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that occurs by operation of law, and without need of the debtor's knowledge.[22] Further, Philguarantee, as guarantor, became the transferee of all the rights of Philtrust as against Roxas and Astro because the "guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor."[23]

WHEREFORE, finding no error with the decision of the Court of Appeals dated December 10, 1998, the same is hereby *AFFIRMED in toto.*

SO ORDERED.

Bellosillo (Chairman), Callejo, Sr., and *Tinga, JJ.,* concur.

Quisumbing, J., concurs in the result.

EN BANC

[G.R. Nos. 138716-19. September 23, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE PILLAS** *y* **AMORIN** *ALIAS* **"CHE-AN,"** *appellant.*

SYNOPSIS

For automatic review was the Decision of the Regional Trial Court of Zamboanga City, Branch 16, that imposed death penalty upon appellant for committing four counts of rape against his own daughter. Except for the penalty, the Court found no reason to reverse the ruling of the trial court.

The victim's testimony that her father had carnal knowledge of her four times was categorical and straightforward; that on

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[22] Article 1302, paragraph 3, Civil Code.

[23] Article 2067, Civil Code.

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each occasion, appellant resorted to force and intimidation to consummate his lust, and during each time, she struggled in order to resist his sexual attack. Hence, appellant's bare denial must fail. Nonetheless, for failure to establish the qualifying circumstance of the victim's minority that would have warranted. The imposition of the death penalty, appellant can only be guilty of four counts of simple rape punishable by *reclusion perpetua* in each count. Additionally, appellant was made liable to pay the victim ₱50,000 as civil indemnity in each case, ₱50,000 as moral damages in each case, and ₱25,000 as exemplary damages, also in each case.

SYLLABUS

1. CRIMINAL LAW; RAPE AND DEATH PENALTY.— Articles 266-A and 266-B of the Revised Penal Code, as amended by R.A. 8353, the law governing these cases, provide: "Article 266-A. *Rape; When And How Committed.* – Rape is committed – 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. 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. "Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.* x x x "The death penalty shall 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, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." Thus, for appellant to be convicted of rape, it must be proven that there was physical evidence of penetration and that appellant forcibly subjected Arlyn to have sexual intercourse with him.

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2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, UPHELD.— Arlyn's testimony that her father had carnal knowledge of her four times is categorical and straightforward. Such testimony is one that could have been recounted only by a victim subjected to sexual assault. It bears emphasis that in each occasion, he resorted to force and intimidation in order to consummate his lust. And during each time, she struggled in order to resist his sexual attack. Carnal knowledge is proven by two details: pain in the victim's genitalia and the findings of the medico-legal officer. Here, Arlyn was certain that appellant penetrated her genitalia because she felt pain every time he inserted his penis therein. Moreover, Dr. Onari's medical findings of laceration and penetration reinforce our conclusion that appellant raped his daughter four times.

3. ID.; ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED.—The trial court found Arlyn's testimony to be credible and straightforward. We give great weight to the trial court's evaluation of the testimony of a witness because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court is in a better position to determine whether a witness is lying or telling the truth. We also find no basis to deviate from the settled rule that testimonies of rape victims who are young and immature are credible.

4. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY.— Appellant could only raise the defense of denial. Denial is an intrinsically weak defense which must be supported by strong evidence of lack of culpability. It is a negative, self-serving evidence, which cannot be accorded greater weight than the testimony of a credible witness who testified on affirmative matters. Thus, appellant cannot be liberated from his predicament even on his assertion that he loves Arlyn, being his only child. Appellant's excuse that Arlyn was motivated by hatred and contempt in filing the rape charges against him simply because she was forced to discontinue her studies is too lame to be accepted as true. The consequences of a rape charge are so serious and far-reaching. In the instant case, Arlyn was fully aware that her father could face death if convicted of the crime with which he was charged. Yet she remained steadfast in her testimony. Thus, the supposed motives

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cannot sway the Court from lending full credence to her testimony. A young girl would not concoct a story that would cause her father's imprisonment or death and drag her family to perennial shame, if she did not have a genuine desire to vindicate her honor.

5. CRIMINAL LAW; RAPE; MEDICAL EXAMINATION OF THE VICTIM NOT INDISPENSABLE.— Contrary to appellant's conjecture, the testimony of Dr. Onari that hymenal lacerations could be caused by other factors cannot by itself be taken to mean that Arlyn had not been sexually abused by appellant. In fact, there can still be a finding of rape even if the medical examination shows no vaginal laceration at all. We have consistently held that a medical examination of the victim is not indispensable to a prosecution for rape as it is merely corroborative in character. Appellant may be convicted even solely on the basis of her credible, natural, and convincing testimony.

