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EN BANC

[G.R. No. 145726. March 26, 2003.]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FERDINAND ANTONIO,** *appellant.*

SYNOPSIS

Appellant was convicted of raping his daughter who was under eighteen years old at the time of the rape and he was sentenced to death.

The Supreme Court upheld his conviction on appeal, ruling: that the victim's straightforward, candid and unflawed testimony is entitled to full faith and credit; that it is highly inconceivable for a daughter to accuse her father of rape if it were not true; and that appellant's denial cannot stand against his positive identification by the complainant that he defiled her womanhood. The Court affirmed the imposition of the death penalty in view of the concurrence of the victim's minority and her filial relationship to appellant. Both circumstances were specifically alleged in the information and duly proved during the trial.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RAPE VICTIM'S STRAIGHTFORWARD AND CANDID TESTIMONY MUST BE GIVEN FULL FAITH AND CREDIT; CASE AT BAR.** – The [victim's] testimony is manifestly credible. It is marked by spontaneity, honesty and sincerity. Settled is the rule that when a victim's testimony is straightforward, candid and unflawed by inconsistencies or contradictions in its material points, as in this case, the same must be given full faith and credit. When an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape had been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.

2. **ID.; ID.; ID.; A DAUGHTER IS NOT LIKELY TO ACCUSE HER FATHER OF RAPE IF IT WERE NOT TRUE; CASE**

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AT BAR. – To be sure, a young girl's revelation that she has 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 so 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 against human nature for a girl 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. Thus, we give credence to complainant's testimony that appellant succeeded in forcibly having carnal knowledge of her on that particular night of January 1998.

3. ID.; ID.; ID.; DENIAL; APPELLANT'S DENIAL CANNOT STAND AGAINST HIS POSITIVE IDENTIFICATION AS THE DEFILER; CASE AT BAR. – In stark contrast to complainant's convincing recital of facts is appellant's unsupported defense of denial. 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 deserves no weight in law if unsubstantiated by clear and convincing evidence. It cannot stand against the positive identification by the complainant that appellant defiled her womanhood.

4. CRIMINAL LAW; DEATH PENALTY; RAPE; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; MINORITY OF RAPE VICTIM AND HER FILIAL RELATIONSHIP TO THE ACCUSED MUST BE SPECIFICALLY ALLEGED AND PROVED WITH EQUAL CERTAINTY AS THE CRIME ITSELF TO WARRANT THE IMPOSITION OF THE DEATH PENALTY; CASE AT BAR. – Pursuant to Article 266-B, the qualifying circumstances of minority and relationship must concur. As these circumstances raise the penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically alleged in the information and duly proved during the trial with equal certainty as the crime itself. . . In view of the concurrence of both the minority of the victim and her filial relationship to appellant, and pursuant to Article 266-B of R.A. No. 8353, we are constrained to affirm the death penalty imposed upon him by the trial court.

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5. ID.; RAPE; CIVIL LIABILITY; CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES AWARDED IN VARYING AMOUNTS IN CASE AT BAR. — While the trial court awarded ₱50,000.00 moral damages, it failed to grant civil indemnity which is mandatory upon a finding of rape. Civil indemnity is distinct from and should not be denominated as moral damages as it is based on different jural foundations and assessed by the court in the exercise of its sound discretion. When rape is qualified and committed under any of the circumstances under which the death penalty is imposed, as in this case, civil indemnity in the amount of ₱75,000.00 is appropriate. Exemplary damages in the amount of ₱25,000.00 should likewise be awarded to the victim, in line with current jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

For automatic review is the Decision[1] of the Regional Trial Court (RTC), Branch 24, Echague, Isabela in Criminal Case No. 24-0683 convicting Ferdinand Antonio, appellant, of rape and sentencing him to suffer the extreme penalty of death and to pay Divina-Gracia Antonio, complainant, the amount of ₱50,000.00 as moral damages.

