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EN BANC

[G.R. Nos. 147662-63. August 15, 2003.]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **FREDDIE FONTANILLA,** *appellant.*

**SYNOPSIS**

Accused-appellant Freddie Fontanilla was convicted of two (2) counts of qualified rape by the Regional Trial Court of Urdaneta City, Pangasinan, and was sentenced to suffer the supreme penalty of death. The victim was the stepdaughter of appellant. On automatic review, appellant imputed ill motive on the part of the victim in filing the cases against him and contended that her testimony revealed that even as a child, she deeply resented his relationship with her mother, and that she disliked him as he was very strict with her and would not give her permission whenever she wanted to go out with her friends.

The Supreme Court affirmed his conviction, but modified the penalty imposed by the trial court. The Court gave full faith and credence to the clear and categorical account of the incidents by the victim, which account is replete with details that could have only been narrated by a victim thereof. The Court also found the motive attributed to the victim to be too shallow to merit consideration because it is most improbable that a victim of tender years and one not exposed to the ways of the world would impute a crime so serious as rape to any man if what she claimed was not true. The Court, however, modified the penalty of death imposed by the trial court to *reclusion perpetua* because the prosecution failed to establish the qualifying circumstance of relationship between the victim and appellant as alleged in the Informations. The relationship of appellant and the complainant was not adequately substantiated since it was merely based on the testimony of the complainant, her mother's testimony and the appellant's use of the words, "mama at papa" in his letters. Said evidence were not sufficient to dispel doubts about the true relationship of appellant and the complainant, to the benefit of which the accused is entitled.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RAPE VICTIM'S UNFAILING TESTIMONY AND HER CLEAR AND CATEGORICAL ACCOUNT OF THE INCIDENTS PREVAILS OVER APPELLANT'S BARE DENIAL.**— Appellant's bare denial, juxtaposed with Methel's clear and categorical account of the incidents, which account is replete with details that could have only been narrated by a victim thereof, deserves scant consideration. As did the trial court, this Court finds her testimony unfailing. This Court has remained steadfast to the rule that the trial court's assessment of the credibility of testimony of a complainant is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case. A careful scrutiny of Methel's testimony yields no compelling reason to disturb the trial court's assessment thereof.

2. **ID.; ID.; ID.; IMPROPER MOTIVE ATTRIBUTED TO THE VICTIM IS TOO SHALLOW TO MERIT CONSIDERATION.**— The Court finds the motive attributed to Methel to be too shallow to merit consideration. It is most improbable that a victim of tender years and one not exposed to the ways of the world would impute a crime so serious as rape to any man if what she claimed was not true. Indeed, as has been repeatedly held, it is unnatural for a young and innocent girl to fabricate a story of defloration, allow an examination of her private parts, and thereafter subject herself to a public trial or ridicule if she had not, in fact, been a victim of rape and deeply motivated by a sincere desire to have the culprit apprehended and punished.

3. **ID.; ID.; ID.; VICTIM'S CREDIBILITY NOT AFFECTED BY THE FACT THAT HER OWN MOTHER TESTIFIED FOR THE DEFENSE.**— That Esmeralda turned her back on Methel and testified for the defense do not militate against the credibility of Methel's testimony. It bears noting that when Methel went to the Laoac Police Station to report the rape incidents, she was even accompanied by Esmeralda. Her change of heart can most likely be attributed to a realization of the consequences of proving the charges against her husband including loss of the family's sole means of support, appellant being the breadwinner. Additionally, as this Court has held, some wives

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are overwhelmed by emotional attachment to their husbands such that they knowingly or otherwise suppress the truth and act as medium for injustice to preponderate.

**4. ID.; CRIMINAL PROCEDURE; NEW TRIAL; AN AFFIDAVIT OF RECANTATION CANNOT QUALIFY AS NEWLY DISCOVERED EVIDENCE TO JUSTIFY A NEW TRIAL.**— As for the trial court's denial of appellant's motion for new trial arising from Methel's affidavit of recantation: Said affidavit cannot qualify as newly discovered evidence to justify a new trial, the following requisites for which, and these must concur, are not present: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) such evidence is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, would probably change the judgment. Besides, affidavits of retraction of testimonies are generally looked with disfavor because there is always the probability that they may later be repudiated.