6. ID.; ID.; DEATH PENALTY; WHEN PROPER.— To warrant the imposition of the death penalty under Article 266-B of the Revised Penal Code, the prosecution must allege in the Information and establish beyond reasonable doubt the twin qualifying circumstances of relationship between appellant and the victim and the latter's minority.

7. ID.; ID.; GUIDELINES IN APPRECIATING AGE. — In *People vs. Pruna*, we set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, thus: 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 matter 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

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to be proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years old and what is sought to be proved is that she is less than 12 years old; c. If the victim is alleged to be below 12 years old and what is sought to be proved is that she is less than 18 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. The trial court should always make a categorical finding as to the age of the victim."

8. **ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY OF THE VICTIM; NOT SUFFICIENTLY ESTABLISHED.**— The prosecution failed to provide the required evidence to prove Arlyn's age. The original or certified true copy of Arlyn's certificate of live birth was never presented. Arlyn's school records indicating she was born on October 19, 1981 were not duly certified and authenticated. Although the baptismal certificate was presented to the trial court, it was not marked and formally offered in evidence. While Arlyn testified that she was born on October 19, 1981, hence, was merely 16 years when she was raped, such testimony was *not expressly and clearly admitted* by appellant. Besides, when the alleged age of the victim at the time of the sexual assault is between 13-18 years, her bare testimony would not suffice to prove her age and consequently qualify the crime to justify the imposition of the death penalty. The absence of a contrary assertion, or appellant's silence on this matter, cannot exempt the prosecution from proving with certainty the victim's age. The trial court cannot conclude that Arlyn was below 18 years of age when she was raped simply because appellant neither disputed nor contradicted her testimony.

9. **ID.; SIMPLE RAPE; PROPER PENALTY.**— Since there is no acceptable proof as to Arlyn's exact age, appellant must be held guilty only of simple, not qualified, rape. Simple rape is punishable by *reclusion perpetua*, a single indivisible penalty. Under Article 63 of the Revised Penal Code, a single indivisible penalty shall be applied by the courts regardless of any attendant mitigating or aggravating circumstance.

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10. ID.; ID.; CIVIL DAMAGES; MORAL DAMAGES, CIVIL INDEMNITY AND EXEMPLARY DAMAGES, AWARDED IN CASE AT BAR.— Anent the award of damages, prevailing jurisprudence requires that moral damages be awarded in the amount of ₱50,000.00 for each count of rape, or a total of ₱200,000.00, without need of pleading or proof of basis therefor. We affirm the award of ₱50,000.00 as civil indemnity in each case, or a total of ₱200,000.00. We have consistently ruled that upon a finding of the fact of rape, the award of civil indemnity is mandatory. We likewise affirm the award of ₱25,000.00 as exemplary damages for each count of rape, or a total of ₱100,000.00. Exemplary damages is awarded in view of the presence of the aggravating circumstance of relationship, and also to deter fathers with aberrant sexual behavior.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

"How could you do that to me? You are my father." Arlyn Pillas spoke with a lost heart when appellant subjected her to bestial abuse. With the sheer perversity of her father, Arlyn was unjustly exposed to his libidinous indulgence. Instead of providing protection to his daughter, he stripped her of the only thing she held dear. He, like any father who subjects his child to shameless lechery, deserves not only condemnation but also loss of respect due him as a human being.

For automatic review is the Decision[1] dated April 19, 1999 of the Regional Trial Court, Branch 16, Zamboanga City, in Criminal Cases Nos. 15199, 15200, 15201 and 15202 convicting appellant Jose Pillas *y* Amorin of four counts of rape against his own daughter and imposing upon him the supreme penalty of death.

[1] Penned by Judge Jesus C. Carbon, Jr.

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The four Informations filed against appellant are similarly worded, except as to the dates of commission of the crimes, thus:

"That on or about July 16, 1998, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of ARLYN PILLAS *y* QUIAMCO, against her will; furthermore, there being present an aggravating circumstance in that the accused is the father of said Arlyn Pillas *y* Quiamco, who is only 16 years of age."[2]

Upon arraignment, appellant, with the assistance of his counsel, pleaded not guilty. A joint trial of the four criminal cases ensued.

