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REDUCED to an indeterminate prison term of six (6) years four (4) months and twenty (20) days of *prision mayor* minimum as minimum to fourteen (14) years two (2) months and ten (10) days of *reclusion temporal* minimum as maximum. Temperate damages in the amount of ₱250,000.00 and exemplary damages of ₱50,000.00 are *AWARDED* to each of complaining witnesses Fructuosa L. Jambo, Simplicio B. Cabrera, Francisco Clerigo, Orlando Braña and Oscar T. Cimagala. Costs against accused-appellant.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

EN BANC

[G.R. No. 145349. July 29, 2003]

PEOPLE OF THE PHILIPPINES, *appellee,* *vs.* **JENIS PATEÑO,** *appellant.*

SYNOPSIS

Twelve-year old Elgen Pateño accused her father, herein accused-appellant, of sexually violating her inside their house on August 31, 1996. Despite appellant's denial and plea of not guilty, the Regional Trial Court of Misamis Oriental, after due trial, convicted appellant of the crime of qualified rape and sentenced him to death. In convicting appellant, the trial court relied on the testimony of the complainant which it found credible. On automatic review, appellant questioned the credibility of the complainant and the imposition of the death penalty.

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The Court found appellant guilty of raping his daughter, the complainant. It held that the appellant may be convicted of the crime of rape based solely on the testimony of complainant provided her testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things. As observed by the trial court, complainant testified in a clear and straightforward manner. She broke down and cried at one point while narrating the ordeal she suffered at the hands of her father. Moreover, there was no indication of any ill motive on her part to fabricate the crime of rape against appellant. The Court noted that because of poverty, she even had to endure a thirty-kilometer walk just to attend court hearings, without taking her breakfast or lunch. Complainant's determination to pursue the case despite the difficulties in attending court hearings and the indignities concomitant to the prosecution for rape persuaded the Court that she was motivated by no other reason than to seek justice for the crime committed against her. However, the Court modified appellant's conviction to simple rape punishable by *reclusion perpetua*. It found that the prosecution failed to adduce independent proof to establish the age of the complainant at the time of rape and her relationship with the appellant.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; REVIEW OF RAPE CASES; GUIDING PRINCIPLES.**— The three guiding principles in the review of rape cases are: (a) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where two (2) persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its merits, and cannot be allowed to draw strength from the weakness of the evidence of the defense.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; ACCUSED MAY BE CONVICTED OF RAPE BASED SOLELY ON TESTIMONY OF COMPLAINANT IF CREDIBLE, NATURAL AND CONVINCING.**— Even without the medical examination, however, appellant may still be convicted of the

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crime of rape based solely on the testimony of complainant provided her testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things.

3. **ID.; ID.; ID.; COMPLAINANT HAS NO ILL MOTIVE TO FABRICATE THE CRIME OF RAPE AGAINST ACCUSED IN CASE AT BAR.**— As observed by the trial court, complainant testified in a clear and straightforward manner. She broke down and cried at one point while narrating the ordeal she suffered at the hands of her father. Moreover, there is no indication of any ill motive on her part to fabricate the crime of rape against appellant. We note that because of poverty, she even had to endure a thirty-kilometer walk just to attend court hearings, without taking her breakfast or lunch. Complainant's determination to pursue the case despite the difficulties in attending court hearings and the indignities concomitant to the prosecution for rape persuades us that she is motivated by no other reason than to seek justice for the crime committed against her.

4. **ID.; CRIMINAL PROCEDURE; AGGRAVATING AND QUALIFYING CIRCUMSTANCES CANNOT BE CONSIDERED EVEN IF PROVED IF NOT EXPRESSLY AND SPECIFICALLY ALLEGED IN THE INFORMATION.**— In *People v. Garcia* and succeeding cases, we have held that the circumstances under the amendatory provisions of Section 11 of R.A. No. 7659, the attendance of which would mandate the single indivisible penalty of death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances since they increase the penalty of rape by one degree. The Revised Rules on Criminal Procedure, which took effect on December 1, 2000, now require that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information otherwise they cannot be considered by the trial court, even if they are subsequently proved during trial.