On October 6, 1998, Provincial Prosecutor Anthony A. Foz of Isabela filed with the trial court three Informations charging appellant Antonio with three counts of rape committed in the following manner:

CRIM. CASE NO. BR. 24-0681

"That on or about the month of November 1996, in the municipality of Jones, province of Isabela, Philippines, and within the jurisdiction

[1] Penned by Judge Bonifacio T. Ong, *Rollo* at 15–23.

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of this Honorable Court, the said accused, by means of force and intimidation and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay with, and have carnal knowledge with his own daughter Divina-Gracia R. Antonio, a girl of 12 years of age, thereby subjecting her to exploitation and sexual abuse against her will and consent."

"CONTRARY TO LAW."

CRIM. CASE NO. BR. 24-0682

"That on or about the month of February 1997, in the municipality of Jones, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay with, and have carnal knowledge with his own daughter Divina-Gracia R. Antonio, a girl of 13 years of age, thereby subjecting her to exploitation and sexual abuse against her will and consent."

"CONTRARY TO LAW."

CRIM. CASE NO. BR. 24-0683

"That on or about the month of January 1998, in the municipality of Jones, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay with, and have carnal knowledge with his own daughter Divina-Gracia R. Antonio, a girl of 14 years of age, thereby subjecting her to exploitation and sexual abuse against her will and consent."

"CONTRARY TO LAW."[2]

During the arraignment on February 10, 1999, appellant pleaded not guilty to all three charges.[3] Thereafter, the joint trial of the three cases ensued.

The Solicitor General, in the Appellee's Brief,[4] summarized the prosecution's version as follows:

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[2] Record at 1.

[3] Certificate of Arraignment, id. at 8.

[4] *Rollo* at 66–91.

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"Divina-Gracia R. Antonio, born on July 24, 1983 (Exhibit "C"), is the eldest of the five (5) children of appellant and his wife, Dionicia R. Antonio (Exhibit "B"; TSN, May 12, 1999 at 7). They lived in a small bamboo house at Napaliong, Jones, Isabela (TSN, May 12, 1999 at 9 & 13) From 1996 to 1997, however, Dionicia was working in Singapore as a domestic helper. During this time, Divina-Gracia took care of her younger brothers and sisters, did the household chores and helped out in the cornfield, too (*id.* at 9–11).

"One Wednesday night in November 1996, Divina-Gracia was sleeping in the living room with her siblings while appellant was out having a drink (*id.* at 16). About midnight, Divina-Gracia sensed that her father was home because he stayed beside her that night. Appellant started undressing Divina-Gracia, warning her at the same time not to say anything to anybody, otherwise he would kill her. She cried and pleaded to her father for mercy, but her entreaties fell on deaf ears (*id.* at 25). Instead, appellant pointed a knife at her waist and went on top of her. Appellant removed Divina-Gracia's panties and his briefs. Embracing Divina-Gracia, appellant inserted his penis into her vagina and did push and pull movements for more than a minute. His bestial desires satisfied, appellant stood up and went outside, leaving Divina-Gracia in tears and gripped with fear (*id.* at 26–29).

"On the last Sunday of February 1997, appellant had gone out to the barrio drinking with his companions in the field. He went home about midnight (*id.* at 30–31). By then, all his children were already sleeping. Divina-Gracia, however, noticed appellant standing in front of her for quite sometime. Scared that there might be a repetition of her harrowing experience that occurred a few months back, Divina-Gracia turned her back on her father and pretended that she was sound asleep. This did not dampen the evil designs of appellant who, placing his hand on the arm of Divina-Gracia, made her lie flat on her back. She started pleading to her father not to sexually abuse her again but appellant pointed a knife (*beinte nueve*) at her (*id.* at 32–33). As Divina-Gracia cried and tried to cover her chest with her two hands, appellant undressed himself. He told her to likewise remove her clothes, but she refused. Appellant then pulled down the shorts of Divina-Gracia, repeating his order that she undress, this time with a warning that he was going to kill her if she did not do what he told her. Divina-Gracia still said "no" but, crying and reluctantly, removed her dress because appellant pointed his knife to her. Appellant kissed her at the neck and embraced her, after which, he lay on top of her.