The prosecution presented as its witnesses Arlyn Pillas, private complainant, Teresita Molina, SPO1 Judito Tubaña, Dr. Jocelyn Onari and Barangay Captain Percival Toribio.

The version of the prosecution is as follows: Arlyn was born on October 19, 1981 at Limaong Island, Zamboanga City. She is the only child of appellant and Carmelita Quiamco who separated when she was about one month old. They left her under the care of her paternal grandparents.

In 1993, when Arlyn was 11 years old, appellant took her into his custody in Sitio Anahaw, Dabuy, Upper Vitali, Zamboanga City. He was then living with his common-law wife, Teresita Molina, and her son (who left for Malaysia in 1995).

In January 1996, appellant ordered Arlyn to discontinue her studies because she stole rice from their house and sold it. From 1996 to 1998, she stayed home and helped her parents in the domestic chores.

On July 16, 1998, at past 8 o'clock in the morning, while Arlyn was washing the dishes, her father asked about Teresita's whereabouts. She informed him that Teresita was at the river washing their clothes. Appellant said, "*You know Lyn, although*

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[2] Record, Vol. 1 at 1 and Vols. 2-4 at 1.

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you are my daughter, I like you." Taken aback by his perverted words, she responded, "*Why were you able to say that? I am your daughter.*" He then said, "*I really like you and you are already a woman.*" Arlyn retorted, "*How could you tell that to your own daughter*"? He replied that he does not know. Then he kissed her on the lips and held her breasts. Arlyn struggled and tried to ward off his face. She exclaimed, "*How could you do that to me? You are my father.*" Without saying another word, appellant pulled her left hand. Arlyn tried to resist by holding on a piece of wood attached to the lavatory. But her grip was not strong enough. He dragged her to the living room and continued to kiss her and hold her breasts. In spite of her struggle, he was able to undress and pin her down. Again Arlyn asked why he was doing that to her. He answered that it was because her stepmother is already old. Then he unzipped his short pants and pulled out his penis and inserted it into her vagina. Arlyn felt pain. While he was doing the pumping motion, he threatened to kill her if she would shout. Before he rose, he kissed her on her mouth and nipples. Arlyn saw her vagina bleeding. She also saw blood and "something white" on his penis. He wiped off the traces of blood on his penis and on her vagina so that Teresita would not be able to notice what happened.[3] Before he went out, he reiterated his threat to kill Arlyn and Teresita should she report the matter to anybody.

On July 26, 1998 at around 10 o'clock in the morning, appellant's animal greed again possessed him. At that time, he was playing guitar at the porch while Teresita was away washing clothes. When Arlyn was preparing food for lunch, he suddenly kissed and carried her from the kitchen to the living room. She tried hard to resist, but he was too strong for her petite physique.[4] After undressing her, he placed himself on top of her. He kissed her and inserted his penis into her vagina, telling her that since he reared and took care of her, "he should be the first one to take advantage or be benefited." According to Arlyn, she felt pain.

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[3] TSN, February 4, 1999 at 17-54.

[4] Arlyn was only 28 kilos and 4'6" in height.

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On July 30, 1998, at around 8 o'clock in the morning, appellant once more gave in to his lust. Arlyn was inside her room fixing her clothes when he hastily pulled and dragged her to the living room. For the third time, he sexually abused her by force and intimidation.

On August 11, 1998, at around 11 o'clock in the morning, while washing clothes at the river, Arlyn at last found the courage to inform Teresita what transpired. They both cried. Teresita then approached Percival Toribio, *barangay* chairman, who stated that appellant should be immediately arrested.[5] Teresita, however, did not take any action as she was afraid of him.[6]

Meanwhile, Arlyn's nightmare was not yet over. On August 25, 1998, for the fourth time, appellant molested her sexually, again by means of force and threat. After the incident, she told Teresita about it. It was only after appellant left for Zamboanga City to sell his farm products that they decided to report the matter to the police. On August 27, 1998, SPO1 Judito P. Tubaña took Arlyn's statement and instructed her to undergo physical examination by a physician.

On August 28, 1998, Dr. Jocelyn Onari of the Zamboanga Medical Center examined Arlyn. Dr. Onari issued a Medico-Legal Certificate[7] stating that Arlyn has incomplete hymenal lacerations at 1, 5, 8 and 11 o'clock positions and that her introitus admitted one finger.