5. **CRIMINAL LAW; RAPE; CAN BE COMMITTED IN PLACES WHERE PEOPLE CONGREGATE, IN PARKS, ALONG THE ROADSIDE, WITHIN THE SCHOOL PREMISES, INSIDE A HOUSE WHERE THERE ARE OCCUPANTS AND EVEN IN THE SAME ROOM WHERE OTHER**

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MEMBERS OF THE FAMILY ARE ALSO SLEEPING.— It is settled that rape can be committed in places where people congregate, in parks, along the roadside, within the school premises, inside a house where there are occupants and even in the same room where other members of the family are also sleeping. Complainant and appellant were alone in their house when the incident happened since appellant ordered his other children to fetch water outside. When appellant began to have sexual intercourse with complainant, Elizabeth Pateño accidentally witnessed the incident by taking a peep at a hole in the wall of their house. Complainant had satisfactorily explained that she could not ask for help from her mother because appellant at that time was kissing complainant on the lips.

6. **ID.; ID.; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE ESTABLISHED BY INDEPENDENT PROOF TO WARRANT IMPOSITION OF DEATH PENALTY.**— The rape herein took place in 1996, prior to the effectivity on October 22, 1997 of Republic Act No. 8353, entitled: "An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for Other Purposes." Whether or not said law should be given retroactive effect so that the allegations in the complaint should no longer be considered, need not be resolved in this case. For, in this case, although the complaint stated the age of the complainant to be twelve years old at the time of the rape, the age of the complainant was not sufficiently established during the trial. The prosecution failed to adduce in evidence complainant's birth certificate or other similar authentic documents such as her baptismal certificate and school records. The prosecution also failed to adduce independent proof to establish complainant's relationship with appellant. Complainant's testimony that she was born on September 25, 1983 and that appellant is her father, even if not refuted by appellant, will not suffice. Proof thereof is critical considering the penalty of death imposed for qualified rape.

7. **ID.; ID.; QUALIFYING CIRCUMSTANCE OF RAPE COMMITTED IN FULL VIEW OF THE PARENT; CANNOT BE APPRECIATED WHERE VICTIM'S MOTHER**

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WITNESSED THE INCIDENT BY CHANCE.— We also cannot consider complainant's allegation that her mother was able to witness the rape incident because this circumstance is not alleged in the complaint nor in the information. Furthermore, this was not sufficiently proven during trial. Complainant's mother did not bother to testify in court. Finally, even if complainant's allegation were sufficiently alleged and proven, it still may not be considered against appellant, considering that complainant's mother only allegedly happened to witness the rape incident by chance. Section 11 of R.A. No. 7659 provides for the imposition of death penalty when rape is committed *in full view* of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

8. **CIVIL LAW; DAMAGES; AWARD OF INDEMNITY IN THE AMOUNT OF ₱50,000.00; MORAL DAMAGES; AUTOMATICALLY GRANTED IN RAPE CASES, SEPARATE AND DISTINCT FROM INDEMNITY.**— In accordance with prevailing jurisprudence, complainant is entitled to indemnity in the sum of ₱50,000. An additional award of ₱50,000 by way of moral damages is also automatically granted in rape cases, separate and distinct from the indemnity.

APPEARANCES OF COUNSEL

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

D E C I S I O N

AZCUNA, *J.*:

Before us for automatic review is a decision rendered by the Regional Trial Court (RTC) of Misamis Oriental, Branch 25, meting the supreme penalty of death on appellant Jenis Pateño for the crime of rape committed against his twelve-year-old daughter Elgen Pateño.

