rape and the offender is her father. The trial court erred when it took judicial notice of private complainant's age to be fourteen years. It should have required competent evidence, such as her birth certificate, as proof of the victim's actual age at the time of the offense. Accordingly, appellant can be convicted only of simple rape, the appropriate penalty for which is *reclusion perpetua.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURT WILL NOT DISTURB TRIAL COURT'S ASSESSMENT THEREOF.** — The trial court found the testimony of private complainant to be straightforward, credible and convincing. It characterized her appearance on the witness stand as a picture of a daughter pained with an experience so revolting that she would not care anymore if, in her demand for justice, the life of the accused, her own father, would be placed in peril. We have examined the record of the case and we find no reason to doubt the trial court's assessment of private complainant's credibility. We ordinarily defer to the assessment and evaluation given by the trial court, for only trial courts are in the unique position to observe the witness' deportment while testifying on the witness stand. Only when there is arbitrariness or oversight of some fact or circumstance of weight shall we depart from the trial court's factual conclusions.

2. **ID.; ID.; ID.; NO YOUNG GIRL WOULD CONCOCT A SORDID TALE OF RAPE AT THE HANDS OF HER OWN FATHER.** — [W]e find no reason to doubt that private complainant was telling the truth when she declared that her father raped her. Her testimony fully inspires belief. No young girl, indeed, would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject

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herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.

3. **ID.; ID.; ID.; ACCUSED'S CLAIM THAT PRIVATE COMPLAINANT WAS USED BY HER MOTHER'S RELATIVES TO DRIVE HIM OUT OF THEIR DWELLING IS TOO FLIMSY.** — Appellant's claim that private complainant was only being used by her mother's relatives to drive him out of their dwelling is too flimsy to be credible.

4. **ID.; ID.; ALIBI; TO PROSPER, IT MUST BE SHOWN THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO BE PRESENT AT THE PLACE OF THE CRIME AT THE TIME OF ITS COMMISSION; NOT ESTABLISHED IN CASE AT BAR.** — Appellant's sole defense of alibi and denial, *i.e.*, that he was then on a drinking spree with his relatives, must likewise fail. It is not enough to prove that the accused was somewhere else when the offense was committed. It must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. Here, he claims to be somewhere only two and one-half meters away from the rape scene. Assuming that he was really out there drinking, he could have easily returned home to commit the rape and then rejoin his drinking buddies, without any of them the wiser.

5. **CRIMINAL LAW; RAPE; LUST IS NO RESPECTER OF TIME AND PLACE.** — Appellant's contention that he could not have raped the private complainant with so many persons living in their house is *non sequitur*. It need not be emphasized here that lust is no respecter of time and place. That observation has now become a platitude.

6. **ID.; ID.; FORCE; ESTABLISHED IN CASE AT BAR.** — The proposition that private complainant consented to appellant's sexual advances, negating force and intimidation, is too trite to be seriously considered. That there was force and intimidation was clear from the testimony of private complainant. There was force when appellant pressed Emelyn to the floor despite her plea of *"Huwag po."*

7. **ID.; ID.; INTIMIDATION; MUST BE VIEWED IN LIGHT OF THE VICTIM'S PERCEPTION AND JUDGMENT AT THE TIME OF RAPE.** — There was intimidation when he threatened to kill her if she shouted. Intimidation must be viewed in light of the

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victim's perception and judgment at the time of rape and not by any hard and fast rule. It is enough that it produces fear—fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Here, private complainant succumbed to appellant's abuses out of fear, not only for herself but also for the life and safety of her mother, her siblings and her grandparents. Such fear is heightened by the fact that appellant, when intoxicated, has the habit of grabbing a bolo.

8. **ID.; ID.; MORAL ASCENDANCY OF FATHER OVER HIS DAUGHTER COULD NOT BE DISCOUNTED.** — [T]he moral ascendancy of appellant over the private complainant could not be discounted. To constitute sexual congress with a girl of minor age into a crime of incestuous rape, it is sufficient that the accused exercised a pervasive influence and control over the victim. In this case, we have no doubt at all that rape has been committed.