Appellant was then charged with four counts of rape and detained. When he pleaded for forgiveness, Arlyn said, "*I do not pity you because you did not pity me.*"[8] Asked if she could quantify her pain and suffering in terms of money, Arlyn replied that even if she will not receive any amount, it is alright with her provided her father "suffer for the things he had done."[9]

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[5] TSN, February 8, 1999 at 9-51.

[6] *Id.* at 41.

[7] Record, Vol. 1 at 5.

[8] TSN, February 5, 1999 at 61-62.

[9] *Id.* at 64.

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Appellant vehemently denied having committed the crimes. He claimed that the reason why Arlyn charged him was because he asked her to quit school. She resented his command since she did not want to do the household chores and work in the farm. With respect to Teresita, she was angry with him because he could not make love to her even once a month because he was suffering from hernia.

He denied having asked for forgiveness from Arlyn considering that he was dizzy while in detention.[10]

After hearing, the trial court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused JOSE PILLAS *y* AMORIN *alias* CHE-AN GUILTY of the crime of Rape charged in Criminal Cases Nos. 15199, 15200, 15201 and 15202, defined and penalized under Articles 266-A and 266-B of the Revised Penal Code (*Sec. 2, R.A. No. 8353 known as 'The Anti-Rape Law of 1997'*), committed against his own daughter, Arlyn Pillas *y* Quiamco who was below 18 years of age at the time of the commission of the crimes charged, and *SENTENCES* said accused as follows:

1. In Criminal Case No. 15199, to suffer the penalty of DEATH with its accessory penalties in the manner provided by law; to pay the offended party, Arlyn Pillas *y* Quiamco, the sum of ₱50,000.00 as indemnity, ₱30,000.00 as moral damages, and ₱25,000.00 as exemplary damages;

2. In Criminal Case No. 15200, to suffer the penalty of DEATH with its accessory penalties in the manner provided by law; to pay the offended party, Arlyn Pillas *y* Quiamco, the sum of ₱50,000.00 as indemnity; ₱30,000.00 as moral damages, and ₱25,000.00 as exemplary damages;

3. In Criminal Case No. 15201, to suffer the penalty of DEATH with its accessory penalties in the manner provided by law; to pay the offended party, Arlyn Pillas *y* Quiamco, the sum of ₱50,000.00 as indemnity; ₱30,000.00 as moral damages, and ₱25,000.00 as exemplary damages;

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[10] TSN, February 9, 1999 at 23-51.

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4. In Criminal Case No. 15202, to suffer the penalty of DEATH with its accessory penalties in the manner provided by law; to pay the offended party, Arlyn Pillas *y* Quiamco, the sum of ₱50,000.00 as indemnity; ₱30,000.00 as moral damages, and ₱25,000.00 as exemplary damages; and

5. To pay the costs in all the four (4) cases.

"Let the complete records of these cases be forwarded to the Supreme Court for automatic review and judgment as provided by law.

"SO ORDERED."[11]

Hence, this automatic review, appellant raising the following assignments of error:

"I

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF FOUR (4) COUNTS OF RAPE.

"II

ASSUMING *ARGUENDO* THAT ACCUSED IS INDEED GUILTY OF THE RAPE CHARGES, THE TRIAL COURT, NONETHELESS, ERRED IN IMPOSING THE DEATH PENALTY IN EACH OF THE FOUR (4) CASES."

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt. That there were lacerations in Arlyn's hymen does not conclusively show that she was raped. In fact, Dr. Onari testified that those lacerations could also be caused by the insertion of a hard object, masturbation, trauma or horseback riding.

He could not have raped Arlyn because he loves her, being his only daughter. She implicated him because he made her quit her studies.

Appellant assails the imposition of the penalty of death upon him in all four cases considering that the prosecution did not offer in evidence Arlyn's certificate of live birth.

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[11] *Rollo* at 139-140.

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Articles 266-A and 266-B of the Revised Penal Code, as amended by R.A. 8353,[12] the law governing these cases, provide:

"Article 266-A. *Rape; When And How Committed.* — Rape is committed —

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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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

x x x x x x x x x

"The death penalty shall 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, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim"

Thus, for appellant to be convicted of rape, it must be proven that there was physical evidence of penetration and that appellant forcibly subjected Arlyn to have sexual intercourse with him.

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[12] Which took effect on October 22, 1997.