The facts of the case are as follows:

On August 31, 1996, at around 3:00 o'clock in the afternoon, twelve-year-old Elgen Pateño was sleeping soundly on the floor

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of their house in Gitagum, Misamis Oriental. She was alone because her brothers and sisters were ordered by her father to fetch water outside. Elgen woke up when she felt someone removing her underwear. She was surprised to see her father, appellant Jenis Pateño, remove his briefs and lie on top of her. Appellant started to have sexual intercourse with Elgen who wanted to shout but could not because appellant was kissing her on the lips. She could not even seek succor from her mother who allegedly happened to witness the dastardly act by peeping through a hole in the wall of their house.[1] The hapless girl could barely put up a fight against appellant since she was overwhelmed by the excruciating pain in her vagina.

Appellant made a push and pull movement after his penis penetrated Elgen's vagina. Thereafter, he threatened Elgen and warned her not to tell her mother about the incident. Elgen stood up and ran until she reached the place of a certain policeman whom she identified as Tatay Clarabal. Tatay Clarabal arrested appellant and brought him to the Police Station in Gitagum, Misamis Oriental.[2]

On November 20, 1996, the following information was filed before the trial court:

The undersigned Provincial Prosecutor upon sworn complaint of the offended party, hereto attached as Annex "A", accuses and charges JENIS PATEÑO, of the crime of RAPE, committed as follows:

That on August 31, 1996 at about 3 o'clock in the afternoon, more or less, inside their house at Barangay Matangad, Municipality of Gitagum, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused taking advantage of his being alone with his daughter, ELGEN PATEÑO in their house, with evil motive and with lewd design, while Elgen Pateño was lying on the bamboo floor asleep, Jenis Pateño feloniously [had] sexual intercourse by inserting his penis to the vagina of Elgen Pateño against her will.

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[1] TSN, July 8, 1997, p. 14.

[2] TSN, July 27, 1997, pp. 8–9.

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CONTRARY to and in violation of Article 335 of the Revised Penal Code in relation to Republic Act No. 7659.[3]

The complaint, attached to the information as Annex "A," reads:

The undersigned Elizabeth Pateño (mother of Elgen Pateño) of Barangay Matangad, Gitagum, Misamis Oriental, after having been duly sworn to an oath in accordance with law, accuses JENIS PATEÑO of the crime of RAPE as follows:

That on or about 3:00 o'clock in the afternoon of August 31, 1996, more or less, inside our house at Barangay Matangad, Municipality of Gitagum, Province of Misamis Oriental, Republic of the Philippines and within the Preliminary Jurisdiction of this Honorable Court, the said accused JENIS PATEÑO, taking advantage of his being alone with our daughter Elgen Pateño in the house, with superior adult masculine force, with evil motive and with lewd design, while his 12 year old daughter Elgen was lying on the bamboo floor asleep, deprived of reason, he did then and there unlawfully and feloniously attack, ravish and rape her by taking advantage of her being alone with him while lying down on the bamboo floor asleep, taking off her panty and taking off his own pants and brief, lying on top of the said victim daughter who, even when awaken was rendered motionless and speechless for fear[,] making coitus movement upon his private organ's penetration to his daughter's vagina[,] who was only able to cry for pain and fear and for the act of his father's inflicting his animal greed on her in a disgusting coercion of incestuous lust [which] is against her will and violated not only her purity and her trust but also the mores of our society which he has scornfully defied, to the irreparable damage and prejudice of the said offended party.

Contrary to law and in violation of Article 335 of the Revised Penal Code.[4]

A medical examination conducted on Elgen on April 28, 1997 revealed the following findings:

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[3] Records, p. 1.

[4] Records, p. 2.