9. **ID.; ID.; SPECIAL QUALIFYING CIRCUMSTANCES; VICTIM'S MINORITY AND HER RELATIONSHIP TO THE OFFENDER; VICTIM'S ACTUAL AGE AT THE TIME OF THE OFFENSE MUST BE SUPPORTED BY COMPETENT EVIDENCE; NOT PRESENT IN CASE AT BAR.** — [W]e are unable to agree with the trial court on the propriety of the penalty imposed. It imposed the death penalty following Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. 7659, because private complainant was only fourteen (14) years old at the time of the rape and the offender is her father. But it must be emphasized that the circumstances of minority and relationship mentioned in Article 335 are special qualifying circumstances which must be alleged in the information and duly proven by the prosecution in order to warrant the imposition of the death penalty. Here, although the minority of the victim was properly alleged in the information, there is insufficient evidence of private complainant's age. The trial court erred when it took judicial notice of private complainant's age to be fourteen. It should have required competent evidence, such as her birth certificate, as proof of the victim's actual age at the time of the offense.

10. **ID.; ID.; ID.; ID.; TRIAL COURT COULD ONLY TAKE JUDICIAL NOTICE OF THE VICTIM'S MINORITY WHEN THE LATTER IS TEN YEARS OLD OR BELOW.** — In *People v.*

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Rivera, we held that the trial court could only take judicial notice of the victim's minority when the latter is, for example, 10 years old or below. Otherwise, the prosecution has the burden of proving the victim's age at the time of the rape. While it is true that in this case the defense admitted the medical certificate dated August 29, 1997, which indicated that private complainant was fifteen years old at the time of the examination, we held in *Rivera* that the absence of denial on the part of appellant does not excuse the prosecution from discharging its burden. Besides, the medical certificate is not the primary evidence of the date of birth of party examined. In this case, judicial notice of the age of the victim is inappropriate, despite the defense counsel's admission of the medical certificate.

11. ID.; ID.; ID.; ID.; HEARING IS REQUIRED BEFORE COURTS CAN TAKE JUDICIAL NOTICE OF VICTIM'S AGE. — As required by Section 3, Rule 129, of the Rules of Court in any other matters such as age, a hearing is required before courts can take judicial notice of such fact. Generally, the age of the victim may be proven by the birth or baptismal certificate of the victim, or in the absence thereof, upon showing that said documents were lost or destroyed, by other documentary or oral evidence sufficient for the purpose. Here, neither her birth certificate or baptismal certificate nor any school record was presented by the prosecution to prove the age of private complainant at the time of the rape. The prosecution having failed to present evidence as to private complainant's age, appellant can be convicted only of simple rape, the appropriate penalty for which is *reclusion perpetua.*

12. ID.; ID.; CIVIL LIABILITY; ₱50,000 AS CIVIL INDEMNITY, ₱50,000 AS MORAL DAMAGES AND ₱25,000 AS EXEMPLARY DAMAGES AWARDED IN CASE AT BAR. — The award of civil indemnity in the amount of ₱75,000 made by the trial court ought also to be modified. Such amount can only be awarded if the crime of rape was effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws. Since the penalty is less than capital, the civil indemnity must be reduced to ₱50,000. But moral damages in the amount of ₱50,000 must be awarded in favor of private complainant, without need of showing that she suffered from mental, physical, and psychological trauma as these are too obvious to require recital

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by the victim during trial. Furthermore, pursuant to prevailing jurisprudence, exemplary damages in the amount of ₱25,000 must be awarded. In rapes committed by fathers against their daughters, such award may be imposed to serve as a deterrent against aberrant elders similarly disposed to commit the offense.

APPEARANCES OF COUNSEL

Solicitor General for appellee.
Euclides G. Forbes for appellant.

D E C I S I O N

QUISUMBING, *J.*:

For automatic review is the judgment,[1] dated September 22, 1999, of the Regional Trial Court of Lucena City, Branch 53, in Criminal Case No. 97-692 convicting appellant Eduardo Metin of qualified rape, sentencing him to death, and ordering him to pay the amount of ₱75,000 as civil indemnity and the costs.