**5. CRIMINAL LAW; RAPE; DEATH PENALTY CANNOT BE IMPOSED IN CASE AT BAR AS THE PROSECUTION FAILED TO ESTABLISH THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP BETWEEN THE VICTIM AND APPELLANT.**— While appellant's liability for rape in both cases is upheld, this Court finds that the prosecution failed to establish the qualifying circumstance of relationship between Methel and appellant as alleged in the Informations. Relationship between Methel and appellant qualifies the crime of rape punishable by *reclusion perpetua* to rape punishable by death under Republic Act No. 8353. Under Article 266-B of the Revised Penal Code, as amended by R.A. 8353, the death penalty shall be imposed if the crime of rape is committed with the following pertinent attendant circumstances: xxx 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. Following jurisprudence, when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must both be *alleged* and *proven* in order to

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justify the imposition of the graver penalty. That appellant and Esmeralda were married is documented. And so is Methel's minority. The certification issued by the Office of the Local Civil Registrar of Manaoag, Pangasinan shows, however, as priorly stated, that her mother is Carmelita Fernandez, the sister of Esmeralda. The explanation given by appellant that when Methel was baptized another sister of Esmeralda instructed the latter to make it appear that Methel is the daughter of Carmelita and the latter's husband Anthony Fernandez who did not have a daughter does not suffice to overturn the *prima facie* truth of such entry in a public document, the acknowledgement of Esmeralda that Methel is her daughter and appellant's admission that Methel is his stepdaughter notwithstanding.

**6. ID.; ID.; RAPISTS ARE NOT DETERRED FROM COMMITTING THEIR ODIOUS ACT BY THE PRESENCE OF PEOPLE NEARBY.**— As for appellant's submission that the rape incidents could not have occurred because Methel's "half-siblings" were beside them sleeping: The possibility of rape is not negated by the presence of even the whole family of the accused inside the same room and with the likelihood of being discovered. For it is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby, or while the rapist's spouse is asleep, or in a small room where other family members also sleep, or as in the cases at bar where the "half-siblings" of Methel were aged 10 and below and, therefore, were wont to sleep soundly.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**CARPIO MORALES, *J.*:**

On December 19, 2000, in Criminal Case Nos. U-10628 and U-10629, the Regional Trial Court of Urdaneta City, Branch 46, found appellant Freddie Fontanilla guilty of rape and imposed upon him the penalty of death.

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The inculpatory portions of the two Informations[1] filed against appellant in June 2000 read as follows:

*Criminal Case No. U-10628*

That on or sometime in the month of November, 1999, at Brgy. Banuar, Laoac, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, a stepfather and relative by affinity within the third civil degree of herein complainant, Methel Kathleen Fernandez, a minor, 14 years old, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant, against her will, to her damage and prejudice.

CONTRARY to Article 335, Revised Penal Code, as amended by Rep. Act Nos. 7659 and 8353.

*Criminal Case No. U-10629*

That on or sometime in January, 2000 at Brgy. Banuar, Laoac, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, a stepfather and relative by affinity within the third civil degree of herein complainant Methel Kathleen Fernandez, a minor, 14 years old, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant, against her will, to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by Rep. Act Nos. 7659 and 8353.

When arraigned on July 5, 2000,[2] appellant, duly assisted by counsel, pleaded not guilty to the charges, whereupon joint trial commenced.

Culled from the records of the case are the following facts established by the prosecution:

Private complainant Methel Kathleen Fernandez was born in Manaoag, Pangasinan on November 30, 1984.[3]

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[1] *Rollo* at 23-26.

[2] Records at 34.

[3] Exhibit "D" (Certification issued by the Office of the Local Civil Registrar of Manaoag, Pangasinan), Records at 63.