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He removed her panties and his briefs. Divina-Gracia pleaded to her father once again not to molest her but appellant once again warned her not to make any noise or he would kill her and her siblings. Appellant then inserted his penis into her vagina and proceeded to do the push and pull movements for about a minute. Divina-Gracia cried and felt pain. Appellant stood up, threatened to kill her and her brothers and sisters if she squealed, then went to his usual place for sleeping (*id.* at 33–35). Putting her hand in her mouth so as not to make noise that might wake up her brother and sisters, Divina Gracia continued crying until she fell asleep (*id.* at 36).

"On January 3, 1998, appellant had gone out with his friends for a drinking spree. All his children were sound asleep at the sala when he arrived that night. Divina-Gracia was sleeping on her side when she was awakened by appellant who was at her back (*id.* at 37). He began touching her breasts. Divina-Gracia said "no" to her father, but he told her to keep quiet and pointed a knife on her right side. Appellant took the liberty of removing his shorts and her panties, and lay on top of her. He embraced Divina-Gracia then inserted his penis into her vagina (*id.* at 38). After doing the push and pull movements for less than a minute, appellant stood up and again threatened Divina-Gracia not to report what happened to anybody or he would kill her and the person to whom she would report the rape (*id.* at 39).

"On January 29, 1998, Dionicia arrived from abroad (*id.*). Divina-Gracia seized this opportunity to disclose to her mother that her future had been tarnished by appellant who had repeatedly ravished her (*id.*). Furious, Dionicia reported the matter to the *Barangay* Captain who accompanied her to the police station where she filed a complaint against appellant (TSN, October 7, 1999 at 15–16). The police authorities in Jones, Isabela advised Dionicia to have Divina-Gracia examined by a doctor (*id.*).

"On February 26, 1998, Divina-Gracia underwent a physical examination by Dr. Theresa Dalmacio, a rural health officer at Jones, Isabela, pursuant to a request (Exhibit "D") from the Philippine National Police (TSN, November 24, 1999 at 3). Dr. Dalmacio found that Divina-Gracia had a ruptured hymen (*id.* at 4; Exhibit "A") with laceration although she did not count how many (TSN, November 24, 1999 at 6). According to Dr. Dalmacio, the laceration of the hymen may be secondary to penetration (*id.* at 6 & 8). During her medical examination, Divina-Gracia revealed, in answer to Dr. Dalmacio's query, that her first sexual contact occurred in November 1996 while her last was in January 1998 (*id.* at 4)."

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The evidence for the defense consists of the testimony of appellant. He admitted that complainant Divina-Gracia Antonio is his daughter, the eldest of his five children; that he is legally married to Dionicia Antonio, complainant's mother; and that they all reside in Purok II, Napaliong, Jones, Isabela.[5]

Appellant merely denied the charges, maintaining that his daughter would have been pregnant if the allegations in the Informations were true. Moreover, as a truck helper and corn thresher in 1998, he spent nights away from home, separated from his family.[6]

He claimed that his wife, succumbing to the will of her relatives who opposed their marriage, caused the filing of the Informations against him. In fact, they concocted the rape charges to force him to abandon her and migrate to another place.[7]

On July 7, 2000, the trial court rendered its judgment convicting appellant in Criminal Case No. Br. 24-0683 but acquitting him in Criminal Cases Nos. Br. 24-0681 and Br. 24-0682, thus:

"WHEREFORE, in view of the foregoing, the Court finds accused FERDINAND ANTONIO in Criminal Case No. Br. 24-0683 guilty beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659 committed by a father against a daughter who is under eighteen (18) years of age and he is hereby sentenced to suffer the extreme penalty of DEATH and to indemnify the victim the sum of ₱50,000.00 as moral damages.

"Accused FERDINAND ANTONIO is however ACQUITTED in Criminal Cases Nos. Br. 24-0681 and Br. 24-0682, the prosecution having failed to prove his guilt beyond reasonable doubt.

"SO ORDERED."[8]

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[5] TSN, February 18, 2000 at 4–13.

[6] *Id.* at 7–8.

[7] *Id.* at 11–12.

[8] *Rollo* at 23.