The information against appellant reads:

That on or about the 31st day of December 1996, at Poblacion, in the Municipality of Candelaria, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Emelyn Metin, his own daughter, a minor, 14 years of age, against her will.[2]

When arraigned, appellant pleaded not guilty and trial ensued thereafter.

The prosecution presented private complainant Emelyn Metin and her mother, Nenita Metin.

EMELYN METIN, who was 16 years old when she testified, recounted that on December 31, 1996, at 11:00 p.m., she was

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[1] *Rollo*, pp. 10-15.
[2] *Id.* at 10.

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awakened by someone caressing her breast and touching her private parts and saw it was the appellant.[3] She sat up but he pressed her to the floor, removed her shorts and panty.[4] She pleaded, "*Huwag po*," ("Please don't") but appellant replied, "*Huwag maingay at madali lang*" ("Keep it quiet and this will be easy").[5] Appellant took off his brief and mounted her. He parted her thighs, inserted his penis into her vagina, and made thrusting motions until he ejaculated.[6] He warned Emelyn not to tell anyone about the incident and left her crying.

According to Emelyn, the coitus happened inside one of the two rooms on the second floor of their house in Nadres Street, Candelaria, Quezon, where the Metins lived with other relatives.[7] Her younger siblings were then asleep[8] while her mother, Nenita, was in the kitchen on the ground floor preparing food for the New Year with her grandparents.[9] According to Emelyn, she kept the abuse to herself for fear of appellant.[10]

Seven months later, her bulging stomach became conspicuous[11] and her mother asked her why she was gaining weight. Emelyn replied she was merely getting stouter.[12] Later, without the knowledge of her mother, her grandmother accompanied her to Dr. Ona, who diagnosed Emelyn to be eight months pregnant.[13] They proceeded to her grandaunt's[14] house and there she revealed

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[3] TSN, 23 September 1998, p. 5.
[4] *Id.* at 5-6.
[5] *Id.* at 6.
[6] *Id.* at 6-7.
[7] *Id.* at 3-4.
[8] *Id.* at 4.
[9] *Id.* at 7-8.
[10] *Id.* at 8.
[11] *Ibid.*
[12] *Ibid.*
[13] *Id.* at 9.
[14] *Ibid.*

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that it was appellant who got her pregnant.[15] Later, her mother was informed of her condition.[16]

On September 16, 1997, Emelyn gave birth to a son, but gave him away immediately after birth to her mother's kin.[17]

On cross-examination, Emelyn explained that she never told anyone about the incident even while appellant was away for fear that the latter would kill the entire household as he has the habit of getting hold of a bolo whenever he was drunk.[18]

Emelyn's mother, NENITA METIN, testified that she is married to Eduardo Metin and has five children with him, Emelyn being the eldest.[19] Upon learning that Emelyn was pregnant, she confronted her if this was true.[20] Emelyn was silent at first, but upon Nenita's prodding, she revealed that appellant got her pregnant.[21] With her mother, Nenita brought Emelyn to the Candelaria police station where they filed a complaint against appellant and proceeded to the Candelaria Community Hospital for Emelyn's check-up.[22] Dr. Ma. Isabel Flores Ona found:

1. Abdomen: globular/palpable fetal movements
2. External examination: Normal looking genitalia
3. Internal examination: Hymenal laceration at 3, 9 and 6 o'clock old. Admits one finger.[23]

The lone witness for the defense was appellant EDUARDO METIN, who denied raping Emelyn. He testified that at 8:00 p.m. on December 31, 1996, he was having a drinking session

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[15] *Id.* at 10.
[16] *Ibid.*
[17] *Id.* at 11.
[18] TSN, 28 October 1998, p. 9.
[19] *Id.* at 11.
[20] *Id.* at 12.
[21] *Id.* at 13.
[22] *Id.* at 13-14.
[23] Records, p. 8.