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On January 21, 1986, Esmeralda Ramos, who claimed to be Methel's mother, albeit the registered name of her mother is Esmeralda's sister Carmelita Fernandez, married appellant.[4] The couple begot four children.[5] Methel stayed with the couple and the four children.

Sometime in November 1999, after watching television, the then 14-year old Methel went to the bedroom which she shared with her family to retire for the evening. Her "mother" not having arrived,[6] she did not lock the door to the room. While she was asleep as were her "half-siblings," she was roused when appellant approached her. As she inquired from him why, he proceeded to remove her short pants and panty after which he removed his own short pants and underwear. He then went on top of her and held his penis and inserted it into her vagina which caused her pain, he making push and pull movements.[7] She attempted to push him away but to no avail as he firmly held her hands. After sometime, sensing that somebody arrived in the house, he put on his underwear and short pants and left. As she was crying, she too put on her short pants and panty. Appellant having threatened to kill her "mother" should she divulge what he did to her,[8] she did not report it to anybody.

Sometime in the second week of January 2000, at nighttime, again while her "half-siblings," the eldest of which was 10 years old[9] were sleeping, Methel sensed that appellant was "at [her] back." Telling her to sleep, he proceeded to remove his short pants and underwear and then removed her short pants and panty and inserted his penis into her vagina.[10] Her efforts to push him away were fruitless as he was too strong. After making push and pull movements, appellant ejaculated.[11] He then put

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[4] Exhibit "E" (Marriage Certificate), Records at 65.

[5] TSN, September 26, 2000 at 3.

[6] TSN, July 25, 2000 at 11.

[7] *Id.* at 13.

[8] *Id.* at 15.

[9] *Id.* at 9.

[10] *Id.* at 17.

[11] *Id.* at 18.

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on his underwear and short pants and was about to sleep beside her half-siblings when somebody knocked on their bedroom door. Appellant thereupon checked who it was and it turned out to be Methel's "mother" Esmeralda, who "came to know what he did to [her]"[12] as she (Esmeralda) "was peeping at the window of our room" when he was "doing the act"[13] Her mother thus shouted at him and told Methel to sleep with her.

On April 14, 2000, Methel, accompanied by Esmeralda, went to the Laoac, Pangasinan Police Station where she executed a sworn statement[14] reporting the rape incidents. On the same day, they proceeded to the Provincial Prosecutor's Office at Urdaneta, Pangasinan where Methel filed the criminal complaints of even date against appellant. Still on the same day, they went to the Don Amadeo J. Perez, Sr. Memorial General Hospital in Urdaneta where Dr. Bernando C. Macaraeg conducted a physical examination on her which yielded the following results:

> External Genitalia — nulliparous introitus, no abrasions, no lacerations.
> Internal Genitalia — Hymen with healed superficial lacerations at 5, 7 and 11 o'clock positions.[15]

In mid 2000, Methel, on the advice of Esmeralda "because of the gossip [going on] in [the] place,"[16] left the family residence for Marikina where she has since been living with an aunt.

Appellant denied the accusations. Esmeralda in fact testified for appellant, she denying having witnessed the alleged rape on the second week of January 2000 and even proffering that on the dates of the alleged incidents, he was not in their house.

The trial court found appellant guilty as charged in its decision on review, the *fallo* of which reads *verbatim* as follows:

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[12] *Id.* at 19.

[13] *Ibid.*

[14] Exhibit "B", Records at 7-8.

[15] Exhibit "A", Records at 4.

[16] TSN, July 25, 2000 at 8.

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WHEREFORE, JUDGMENT is hereby rendered:

1. In CRIM. CASE NO. U-10628, CONVICTING FREDDIE FONTANILLA beyond reasonable doubt of the crime of Rape and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; to indemnify Methel Kathleen Fernandez the sum of ₱75,000.00 as moral damages and the further sum of ₱50,000.00 as exemplary damages;

2. In CRIM. CASE NO. U-10629, CONVICTING FREDDIE FONTANILLA beyond reasonable doubt of the crime of Rape and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; to indemnify Methel Kathleen Fernandez the sum of ₱75,000.00 as moral damages and the further sum of ₱50,000.00 as exemplary damages.