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Arlyn testified as follows:

1. The rape on July 16, 1998

Q What happened when you informed your father Jose Pillas that your stepmother was in the river washing?
A My father said: '*Sabi vo Lyn, masqui anak vo de mio quiere yo contigo.*' Which means in English, 'You know Lyn, although you are my daughter, I like you.'

Q What response did you give when your father told you this?
A I said, '*Porque ya hable tu ansena Anak yo de tuyo?*' meaning, 'Why is it that you were able to say that I am your daughter?'

Q Did your father say anything when you told him that 'I am just your daughter?'
A He said that, 'I really like you and you are already a woman.'

Q And what did you tell him when he told you that?
A I told him: 'How come that you could tell that to your daughter?'

x x x x x x x x x

A According to him, 'He does not know.' And, according to him 'that was what came in his mind.'

Q So what happened next?
A Then, after he kissed me and then, I was struggling and at the same time removed his face near me.

x x x x x x x x x

FISCAL MEDALLE:

Q When he kissed you and held your breast, what did you do?
A I was struggling and at the same time I told him 'how come that you could do that to me, you are my father'?

Q And did he tell you anything?
A No.

Q So, what else happened?
A He pulled my hands and brought me to the place where they slept.

x x x x x x x x x

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FISCAL MEDALLE:

Q When you reached that place in the sala, as you said, where they used to sleep, what happened?
A Just the same he kept on kissing me and holding my breast.

Q Which part of your body did he kiss?
A In my mouth.

Q What did you do when your father kissed your mouth and held your breasts?
A I struggled and cried.

Q What prompted you to struggle and cry when your father kissed you on your mouth?
A I was struggling because what he was doing to me is not right and he is my father.

x x x x x x x x x

FISCAL MEDALLE:

Q What happened when your father kissed you on your mouth and held your breasts?
A He was trying to remove my dress and I was struggling.

x x x x x x x x x

FISCAL MEDALLE:

Q You said that he was trying to pull down your panty and you were insisting in pulling it up, is that correct?
A Yes.

Q At that time you were still standing?
A He was trying to let me lie down.

x x x x x x x x x

FISCAL MEDALLE:

Q You are trying to tell us that your father was trying to push you down by pressing your shoulders?
A Yes.

Q And he was able to make you lie down?
A Yes.

x x x x x x x x x

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Q When you were already lying down wearing a pair of panty and skirt, what did your father do?
A He was trying to remove my panty.

x x x x x x x x x

Q And was your father able to remove your panty?
A Yes.

x x x x x x x x x

Q How was he able to remove it when you were trying to pull it up?
A Well, I could not do anything, Your Honor, because he is stronger than me.

x x x x x x x x x

Q Now, as you were struggling to prevent your father from pulling down your pair of panty, did your father say anything?
A I told my father 'How come that you could do that to your own daughter?'

Q And did your father answer you?
A He told me that, 'I was able to do that because your stepmother is already old.'

COURT:

Q When did he say that?
A The time when he pinned me down, Your Honor.

x x x x x x x x x

Q You already know about rape at that time?
A Yes. I know already by seeing that forcing a child and at the same time removing their clothes.

Q That would allow into rape?
A Yes.

COURT:

Proceed.

FISCAL MEDALLE:

Q After your father was able to remove your panty, what happened next?
A At first, he kissed my vagina and he inserted his finger into my vagina.

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Q *When he did that, what did you do?*
A *I was crying.*

Q *What else?*
A *And at the same time struggling.*

x x x x x x x x x

Q For how long did he insert his finger into your vagina?
A '*Ungratu lang nuay dura.*' Meaning, 'it was only for a brief/ short time, it did not take long.'

COURT:

Proceed.

FISCAL MEDALLE:

Q Afterwards, what else did your father do?
A He removed his finger from my vagina and he opened the zipper of his pants.

x x x x x x x x x

FISCAL MEDALLE:

Q After he opened his zipper, what else did your father do?
A He put out his private part.

x x x x x x x x x

Q *After he put out his penis, what else did your father do?*
A *'Ya asi le entra de soyo putotoy na de mio kulo.' Meaning, he inserted his penis into my vagina.'*

x x x x x x x x x

Q *Now, when your father was about to insert his penis into your vagina, what were you doing?*
A *I was struggling and at the same time crying.*

COURT:

Q *But, you were not shouting?*
A *Well, I am afraid to shout because he was threatening us.*

Q *How?*
A *He said that I will not report and at the same time he will* **harm me and he will kill us all**.