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with his nephew, Edgar Benitez,[24] at the latter's house two and one-half (2½) meters away from the rape scene.[25] According to him, he went home at 11:50 p.m.[26] and had *media noche* with his wife, children and parents-in-law.[27] At 12:30 a.m. the following day, he went to their neighbor's house, returned home after fifteen minutes and went to sleep.[28]

He pointed out that there were seventeen (17) of them living under the same roof and he could not have raped his daughter in their presence.[29] He also claimed that his in-laws concocted the story because they had long wanted to drive him out of the house where they were staying.[30]

On September 22, 1999, the trial court handed down its verdict of conviction. The *fallo* reads:

> WHEREFORE, premises considered, the Court finds Eduardo Metin guilty beyond reasonable doubt of the crime of rape and he is sentenced to suffer the supreme penalty of death and he is ordered to indemnify Emelyn Metin in the sum of ₱75,000.00 and to pay the costs.
>
> SO ORDERED.[31]

Hence, the instant automatic review. Appellant imputes the following errors to the trial court:

I - THE COURT *A QUO* ERRED IN NOT FINDING THAT THE PROSECUTION HAS UTTERLY FAILED TO PROVE THE CRIME CHARGED IN THE INFORMATION.

II - THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED BECAUSE HIS CONVICTION VIOLATED HIS CONSTITUTIONAL

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[24] TSN, 20 January 1999, p. 3.

[25] *Id.* at 4.

[26] *Ibid.*

[27] *Id.* at 5.

[28] *Id.* at 5-6.

[29] *Id.* at 5, 6.

[30] *Id.* at 7.

[31] *Rollo*, p. 15.

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RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM.[32]

To restate, the issues are: (1) whether or not the prosecution proved the elements of rape beyond reasonable doubt and (2) whether or not the death penalty was properly imposed.

The trial court found the testimony of private complainant to be straightforward, credible and convincing. It characterized her appearance on the witness stand as a picture of a daughter pained with an experience so revolting that she would not care anymore if, in her demand for justice, the life of the accused, her own father, would be placed in peril.[33]

We have examined the record of the case and we find no reason to doubt the trial court's assessment of private complainant's credibility. We ordinarily defer to the assessment and evaluation given by the trial court, for only trial courts are in the unique position to observe the witness' deportment while testifying on the witness stand. Only when there is arbitrariness or oversight of some fact or circumstance of weight shall we depart from the trial court's factual conclusions.

In this case, we find no reason to doubt that private complainant was telling the truth when she declared that her father raped her. Her testimony fully inspires belief. No young girl, indeed, would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[34]

Appellant's claim that private complainant was only being used by her mother's relatives to drive him out of their dwelling is too flimsy to be credible.

Appellant's sole defense of alibi and denial, *i.e.,* that he was then on a drinking spree with his relatives, must likewise fail. It is not enough to prove that the accused was somewhere else when

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[32] *Id.* at 31.

[33] Records, p. 95.

[34] *People v. Bernabe*, G.R. No. 141881, 21 November 2001, p. 4.

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the offense was committed. It must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[35] Here, he claims to be somewhere only two and one-half meters away from the rape scene. Assuming that he was really out there drinking, he could have easily returned home to commit the rape and then rejoin his drinking buddies, without any of them the wiser.

Appellant's contention that he could not have raped the private complainant with so many persons living in their house is *non sequitur.* It need not be emphasized here that lust is no respecter of time and place.[36] That observation has now become a platitude.

The proposition that private complainant consented to appellant's sexual advances, negating force and intimidation, is too trite to be seriously considered. That there was force and intimidation was clear from the testimony of private complainant. There was force when, appellant pressed Emelyn to the floor despite her plea of "*Huwag po.*"[37] There was intimidation when he threatened to kill her if she shouted.[38] Intimidation must be viewed in light of the victim's perception and judgment at the time of rape and not by any hard and fast rule. It is enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident.[39] Here, private complainant succumbed to appellant's abuses out of fear, not only for herself but also for the life and safety of her mother, her siblings and her grandparents.[40] Such fear is heightened

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[35] *People v. Verde*, G.R. No. 119077, 10 February 1999, 302 SCRA 690, 705.

[36] *People v. Labayne*, G.R. No. 132170, 20 April 2001, 357 SCRA 184, 198.

[37] TSN, 23 September 1998, p. 6.

[38] TSN, 28 October 1998, p. 8.

[39] *People v. Tabugoca,* G.R. No. 125334, 28 January 1998, 285 SCRA 312, 332.

[40] TSN, 28 October 1998, p. 9.