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Considering that the trial court imposed the death penalty on appellant in Criminal Case No. Br. 24-0683, the records thereof were forwarded to this Court for automatic review.

In Appellant's Brief, he ascribes to the trial court the following errors:

"I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED IN CRIMINAL CASE NO. BR. 24-0683 DESPITE THE LACK OF A FORMAL OFFER OF EXHIBITS BY THE PROSECUTION.

"II. ASSUMING IN *ARGUENDO* THAT THE PROSECUTION'S DOCUMENTARY EXHIBITS FORM PART OF THE RECORDS OF THE CASE, THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE SAME, IN VIOLATION OF THE BEST EVIDENCE RULE."[9]

Well-settled 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.[10] In fact, the testimony of the victim is the most important factor to prove that the felony has been committed. 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]

Consequently, the issue in a rape case boils down to the credibility of the victim.[12] In scrutinizing such credibility, jurisprudence has established the following doctrinal guidelines: (1) the appellate tribunal will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case;

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[9] *Id.* at 35.

[10] *People vs. Fuensalida*, 346 Phil. 463 (1997); *People vs. Pascual*, G.R. Nos. 144495-96, March 12, 2002.

[11] *People vs. Dela Cruz*, 342 Phil. 150 (1997).

[12] *People vs. Soriano*, 339 Phil. 144 (1997).

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(2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect and even finality since it had the opportunity to examine their demeanor as they testified on the witness stand; and (3) a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness.[13]

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

"Q . . . where were you on that evening of January 3, 1998?
A. I was at home, sir.

Q. How about your father, where was he at that time on January 3, 1998?
A. He went to have a drinking spree again, sir.

xxx xxx xxx

Q. What time did he arrive, if you remember?
A. It was already at the middle of that night that time because when I woke up, he was already at my back.

Q. Why, what was your position when your father went at your back?
A. I was on my side, sir.

Q. What were you doing at that time?
A. I was sleeping at that time.

Q. Where were you sleeping at that time?
A. In our house, sir.

Q. Where in your house?
A. In the living room, sir.

xxx xxx xxx

Q. When your father went at your back while you were sleeping, do you remember what did he do to you?
A. Yes, sir.

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[13] *People vs. Cepeda*, G.R. No. 124832, February 1, 2000, 324 SCRA 290.

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Q. What did he do to you?
A. He touched my breast, sir.

Q. When your father touched your breast, what did you do?
A. I told him, Daddy, no.

Q. When you pleaded to your father, what did your father do?
A. He told me just to keep quiet and then I felt something pointed at my side, here, sir. (Witness pointing to her right side).

Q. After that, what happened next, if any?
A. He undressed me, sir.

Q. And when he undressed you, what did he do?
A. He removed his shorts and then he removed my panty.

Q. And when you were already in that condition, what did your father do?
A. He removed his brief and then he went on top of me.

Q. And what did he do when he was on top of you?
A. He embraced me, sir.

Q. Is that all that he did to you?
A. No, sir.

Q. After embracing you, what did he do next, if any?
A. He inserted his penis to my private part.

Q. When his penis was already in your private part, what happened?
A. He did the push and pull movement.

Q. How long did he do that?
A. Not so long, sir.

Q. What did you feel when he was doing the push and pull movement?
A. I was hurt, sir.

Q. How many minutes elapsed when your father did the push and pull movement?
A. Less than a minute, sir.

Q. And after the lapse of less than one minute, what happened?
A. He stood and then he went beside me.

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Q. Did he say anything to you when he stood up beside you?
A. There was, sir.

Q. What did he tell you?
A. He told me that if anybody will come to know what happened to me, he will kill including the person whom I reported, sir."[14]

Complainant likewise categorically described how appellant forced himself upon her as he satisfied his bestial desires, thus:

"Q. And did you try to push him on that evening of January 3, 1998, Miss Witness?
A. I cannot push him because he was embracing me.

Q. You did not try to use your knee in hitting him, Miss Witness?
A. I cannot move. sir, because I was pinned down by him.