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Q When did he say that?
A When he was already doing the sexual intercourse motion, your Honor.

x x x x x x x x x

Q What else did your father do as he was pumping or having sexual intercourse, that is, before he stood up?
A He kissed my mouth and he also kissed my breasts.

COURT:

Q What breasts?
A The two (2) nipples.

COURT:

Proceed.

FISCAL MEDALLE:

Q *As he was doing this with you, can you tell to this Honorable Court, what was your reaction?*
A *Just the same I was struggling and at the same time crying.*

Q *Now, as your father was doing the sexual intercourse act on you, what did you feel?*
A **I felt pain**.

x x x x x x x x x

Q Then, what happened?
A *Afterwards he stood up then, I saw something white in his penis and I saw blood from my vagina and there are also traces of blood that I saw on his penis.*

Q What did you see?
A That there is a white substance '*tiene cosa blanco*' something white on his penis, your Honor.

FISCAL MEDALLE:

Q When you saw this, your father was still standing?
A He was on a kneeling position.

Q *What about you, what did you observe on your vagina?*
A **It is painful and with blood, your Honor**.[13]

x x x x x x x x x

[13] TSN, February 4, 1999 at 30-52.

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Q Now, after a while, he was helping you wipe your vagina because there was blood, did he tell you anything?
A *He told me not to report to anybody what happened because I will be harmed and at the same time he will kill us all.*

Q What do you mean by 'all'?
A *He will kill me, together with my stepmother.*[14]

2. The rape on July 26, 1998

Q Now, on July 26, 1998 at around 10 o'clock that morning, can you recall where were you then at that time?
A Yes, sir.

Q Where were you?
A I was at the kitchen.

Q What were you doing at the kitchen?
A I was preparing food.

Q While you were preparing your food, where was your stepmother?
A She was in the river washing.

Q What about your father, where was he then?
A He was there playing the guitar.

Q In which part of the house was your father playing the guitar?
A At the porch.

x x x x x x x x x

Q While you were preparing the meal for lunch, what happened at the kitchen?
A My father approached me then he kissed me at the same time carried me.

x x x x x x x x x

Q Were you able to get away from your father?
A No. Well, he was able to carry me despite the fact that I was struggling because he was stronger than me.

x x x x x x x x x

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[14] TSN, February 5, 1999 at 3-4.

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FISCAL MEDALLE:

Q Now, you said that you were not able to get away from your father although you struggled. Where did he bring you?
A I was brought to the place where they used to sleep.

Q What happened when you were at that place?
A Just the same, he kissed me and at the same time he was trying to remove my short pants and he was trying to pull my short pants upward but I cannot do anything. He was stronger than me.

x x x x x x x x x

Q After he removed his pair of shorts, what did your father do?
A He kissed my mouth first then afterwards he inserted his penis in my vagina.

Q What was his position when he inserted his penis into your vagina?
A He went on top of me.

Q What did you feel when he inserted his penis into your vagina?
A He was doing the sexual intercourse motion at the same time **I could feel the pain**.

Q When he inserted his penis into your vagina and doing the motion of sexual intercourse with you, what were you doing?
A *I continued to struggle and cry trying to push him.*

x x x x x x x x x

Q Now, do you remember for how long was your father doing the motion of sexual intercourse with you?
A I could not remember. *The time when he was doing that sexual intercourse motion with me, he told me that since he was the one who reared and took care of me, he will be the first one to take advantage or be benefited.*[15]

3. The rape on July 30, 1998

Q Now, on July 30, 1998, do you remember where were you then in the morning at around past 8:00 o'clock?
A Yes.

[15] *Id.* at 8-16.

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Q Where were you then?
A I was in the room.

Q What were you doing there inside the room?
A I was fixing my clothes.

Q At the time, do you know where was your stepmother?
A Yes, she was washing clothes in the river.

Q How about your father, do you know where your father was then?
A He was just outside.

Q Outside what?
A He was at the porch.

Q What happened when you were fixing your clothes inside the room?
A He just pulled me suddenly.

Q What part of your body did he hold to pull you?
A My left hand.

Q What did you do when your father suddenly entered the room and pulled you by your left hand?
A Well, I was shocked. I was not able to hold anything.

Q You said he pulled you. Where did he bring you?
A In the same place where they used to sleep.

x x x x x x x x x

Q What happened when your father brought you to the place where they were sleeping?
A Just the same. He removed my pants and panty at the same time, kissed me.