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by the fact that appellant, when intoxicated, has the habit of grabbing a bolo.[41]

Moreover, given the circumstances in this case, the moral ascendancy of appellant over the private complainant could not be discounted. To constitute sexual congress with a girl of minor age into a crime of incestuous rape, it is sufficient that the accused exercised a pervasive influence and control over the victim.[42] In this case, we have no doubt at all that rape has been committed.

However, we are unable to agree with the trial court on the propriety of the penalty imposed. It imposed the death penalty following Article 335[43] of the Revised Penal Code, as amended by Section 11 of R.A. 7659, because private complainant was only fourteen (14) years old at the time of the rape and the offender is her father. But it must be emphasized that the circumstances of minority and relationship mentioned in Article 335 are special qualifying circumstances which must be alleged in the information and duly proven by the prosecution in order to warrant the imposition of the death penalty.[44] Here, although the minority of the victim was properly alleged in the information, there is insufficient evidence of private complainant's age. The trial court erred when it took judicial notice of private complainant's age to be fourteen. It should have required competent, evidence, such as her birth certificate, as proof of the victim's actual age at the time of the offense.

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[41] *Ibid.*

[42] *People v. Tabugoca, supra,* at 330.

[43] ART. 335. *When and how rape is committed.* —

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

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

x x x x x x xxx

[44] *People v. Lor*, G.R. No. 133190, 19 July 2001, 361 SCRA 402, 413.

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In *People v. Rivera*,[45] we held that the trial court could only take judicial notice of the victim's minority when the latter is, for example, 10 years old or below. Otherwise, the prosecution has the burden of proving the victim's age at the time of the rape. While it is true that in this case the defense admitted the medical certificate dated August 29, 1997, which indicated that private complainant was fifteen years old at the time of the examination,[46] we held in *Rivera* that the absence of denial on the part of appellant does not excuse the prosecution from discharging its burden. Besides, the medical certificate is not the primary evidence of the date of birth of party examined. In this case, judicial notice of the age of the victim is inappropriate, despite the defense counsel's admission of the medical certificate.

As required by Section 3,[47] Rule 129, of the Rules of Court in any other matters such as age, a hearing is required before courts can take judicial notice of such fact. Generally, the age of the victim may be proven by the birth or baptismal certificate of the victim, or in the absence thereof, upon showing that said documents were lost or destroyed, by other documentary or oral evidence sufficient for the purpose. Here, neither her birth certificate or baptismal certificate nor any school record was presented by the prosecution to prove the age of private complainant at the time of the rape. The prosecution having failed to present evidence as to private complainant's age, appellant can be convicted only of simple rape, the appropriate penalty for which is *reclusion perpetua*.

The award of civil indemnity in the amount of ₱75,000 made by the trial court ought also to be modified. Such amount can

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[45] G.R. No. 139180, 31 July 2001, 362 SCRA 153, 181.

[46] TSN, 28 October 1998, p. 17.

[47] SEC. 3. *Judicial notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

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only be awarded if the crime of rape was effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws.[48] Since the penalty is less than capital, the civil indemnity must be reduced to ₱50,000. But moral damages in the amount of ₱50,000 must be awarded in favor of private complainant, without need of showing that she suffered from mental, physical, and psychological trauma as these are too obvious to require recital by the victim during trial. Furthermore, pursuant to prevailing jurisprudence, exemplary damages in the amount of ₱25,000 must be awarded.[49] In rapes committed by fathers against their daughters, such award may be imposed to serve as a deterrent against aberrant elders similarly disposed to commit the offense.[50]

WHEREFORE, the decision of the Regional Trial Court, Branch 53, Lucena City, in Criminal Case No. 97-692, finding appellant Eduardo Metin guilty of the crime of rape is *AFFIRMED* with the *MODIFICATION* that appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant Emelyn Metin the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

Costs *de oficio*.

SO ORDERED.

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

Panganiban, J., on leave.

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[48] *People v. Rivera, supra*, at 182.

[49] *People v. Llandelar*, G.R. Nos. 123138-39, 8 November 2001, 368 SCRA 488, 449.

[50] *People v. Rivera, supra*, at 182-183.