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GENITAL EXAMINATION

Pubic Hairs, absent. Labia majora and minora, both coaptated. Fourchette, moderately tight. Vestibule, pinkish, smooth. Hymen, tall, thick, fleshy, with old healed, complete laceration at 6:00 o'clock position with rounded non coaptable edges. Hymenal orifice, originally annular, admits a glass tube of 2.5 cms. diameter with moderate resistance. Vaginal walls, moderately lax; rugosities, prominent.[5]

CONCLUSION

Genital findings, compatible with sexual intercourse with man on or about the alleged commission of rape on 30 September 1995 and subsequently thereafter.[6]

During trial, Dr. Tammy Uy testified that he asked complainant who was responsible for the laceration found in her hymen. Complainant allegedly identified appellant, Jenis Pateño, as the one responsible for the laceration and narrated that she was raped by appellant on two occasions in different places.[7] According to Dr. Uy, complainant's hymen showed a healed laceration at the 6:00 o'clock position. Dr. Uy explained that old healed lacerations usually refer to lacerations which are about six months to more than two years old.[8] He opined that the laceration found in the hymen of complainant could not have been caused by a finger because if it were so, the laceration should have been directed upward at the 10:00 to 12:00 o'clock positions. If the laceration, however, is caused by the male sexual organ, laceration is directed at the 3:00 o'clock to 6:00 o'clock positions.[9]

Appellant who pleaded not guilty upon arraignment,[10] denied having ravished Elgen on August 31, 1996. He testified that in

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[5] Exhibit "B-2," Records, p. 131.

[6] Exhibit "B-3," Records, p. 131.

[7] TSN, October 14, 1997, p. 5.

[8] TSN, October 14, 1997, p. 6.

[9] TSN, October 14, 1997, p. 7.

[10] Records, pp. 29, 31.

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the morning of said date, he was digging a deep well for a certain Sisoy Clarabal at Matangad, Gitagum, Misamis Oriental. He started working at around 8:30 o'clock in the morning until 1:00 o'clock in the afternoon after which he went home and slept.[11] Appellant also denied having raped Elgen in their house at Kisanay, Maramag, Bukidnon on September 30, 1995. Appellant averred that he was then working at Mahayag, Quezon, Bukidnon.[12]

Appellant testified that his wife abandoned him and their children when she went home to Matangad, Misamis Oriental. Appellant then left their farm in Bukidnon and followed his wife to the house of his parents-in-law in Misamis Oriental. When appellant confronted his wife as to why she left him and their children, his wife coldly told him that she found someone else and did not love him anymore.[13] Appellant maintains that he could not have raped Elgen on August 31, 1996 since his wife was at home breastfeeding their youngest child. All their other children were also present at that time.[14] Appellant surmised that his wife filed the present case because she wanted to live freely with another man.[15]

Appellant's claim was corroborated by his nine-year-old son, Randy Pateño. Randy testified that on August 31, 1996, he and complainant, together with the rest of their siblings, were at home playing hide and seek while their mother was at home cooking rice. Appellant who was also at home fast asleep, was fetched by some policemen and brought to prison.[16] Randy said that he has not visited appellant since the time the latter was imprisoned.[17]

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[11] TSN, March 27, 1998, pp. 3–4.

[12] TSN, March 27, 1998, pp. 5–6.

[13] TSN, March 27, 1998, pp. 6–7.

[14] TSN, March 27, 1998, pp. 8–9.

[15] TSN, March 27, 1998, p. 11.

[16] TSN, June 26, 1998, pp. 6–9.

[17] TSN, November 27, 1998, p. 4.

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Randy insisted that appellant did not rape complainant. He admitted having quarreled with complainant because his mother and complainant wanted appellant to be imprisoned. Randy said that his mother "gave" them away when appellant was in jail. Randy lived with his Uncle Rogelio but was driven away because his Uncle Rogelio allegedly wanted appellant to go to prison. Thereafter, Randy lived with his Auntie Lumen, appellant's sister.

The prosecution's witness, Narciso Clarabal, however, belied appellant's claim that he dug a well in Clarabal's residence from 8:00 o'clock in the morning to 12:00 o'clock noon on the day the rape incident was testified to as having happened. Clarabal said that the artesian well in his house was constructed in 1965[18] and has never had any repair work since.[19]

On March, 20, 2000, the trial court rendered a decision, the dispositive portion of which reads as follows:

IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, this Court hereby finds the accused Jenis Pateño guilty of the crime of rape as charged in the information and sentences the accused to death by lethal injection and to indemnify the offended party, Elgen Pateño, the sum of ₱75,000.00; to pay moral damages of ₱75,000.00; and to pay the cost.