The Clerk of Court is hereby ordered to prepare the mitimus and to transmit the entire records of Crim. Cases Nos. U-10628 and U-10629 to the Honorable Supreme Court of the Philippines for automatic review.

The Jail Warden, Bureau of Jail Management and Penology (BJMP), Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living person of Freddie Fontanilla to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this Decision.

SO ORDERED.[17]

Appellant filed on February 8, 2001 a Motion for New Trial and To Defer Transfer of Accused to the National Penitentiary,[18] alleging that Methel had, a few days after the promulgation of the decision of the trial court, executed an affidavit of recantation[19] wherein she stated that appellant never raped her and that all the allegations she made against him were not true, she having been "only couched and taught what to state and say" in her sworn statement and during the trial.

By Order of February 19, 2001,[20] the trial court denied appellant's motion.

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[17] *Rollo* at 106.

[18] Records at 110.

[19] *Id.* at 112.

[20] *Id.* at 118–119.

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Hence, the automatic review of the cases pursuant to Article 47 of the Revised Penal Code, as amended.

Appellant maintains his innocence and assigns the following errors to the trial court:

I. THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II. THE COURT *A QUO* GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE INCREDULOUS TESTIMONY OF THE PRIVATE COMPLAINANT.

III. THE COURT *A QUO* GRAVELY ERRED IN NOT CONSIDERING THE AFFIDAVIT OF RECANTATION SUBMITTED BY THE PRIVATE COMPLAINANT.[21]

Appellant, casting doubt on the motive of Methel in filing the cases against him, contends that her testimony reveals that even as a child, she deeply resented his relationship with Esmeralda, and that she disliked him as he was very strict with her and would not give her permission whenever she wanted to go out with her friends.

Appellant surmises that Methel wanted Esmeralda to leave him and when she did not have her way, she left Laoac after fabricating the rape charges against him. He surmises too that Methel was prevailed upon by her maternal uncle, Benjamin Ramos, to file the charges as he (appellant) did not allow her to go with him (Benjamin) to a beach when the latter invited her to go with him.[22]

Assailing the credibility of Methel's testimony, appellant submits that it was impossible for her "half-siblings" to have remained asleep during the alleged rape incidents despite the commotion and outcry she claimed to have made.[23]

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[21] *Rollo* at 44–45.

[22] TSN, September 26, 2000 at 8.

[23] *Rollo* at 53.

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And appellant harps on the testimony of Esmeralda that she did not see appellant having sexual intercourse with Methel[24] on the second week of January 2000.

Finally, appellant faults the trial court for denying his motion for new trial.

After a considered review of the records of the cases, this Court affirms appellant's conviction.

Appellant's bare denial, juxtaposed with Methel's clear and categorical account of the incidents, which account is replete with details that could have only been narrated by a victim thereof, deserves scant consideration. As did the trial court, this Court finds her testimony unfailing.[25] Thus she declared:

Q: On that particular month of November 1999 while watching television was there an unusual thing that happened?

A: There was, sir.

Q: What is that?

A: When I switch (*sic*) off the television I went to our room but my mother was not around she went out with her sister and Freddie Fontanilla arrived drunk, sir.

Q: You said you went to your room, do you have companions when you said you went to your room?

A: I have, sir.

Q: Who?

A: My four siblings, sir.

xxx xxx xxx

Q: Your four (4) siblings what were they doing then?

A: They were sleeping, sir.

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[24] TSN, November 8, 2000 at 4.

[25] *Rollo* at 102–104.

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Q: And when you went inside your room what did you do then?

A: I arranged my things then I intend (*sic*) to sleep, sir.

Q: Then when you intend (*sic*) to sleep what happened?

A: When I was already sleeping all of a sudden someone entered, my stepfather entered my room, sir.

Q: By the way, will you describe that room, is there a lock?

A: There is a lock but we did not lock, because my mother has not yet arrived, sir.

Q: What happened next when Freddie Fontanilla suddenly entered your room?

A: When Freddie Fontanilla entered the room he went near me and I asked him "why papa" and he suddenly removed my shorts, sir.