Q. You did not make any unnecessary movements so that your younger brothers and sister will be awakened, Madam Witness?
A. I was not able to move hard, sir."[15]

The above testimony is manifestly credible. It is marked by spontaneity, honesty and sincerity. Settled is the rule that when a victim's testimony is straightforward, candid and unflawed by inconsistencies or contradictions in its material points, as in this case, the same must be given full faith and credit.[16] When an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape had been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[17]

To be sure, a young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination

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[14] TSN, May 12, 1999 at 37–39.

[15] TSN, May 20, 1999 at 25–26.

[16] *People vs. Caratay*, G.R. Nos. 119418, 119436-37, October 5, 1999, 316 SCRA 251.

[17] *People vs. Callos*, G.R. No. 133478, January 16, 2002; *People vs. Dacara*, G.R. No. 135822, October 25, 2001.

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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 so 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 against human nature for a girl 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.[18]

Thus, we give credence to complainant's testimony that appellant succeeded in forcibly having carnal knowledge of her on that particular night of January 1998.

In stark contrast to complainant's convincing recital of facts is appellant's unsupported defense of denial. 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 deserves no weight in law if unsubstantiated by clear and convincing evidence.[19] It cannot stand against the positive identification by the complainant that appellant defiled her womanhood.

Indeed, appellant's denial, not being sustained by sufficient evidence, does not in any way diminish the credibility of complainant or the weight of her testimony.

We thus hold that appellant is guilty beyond reasonable doubt of the crime of rape. As the rape was committed in January 1998, the law applicable is Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997" (incorporated in the Revised Penal Code as Articles 266-A and 266-B) which took effect on October 22, 1997. The pertinent portions of said law read:

Article 266-A. *Rape*; *When and How Committed.* — Rape is committed:

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

[19] *People vs. Silvano*, 368 Phil. 676 (1999).

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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.

xxx xxx xxx

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

xxx xxx xxx

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

xxx xxx xxx

Pursuant to Article 266-B, the qualifying circumstances of minority and relationship must concur. As these circumstances raise the penalty of the crime to death, great caution must be exercised in their evaluation. For these circumstances to be appreciated, both must be specifically alleged in the information and duly proved during the trial with equal certainty as the crime itself.[20] Indeed, Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, which took effect on

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

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December 1, 2000, specifically require both qualifying and aggravating circumstances to be alleged in the information.[21]

In the case at bar, the filial relationship between appellant and complainant has been alleged in the Information and sufficiently established during the trial. Appellant testified that Divina-Gracia is his daughter, thus:

"Q. Mr. Witness, do you know one Divina-Gracia Antonio?
A. Yes, sir.

Q. Why do you know her, Mr. Witness?
A. She is my daughter, sir."[22]

Likewise, appellant unequivocally declared that he is legally married to Dionicia Antonio, thus:

"Q. How about Dionicia Antonio, do you know one Dionicia Antonio?
A. I know her, sir.

Q. And why do you know her, Mr. Witness?
A. She is my wife, sir.[23]

xxx xxx xxx

Q. So Dionicia Remigio Antonio is your wife?
A. Yes, sir.

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[21] SEC. 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[22] TSN, February 18, 2000 at 4.

[23] *Id.*

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Q. And in fact you legally got married under the law, is it not?
A. Yes, sir. We were married by an independent priest, sir."[24]

In fact, appellant's marriage with Dionicia Antonio is evidenced by their Marriage Contract.[25]

Appellant, however, insists that complainant's minority, though alleged in the Information, was not satisfactorily proven.

We are not persuaded.

The Information in Criminal Case No. 24-0683 alleges that complainant was 14 years old at the time the rape was committed in January 1998. While only a photocopy of her Certificate of Live Birth was presented by the prosecution, her mother clearly testified that she was born on July 24, 1983, thus:

"Q. When was Divina-Gracia born?
A. July 24, 1983, Sir."[26]

This testimony was corroborated by appellant himself when he testified as follows:

"Q. Is it not that in 1985 or two years after your marriage that Divina-Gracia was born, is it not?
A. Divina-Gracia was born on July 24, 1983, Sir."[27]

Furthermore, Divina-Gracia herself testified that her birthday is July 24, 1983.[28] This means that when the crime took place in January 1998, she was only 14 years old.