SO ORDERED.[20]

The trial court did not give credence to appellant's claim that he was engaged in the digging of a deep well in the morning of August 31, 1996 and only went home in the afternoon to sleep because of exhaustion. The trial court noted that appellant's allegation was belied by the testimony of Narciso Clarabal that there was no such construction work of a deep well at the latter's residence on August 31, 1996. The trial court also ruled that appellant's claim that he could not have raped Elgen on August 31, 1996 since his wife and all his other children were at home at the time, was not worthy of consideration, lust being

[18] TSN, January 29, 1999, p. 217.

[19] TSN, January 29, 1999, p. 218.

[20] *Rollo*, p. 420.

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no respecter of time and place. Finally, the trial court noted that Elgen was only twelve years old at the time. She was a *barrio* girl with low educational attainment who was unaccustomed to the ways of the world and had no other motive than to seek justice for the crime committed against her.

Appellant in his appeal now raises the following assignment of errors:

I. THE TRIAL COURT ERRED IN GIVING FULL FAITH AND UNDUE CREDENCE TO THE MANIFESTLY INCREDIBLE AND UNRELIABLE TESTIMONY OF THE PRIVATE COMPLAINANT ANENT THE SUBJECT INCIDENT AND IN DISREGARDING THE EVIDENCE PROFFERED BY THE ACCUSED-APPELLANT WHICH WAS AMPLY CORROBORATED ON MATERIAL POINTS.

II. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III. ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY OF RAPE, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE PENALTY OF DEATH DESPITE THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF MINORITY AND RELATIONSHIP WERE NOT ALLEGED IN THE INFORMATION, HENCE THE APPROPRIATE PENALTY SHOULD BE *RECLUSION PERPETUA*.

The three guiding principles in the review of rape cases are: (a) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where two (2) persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its merits, and cannot be allowed to draw strength from the weakness of the evidence of the defense.[21]

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[21] *People v. Antido*, 278 SCRA 425, 440 [1997]; *People v. Betonio*, 279 SCRA 532, 547-548 [1997]; *People v. Gomez*, 279 SCRA 688, 692-693 [1997]; *People v. Burgos*, 279 SCRA 697, 705 [1997].

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Appellant insists that the trial court should not have given credence to the claim of complainant that she was raped. Appellant points out that the result of the medical examination is not compatible with complainant's allegation that she was raped on August 31, 1996 since the medical report mentioned another date, *i.e.,* September 3,1995.

We find no inconsistency between the result of medical examination and complainant's allegation that she was raped on August 31, 1996. The information filed against appellant accuses him of the crime of rape which allegedly happened on August 31, 1996. When complainant subjected herself to medical examination, however, she told the physician that she had been raped by appellant on two occasions in two different places.[22] Hence, the medical report reads:

Alleged Case:	Commission:
Rape	1. *30 September 1995 at noon time in Kisanday, Maramag, Bukidnon*
	2. *31 August 1996 at about 3:00 P.M. at Matangad, Gitagum, Misamis Oriental*[23]

The result of the medical examination which reads "Genital findings, compatible with sexual intercourse with man on or about the alleged date of the commission of rape on 30 September 1995 and subsequently thereafter" only corroborates complainant's statement to the physician that she had been subjected to sexual abuse as early as 1995.

Even without the medical examination, however, appellant may still be convicted of the crime of rape based solely on the testimony of complainant provided her testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things.

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[22] TSN, October 14, 1997, 5.

[23] Exhibit "B," p. 131.