Q: What were you wearing that time?

A: I was wearing shorts and blue t-shirt, sir.

Q: After he removed your shorts what else did he do if any?

A: He went on top of me and he placed his organ to my organ, sir.

Q: Before that, what was your father wearing that time?

A: He was wearing shortpants, sir.

Q: What did he do with that (*sic*) shortpants?

A: He removed his shorts, sir.

Court: You mean you were not wearing panty?

A: I have, sir.

Q: What were removed were your shorts and panty?

A: Yes, sir.

Q: Was (*sic*) the shorts and panty removed simultaneously?

A: No, sir.

Q: What was removed first?

A: Shorts, sir.

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Prosecutor Tomboc: You said that your father removed his shorts and then he went on top of you, where did he insert his organ how did he put his organ to your organ?

A: He held his penis and then inserted it to my organ, sir.

Court: Was it in erect position?

A: Yes, sir.

Prosecutor Tomboc: What did you feel when you said he inserted his organ to your organ?

A: It was painful, sir.

Court: When he inserted his penis to your vagina what did he do?

A: He did the push and pull, sir.

xxx xxx xxx

Prosecutor Tomboc: Did you make any resistance when he went on top of you?

A: Yes, sir.

Q: How did you make the resistance?

A: I was pushing him but he is very strong, sir.

Q: What did he do when you pushed him?

A: He was holding my both (*sic*) hands and he forced his way and do (*sic*) what he wanted, sir.

Court: After making the push and pull, what happened?

A: He removed his organ, sir.

Q: Why was it removed?

A: Because as if (*sic*) somebody arrived home and removed his organ, sir.

Prosecutor Tomboc: What did he do then after removing his penis?

A: He put on his underwear and shorts, sir, and then he left.

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Q: How about you, what did you do when he left?

A: I put on my underwear and shorts and then I cried, sir.

Q: Did you report the matter to your mother?

A: No, sir.

Court: That night did you report?

A: No, sir, because I was afraid.

Q: But did you ever report to anybody?

A: I did not report to anybody even to my mother because my stepfather told me he will kill my mother if I will report, sir.

Prosecutor Tomboc: After November 1999, will you inform this Honorable Court if there are other instances that happened to you relating to the same incident sometime in January 2000?

A: Yes, sir.

Q: Can you still recall the day or week when that incident happened?

A: Second week of January, sir.

Q: What time is it, nighttime or daytime?

A: Nighttime, sir.

Q: Where were you on that day when this incident happened?

A: I was at home my stepfather did not allow me to go out, sir.

xxx xxx xxx

Court: How many were accompanying you in that house?

A: We were four (4), sir.

xxx xxx xxx

Q: In what particular place were you then that time?

A: In the sala, sir.

Q: And what were you doing then?

A: We were watching tv and I was helping my brothers and sisters doing (*sic*) their homeworks, sir.

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Q: Were you able to finish the watching of television?

A: My uncle who was in the second floor of the house advised us to sleep because he did not want to be disturb (*sic*) by the sound of the television, sir.

Q: Did you comply?

A: Yes, sir.

Q: Where did you sleep that night?

A: In our room, sir.

Q: Together with your brothers and sisters?

A: Yes, sir.

xxx xxx xxx

Q: Then what happened?

A: My stepfather entered the room, sir.

Q: What did he do?

A: When my stepfather entered the room he went at my back (*sic*) and then he told me to sleep and then stayed at my side, removed his shorts and underwear and then he also removed my shorts and panty, sir.

Q: After removing your shorts and panty what did he do if any?

A: He again inserted his organ to my organ, sir.

Q: Did you make any resistance that time?

A: Yes, sir.

Q: In what way did you resist?

A: I was pushing him but I cannot because he was strong, sir.

Q: When you said he put his penis to your vagina what did he do next?

A: He did the push and pull again, sir.

Q: How long?

A: I cannot calculate, sir.

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Q: What happened to his penis after doing the push and pull?

A: Something came out from his penis, sir.

Q: What did you feel with that something?