Q What did you do as he was kissing you, also removing your short pants and panty?
A I was struggling.

Q Afterwards, what else did your father do after he removed your pair of pants and panty?
A He also removed his shorts and brief.

Q After he removed his pair of pants and brief, what else did your father do?
A He went on top of me and inserted his penis in my vagina.

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Q As he went on top of you, what did you do?
A I was trying to push him.

Q Were you able to push him off?
A No, because I could not overpower him.

Q What happened when he was already on top of you?
A He was already doing the sexual intercourse motion.

Q Did you feel his penis inside your vagina?
A Yes.

Q And as he was pumping on top of you, what did you feel?
A **I could still feel the pain**, *but not too painful anymore.*[16]

4. The rape on August 25, 1998

Q On August 25, 1998, at around past 8 o'clock, where were you?
A I was sweeping.

Q What part of the house were you sweeping?
A Under our house.

Q Your mother?
A She was washing clothes.

Q Where?
A At the river.

Q What about your father?
A He was watering the plants.

x x x x x x x x x

FISCAL MEDALLE:

Q What happened when you were sweeping?
A My father arrived.

Q Where did he go?
A He went up to the house.

Q What happened when he was upstairs?
A He told me, 'Arlyn, you hurry up in sweeping.' Then, he called me to go up.

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[16] *Id.* at 20-23.

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Q When he called you, do you have in your mind that he will rape you again?
A No, sir.

Q Did he tell you the reason why he was telling you to go upstairs?
A My father was asking me what was the reaction of my stepmother when he was talking to me that night.

Q What answer did you give?
A I told my father nothing.

x x x x x x x x x

Q What happened when you were talking?
A According to him, if he will not scold my stepmother, my stepmother will not leave me alone.

Q What else?
A Then, he told me 'now, I could do what I want.'

Q What did your father do?
A He kissed me again.

Q In what part of the body did he kiss you?
A In my mouth, at the same time, he was holding my breasts.

Q What else did your father do aside from holding your breasts and kissing your mouth?
A He removed my shorts and panty.

Q At that time when he removed your shorts and panty, were you still standing or lying?
A He was trying to put me down but I was struggling.

Q But was he able to make you lie down?
A Yes.

Q After he removed your short pants and panty, what happened next?
A He also removed his pants and brief.

x x x x x x x x x

Q After that, what happened next?
A He went on top of me.

Q When he went on top of you, what were you doing?
A I was struggling and at the same time crying.

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Q *Did your father remain on top of you despite your struggle?*
A *Yes.*

Q *What happened?*
A *Well, he went on top of me and inserted his penis and he was doing the sexual intercourse motion."*[17]

Arlyn's testimony that her father had carnal knowledge of her four times is categorical and straightforward. Such testimony is one that could have been recounted only by a victim subjected to sexual assault. It bears emphasis that in each occasion, he resorted to force and intimidation in order to consummate his lust. And during each time, she struggled in order to resist his sexual attack.

Carnal knowledge is proven by two details: pain in the victim's genitalia and the findings of the medico-legal officer.[18] Here, Arlyn was certain that appellant penetrated her genitalia because she felt pain every time he inserted his penis therein. Moreover, Dr. Onari's medical findings of laceration and penetration reinforce our conclusion that appellant raped his daughter four times.

Besides, the trial court found Arlyn's testimony to be credible and straightforward. We give great weight to the trial court's evaluation of the testimony of a witness because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court is in a better position to determine whether a witness is lying or telling the truth. We also find no basis to deviate from the settled rule that testimonies of rape victims who are young and immature are credible.[19]

Appellant could only raise the defense of denial. Denial is an intrinsically weak defense which must be supported by strong

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[17] *Id.* at 45-50.

[18] *People vs. Santos*, G.R. No. 145305, June 26, 2003, citing *People vs. Managbanag*, G.R. No. 140101, December 7, 2001, 371 SCRA 615.

[19] *Id.*, citing *People vs. Cortes*, G.R. No. 129693, January 24, 2000, 323 SCRA 131.

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evidence of lack of culpability. It is a negative, self-serving evidence, which cannot be accorded greater weight than the testimony of a credible witness who testified on affirmative matters.[20] Thus, appellant cannot be liberated from his predicament even on his assertion that he loves Arlyn, being his only child.