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As observed by the trial court, complainant testified in a clear and straightforward manner. She broke down and cried at one point while narrating the ordeal she suffered at the hands of her father.[24] Moreover, there is no indication of any ill motive on her part to fabricate the crime of rape against appellant. We note that because of poverty, she even had to endure a thirty-kilometer walk just to attend court hearings, without taking her breakfast or lunch.[25] Complainant's determination to pursue the case despite the difficulties in attending court hearings and the indignities concomitant to the prosecution for rape persuades us that she is motivated by no other reason than to seek justice for the crime committed against her.

Appellant himself admitted that he knew of no reason why complainant filed the case against him[26] but presented one of his sons, nine-year-old, Randy Pateño, to testify that Elizabeth Pateño wanted appellant to go to prison so that she would be able to marry another man.[27]

We find this reason unavailing. The records show that complainant was entrusted to the Department of Social Welfare and Development (DSWD) of Cagayan de Oro City not only to spare her from the thirty-kilometer walk from her home in Gitagum, Misamis Oriental to the court house but also because Elizabeth Pateño, appellant's wife, herself apparently had a change of heart and wanted to have the case dismissed, to the outrage of complainant.[28]

Appellant maintains that complainant's account of the alleged rape incident is not credible because the place where the alleged rape incident happened was not isolated. Appellant avers that if complainant's allegations were true, she could have sought assistance from her mother who the complainant claims to have witnessed the entire incident.

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[24] TSN, July 8, 1997, p. 7.

[25] Records, p. 38-A.

[26] TSN, April 27, 1998, p. 4.

[27] TSN, November 27, 1998, p. 10.

[28] Records, p. 38-A.

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Appellant's claim deserves little consideration. It is settled that rape can be committed in places where people congregate, in parks, along the roadside, within the school premises, inside a house where there are occupants and even in the same room where other members of the family are also sleeping.[29] Complainant and appellant were alone in their house when the incident happened since appellant ordered his other children to fetch water outside. When appellant began to have sexual intercourse with complainant, Elizabeth Pateño accidentally witnessed the incident by taking a peep at a hole in the wall of their house. Complainant had satisfactorily explained that she could not ask for help from her mother because appellant at that time was kissing complainant on the lips.[30]

Appellant laments that the trial court should have accorded credence to the testimony of Randy Pateño, the nine-year-old brother of complainant, who testified that his father did not have sexual intercourse with complainant, Elgen, on August 31, 1996. Randy testified that Elgen was playing with them at the particular time and date that the alleged rape incident was supposed to have happened. Randy added that his mother, Elizabeth Pateño, wants appellant to go to prison so that she would be free to marry another man.

The following excerpts from the boy's testimony on June 26, 1998, however, cast doubt as to whether he had any recollection of the events which transpired on August 31, 1996.

Q: Now, do you know what day is today?
A: Today is Friday.

Q: What date?
A: I do not know the date.

Q: You do not know that today is Friday? June 26, 1998?
A: Yes, Mam [sic]

Q: You know or you do not know?
A: I do not know that today is June 26, 1998

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[29] *People v. Devilleres*, 269 SCRA 716, 728 [1997].

[30] TSN, July 8, 1997, p. 14.

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Q: You testified that you remember well that on August 31, 1996 you were in your house together with your brothers and sisters. Now, how did you remember that particular date, August 31, 1996, that you were in your house when it was already two years ago?

A: I cannot understand the question, Mam (sic).

Q: Randy, you were asked that on August 31, 1996 at about 3:00 o'clock in the afternoon you were asked where were you and your answer was I was in our house together with my brothers and sisters, when that was already two years ago.

A: I do not know how did I remember that on August 31, 1996, at around 3:00 o'clock in the afternoon I was together with my brothers and sisters in our house.

Q: Who told you to testify that the date will be August 31, 1996, was it your father who told you?

A: Yes, mam [sic], it was my father who taught me that the incident was on August 31, 1996.

x x x x x x x x x

Q: Now you testified, Randy, that your father woke up only when the policeman arrived in your house, is that correct?

A: Yes Mam [sic].