A: There was a fluid, sir.

Q: After that fluid came out what happened?

A: He put on his underwear and shorts and went beside my brothers and sisters, sir.

Q: What did he do there?

A: He was about to sleep beside my brothers and sisters but my mother knocked and he was the one who opened, sir.

Q: What happened after that?

A: My mother came to know what he did to me and my mother shouted to (*sic*) my father, sir.

Q: You mean that night?

A: Yes, sir.

Q: How did she come to know?

A: When my father was doing the act she was peeping at the window of our room, sir.

Q: How about you what did you do?

A: When my mother came to me I was crying, sir.

Q: That night what else transpired after that incident?

A: My mother got angry, sir, and that night I was told to sleep with her.[26]

This Court has remained steadfast to the rule that the trial court's assessment of the credibility of testimony of a complainant is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case.[27] A careful scrutiny of Methel's testimony yields

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[26] SN, July 25, 2000 at 10-19.

[27] *People v. Sabredo,* 331 SCRA 663, 669-670 (2000) (citation omitted).

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no compelling reason to disturb the trial court's assessment thereof.

And as did the trial court, this Court finds the motive attributed to Methel to be too shallow to merit consideration. It is most improbable that a victim of tender years and one not exposed to the ways of the world would impute a crime so serious as rape to any man if what she claimed was not true.[28] Indeed, as has been repeatedly held, it is unnatural for a young and innocent girl to fabricate a story of defloration, allow an examination of her private parts, and thereafter subject herself to a public trial or ridicule if she had not, in fact, been a victim of rape and deeply motivated by a sincere desire to have the culprit apprehended and punished.[29]

As for appellant's submission that the rape incidents could not have occurred because Methel's "half-siblings" were beside them sleeping: The possibility of rape is not negated by the presence of even the whole family of the accused inside the same room and with the likelihood of being discovered.[30] For it is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby,[31] or while the rapist's spouse is asleep, or in a small room where other family members also sleep,[32] or as in the cases at bar where the "half-siblings" of Methel were aged 10 and below and, therefore, were wont to sleep soundly.

That Esmeralda turned her back on Methel and testified for the defense do not militate against the credibility of Methel's testimony. It bears noting that when Methel went to the Laoac Police Station to report the rape incidents, she was even accompanied by Esmeralda.[33] Her change of heart can most

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[28] *People v. Manggasin*, 306 SCRA 228, 240 (1999) (citation omitted).

[29] *People v. Sagaral*, 267 SCRA 671, 681 (1997) (citation omitted).

[30] *People v. Watimar*, 338 SCRA 173, 185 (2000).

[31] *People v. Baybado*, 335 SCRA 712, 720 (2000) (citation omitted).

[32] See note 7, *supra*.

[33] TSN, July 18, 2000 at 10.

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likely be attributed to a realization of the consequences of proving the charges against her husband including loss of the family's sole means of support, appellant being the breadwinner.[34] Additionally, as this Court has held, some wives are overwhelmed by emotional attachment to their husbands such that they knowingly or otherwise suppress the truth and act as medium for injustice to preponderate.[35]

As for the trial court's denial of appellant's motion for new trial arising from Methel's affidavit of recantation: Said affidavit cannot qualify as newly discovered evidence to justify a new trial, the following requisites for which, and these must concur, are not present: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) such evidence is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, would probably change the judgment.[36]

Besides, affidavits of retraction of testimonies are generally looked with disfavor because there is always the probability that they may later be repudiated.[37]

x x x The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having accused-appellant arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, Maryjane would suddenly turn around and declare that "after a careful deliberation over the case, [she] find[s] that the same does not merit or warrant criminal prosecution.

Thus, we have declared that *at most the retraction is an afterthought which should not be given probative value.* It would

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[34] TSN, November 8, 2000 at 6.

[35] *People v. Dizon*, 356 SCRA 69, 85 (2001).

[36] *People v. Remudo*, 364 SCRA 61, 72 (2001) (citation omitted).

[37] *Reano v. Court of Appeals*, 165 SCRA 525, 530 (1988) (citation omitted).