It must be recalled that in *People vs. Pruna*,[29] this Court laid down the following guidelines in appreciating the age of the

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[24] *Id.* at 13.

[25] *Id.* at 14; Marriage Contract, Exhibit "B", Record at 82.

[26] TSN, October 7, 1999 at 8.

[27] TSN, February 18, 1997 at 18.

[28] TSN, May 20, 1999 at 27.

[29] G.R. No. 138471, promulgated October 10, 2002.

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victim, 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.

"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;

"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."

On appellant's contention that the prosecution did not formally offer in evidence the said marriage contract and Certificate of Live Birth, suffice it to state that on February 27, 2000, the trial court issued an order quoted as follows:

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"ORDER

"The prosecution offered its evidence consisting of Exhibits "A", "B", "C", and "D". The accused objected to the purpose of Exhibit "A" principally as evidence showing intercourse.

"The prosecution exhibits from "A" to "D" are all admitted as part of the testimonies of their witnesses.

"On motion for the Trial Prosecutor, the prosecution rested their case.

"WHEREFORE, set the hearing tomorrow, February 18, 2000 as previously scheduled.

"SO ORDERED.

"Given in open court this 17th day of February, 2000 at Echague, Isabela."[30]

This Order belies appellant's assertion that the said documents were not formally offered by the prosecution.

Appellant likewise argues that even assuming that the prosecution formally offered its documentary evidence, however, the same is inadmissible since they are mere photocopies.

As to the admissibility of the marriage contract, Dionicia Antonio testified as follows:

"Q. The last time that you testified in court, you mentioned that the accused is your husband, in fact, you are legally married. You were asked then if you have a marriage contract and you said, you have but you only forgot then to bring in court. Now, do you have with you the marriage contract which you are telling you forgot to bring in court?

A. Yes, sir.

Q. Will you please show to the Honorable Court?
(Witness handed to the prosecutor a marriage contract.)
Your Honor, we have a xerox copy of the same and we would like to show to the defense counsel whether they admit that

[30] Record at 24.

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the xerox copy is a true and faithful reproduction of the original in our possession.

ATTY. DELA CRUZ:

We admit, Your Honor, that the xerox copy is the true and faithful reproduction of the original.[31]

Considering the admission of appellant's counsel that the photocopy of the marriage contract is a true and faithful reproduction of the original, appellant cannot now dispute its admissibility.

In view of the concurrence of both the minority of the victim and her filial relationship to appellant, and pursuant to Article 266-B of R.A. No. 8353, we are constrained to affirm the death penalty imposed upon him by the trial court.

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

While the trial court awarded ₱50,000.00 moral damages, it failed to grant civil indemnity which is mandatory upon a finding of rape. Civil indemnity is distinct from and should not be denominated as moral damages as it is based on different jural foundations and assessed by the court in the exercise of its sound discretion.[32] When rape is qualified and committed under any of the circumstances under which the death penalty is imposed, as in this case, civil indemnity in the amount of ₱75,000.00 is appropriate.[33]

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[31] TSN, November 24, 1999 at 13.

[32] *People vs. Villanos*, G.R. No. 126648, August 1, 2000, 337 SCRA 78.

[33] *People vs. Alborida*, G.R. No. 136382, June 25, 2001, 359 SCRA 495.

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Exemplary damages in the amount of ₱25,000.00 should likewise be awarded to the victim, in line with current jurisprudence.[34]

WHEREFORE, the Decision of the RTC, Branch 24, Echague, Isabela, in Criminal Case No. 24-0683, convicting appellant Ferdinand Antonio of rape and sentencing him to suffer the death penalty is *AFFIRMED* with *MODIFICATION* in the sense that he is ordered to pay complainant Divina-Gracia Antonio the additional amounts of ₱75,000.00 as civil indemnity and ₱25,000.00 as exemplary damages. The sum of ₱50,000.00 as moral damages awarded by the trial court is maintained.

In consonance 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 the possible exercise of her pardoning power.

Costs *de oficio*.

SO ORDERED.

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

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[34] *People vs. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621.