Q: And he was brought to the prison cell, is that correct?

A: Yes, Mam [sic].

Q: So you know what date was that?

A: I do not know what date was it when my father brought [sic] to the prison cell by the policeman.

Q: So, you do not remember that it was on August 31, 1996?

A: I do not remember that it was on August 31, 1996.[31]

With regard to the proper imposable penalty, the Solicitor General in his reply brief recommends that the death sentence imposed on appellant be lowered to *reclusion perpetua* because the age of complainant was not specifically alleged in the information.

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[31] TSN, June 26, 1998, pp. 349–351.

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In *People v. Garcia*[32] and succeeding cases,[33] we have held that the circumstances under the amendatory provisions of Section 11 of R.A. No. 7659, the attendance of which would mandate the single indivisible penalty of death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances since they increase the penalty of rape by one degree. The Revised Rules on Criminal Procedure, which took effect on December 1, 2000, now require that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information otherwise they cannot be considered by the trial court, even if they are subsequently proved during trial. Hence, Sections 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure read:

"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 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 by 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."

The next point is that, as adverted to by the Solicitor General, the information filed against appellant in the case at bar failed to specify the minority of complainant. The record shows, however, that the sworn complaint of Elizabeth Pateño, complainant's mother, filed against appellant, specifically stated the minority as well as the relationship of complainant to appellant.

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[32] 281 SCRA 463 [1997].

[33] *People v. Ramos*, 296 SCRA 559, 574–575 [1998]; *People v. Ilao*, 296 SCRA 658, 670-672 [1998]; *People v. Dimapilis*, 300 SCRA 279, 308-309 [1998] and *People v. Renola*, 308 SCRA 145, 164-165 [1999].

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The rape herein took place in 1996, prior to the effectivity on October 22, 1997 of Republic Act No. 8353, entitled: "An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for Other Purposes." Whether or not said law should be given retroactive effect so that the allegations in the complaint should no longer be considered, need not be resolved in this case.

For, in this case, although the complaint stated the age of the complainant to be twelve years old at the time of the rape, the age of the complainant was not sufficiently established during the trial. The prosecution failed to adduce in evidence complainant's birth certificate or other similar authentic documents such as her baptismal certificate and school records. The prosecution also failed to adduce independent proof to establish complainant's relationship with appellant. Complainant's testimony that she was born on September 25, 1983 and that appellant is her father,[34] even if not refuted by appellant,[35] will not suffice. Proof thereof is critical considering the penalty of death imposed for qualified rape.[36]

We also cannot consider complainant's allegation that her mother was able to witness the rape incident because this circumstance is not alleged in the complaint nor in the information. Furthermore, this was not sufficiently proven during trial. Complainant's mother did not bother to testify in court. Finally, even if complainant's allegation were sufficiently alleged and proven, it still may not be considered against appellant, considering that complainant's mother only allegedly happened to witness the rape incident by chance. Section 11 of R.A. No. 7659 provides for the imposition of death penalty when rape is committed *in full view* of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

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[34] TSN, July 8, 1997, p. 3.

[35] TSN, March 27, 1998, pp. 3, 8, 13.

[36] *People v. Gavino*, G.R. 142749, March 18, 2003.

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In accordance with prevailing jurisprudence, complainant is entitled to indemnity in the sum of ₱50,000. An additional award of ₱50,000 by way of moral damages is also automatically granted in rape cases, separate and distinct from the indemnity.

WHEREFORE, the appealed decision of the Regional Trial Court (RTC) of Misamis Oriental, Branch 25, in Criminal Case No. 96-993 is *AFFIRMED* with *MODIFICATION*. Appellant Jenis Pateño is found guilty beyond reasonable doubt of simple rape and is meted the penalty of *reclusion perpetua*. Appellant is also ordered to pay complainant ₱50,000 as civil indemnity and ₱50,000 as moral damages.

No costs.

SO ORDERED.

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

Sandoval-Gutierrez, J., is on leave.