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be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses.[38] (Italics supplied)

While appellant's liability for rape in both cases is upheld, this Court finds that the prosecution failed to establish the qualifying circumstance of relationship between Methel and appellant as alleged in the Informations. Relationship between Methel and appellant qualifies the crime of rape punishable by *reclusion perpetua* to rape punishable by death under Republic Act No. 8353. Under Article 266-B of the Revised Penal Code, as amended by R.A. 8353, the death penalty shall be imposed if the crime of rape is committed with the following pertinent attendant circumstances:

x x x x x x x x x

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. (Italics supplied)

Following jurisprudence, when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must both be *alleged* and *proven* in order to justify the imposition of the graver penalty.[39]

That appellant and Esmeralda were married is documented.[40] And so is Methel's minority. The certification issued by the Office of the Local Civil Registrar of Manaoag, Pangasinan shows, however, as priorly stated, that her mother is Carmelita Fernandez, the sister of Esmeralda.[41] The explanation given by appellant that when Methel was baptized another sister of

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[38] *People v. Junio*, 237 SCRA 826, 834 (1994).

[39] *People v. Marquez*, 347 SCRA 510, 523 (2000).

[40] *Vide* Note 4.

[41] TSN, July 25, 2000 at 8.

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Esmeralda instructed the latter to make it appear that Methel is the daughter of Carmelita and the latter's husband Anthony Fernandez who did not have a daughter[42] does not suffice to overturn the *prima facie* truth of such entry in a public document, the acknowledgement of Esmeralda that Methel is her daughter[43] and appellant's admission that Methel is his stepdaughter[44] notwithstanding.

Considering that the relationship of accused-appellant to complainant qualifies the crime of rape punishable by *reclusion perpetua* to rape punishable by death, it is but proper that *a more stringent proof of relationship between the offender and the offended party must be established* by the prosecution. Corollarily, a clearer proof of relationship between the complainant and the spouse of accused-appellant must be presented. *The relationship of accused-appellant and the complainant is not adequately substantiated since it is merely based on the testimony of the complainant, her mother's testimony and the accused-appellant's use of the words*, "mama at papa" in his letters. Needless to say, the evidence presented are not sufficient to dispel doubts about the true relationship of accused-appellant and the complainant, to the benefit of which the accused is entitled. *Where the life of an accused-appellant hangs in the balance, a more exacting proof must be adduced.* [45] (Italics supplied)

The penalty imposed on appellant must thus be reduced to *reclusion perpetua*.

A word on the damages awarded by the trial court. While moral damages were awarded, indemnity *ex delicto* was not. The civil indemnity, which is distinct from and awarded in addition to moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion,[46] is automatically given to the offended party without need of further evidence other than the fact of rape.[47] Hence, appellant

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[42] TSN, September 26, 2000 at 3.

[43] TSN, November 8, 2000 at 3.

[44] TSN, September 26, 2000 at 2.

[45] *People v. Berana*, 311 SCRA 664, 677 (1999).

[46] *People v. Ignacio*, 294 SCRA 542, 552 (1998) (citation omitted).

[47] *People v. Marquez*, 347 SCRA 510, 524 (2000) (citation omitted).

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should, under the circumstances of the cases, likewise be ordered to pay the amount of ₱50,000.00 for each count of rape.

As for the award by the trial court of exemplary damages in the amount of ₱50,000.00 for each count of rape, since relationship as an aggravating circumstance was not proven and no other aggravating circumstance was alleged and proven, the award must be deleted.[48]

**WHEREFORE**, the decision of the Regional Trial Court of Urdaneta City, Branch 46 in Criminal Case Nos. U-10628 and U-10629 finding appellant guilty beyond reasonable doubt of rape in both cases is AFFIRMED with MODIFICATION.

As modified, appellant is sentenced in each case to suffer the penalty of *reclusion perpetua* and to pay the victim the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

Costs *de oficio.*

**SO ORDERED.**

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

*Callejo, Sr., J.*, on leave.

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[48] *Vide* Civil Code, Art. 2230.