Appellant's excuse that Arlyn was motivated by hatred and contempt in filing the rape charges against him simply because she was forced to discontinue her studies is too lame to be accepted as true. The consequences of a rape charge are so serious and far-reaching. In the instant case, Arlyn was fully aware that her father could face death if convicted of the crime with which he was charged. Yet she remained steadfast in her testimony. Thus, the supposed motives cannot sway the Court from lending full credence to her testimony.[21] A young girl would not concoct a story that would cause her father's imprisonment or death and drag her family to perennial shame, if she did not have a genuine desire to vindicate her honor.

Contrary to appellant's conjecture, the testimony of Dr. Onari that hymenal lacerations could be caused by other factors cannot by itself be taken to mean that Arlyn had not been sexually abused by appellant. In fact, there can still be a finding of rape even if the medical examination shows no vaginal laceration at all.[22] We have consistently held that a medical examination of the victim is not indispensable to a prosecution for rape as it is merely corroborative in character. Appellant may be convicted even solely on the basis of her credible, natural, and convincing testimony.[23]

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[20] *People vs. Aquino*, G.R. Nos. 145309-10, April 4, 2003.

[21] *People vs. Santos, id.; People vs. Dalisay*, G.R. No. 133926, August 26, 2003; *People vs. Itdang*, G.R. No. 136393, October 18, 2000, 343 SCRA 624.

[22] *People vs. Sapurco*, 315 Phil. 561 (1995); *People vs. Umayam*, G.R. No. 147033, April 30, 2003.

[23] *People vs. Umayam, supra.*

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In fine, we find appellant guilty beyond reasonable doubt of rape on four counts. However, the trial court erred in imposing upon him the death penalty. On the basis of school records and appellant's admission,[24] the trial court concluded that Arlyn was below 18 years of age when appellant sexually ravished her.

To warrant the imposition of the death penalty under Article 266-B of the Revised Penal Code, the prosecution must allege in the Information and establish beyond reasonable doubt the twin qualifying circumstances of relationship between appellant and the victim and the latter's minority.

In the instant case, the evidence for the prosecution has shown that appellant is the father of Arlyn, a fact that he himself has maintained.[25] However, the prosecution failed to prove her minority.

In *People vs. Pruna*,[26] we set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, thus:

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 matter respecting pedigree* such as the exact age or date of birth of the offended party pursuant

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[24] Record, Vol, 1 at 88.

[25] TSN, February 9, 1999 at 24.

[26] G.R. No. 138471, October 10, 2002.

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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 old and what is sought to be proved is that she is less than 12 years old;

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

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

The prosecution failed to provide the required evidence to prove Arlyn's age.

First, the original or certified true copy of Arlyn's certificate of live birth was never presented.

Second, Arlyn's school records[27] indicating she was born on October 19, 1981 were not duly certified and authenticated. Although the baptismal certificate was presented to the trial court,[28] it was not marked and formally offered in evidence.

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[27] Exhibit "I", form 137.

[28] TSN, February 4, 1999 at 20-21.

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Third, while Arlyn testified that she was born on October 19, 1981,[29] hence, was merely 16 years when she was raped, such testimony was *not expressly and clearly admitted* by appellant. Besides, when the alleged age of the victim at the time of the sexual assault is between 13-18 years, her bare testimony would not suffice to prove her age and consequently qualify the crime to justify the imposition of the death penalty.[30]

Fourth, the absence of a contrary assertion, or appellant's silence on this matter, cannot exempt the prosecution from proving with certainty the victim's age. The trial court cannot conclude that Arlyn was below 18 years of age when she was raped simply because appellant neither disputed nor contradicted her testimony.

Since there is no acceptable proof as to Arlyn's exact age, appellant must be held guilty only of simple, not qualified, rape. Simple rape is punishable by *reclusion perpetua*, a single indivisible penalty. Under Article 63 of the Revised Penal Code, a single indivisible penalty shall be applied by the courts regardless of any attendant mitigating or aggravating circumstance.

Anent the award of damages, prevailing jurisprudence requires that moral damages be awarded in the amount of ₱50,000.00[31] for each count of rape, or a total of ₱200,000.00, without need of pleading or proof of basis therefor.[32] Here, the trial court awarded only ₱30,000.00 in each case.

We affirm the award of ₱50,000.00 as civil indemnity in each case, or a total of ₱200,000.00. We have consistently ruled that upon a finding of the fact of rape, the award of civil

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[29] *Id.* at 19.

[30] *People vs. Umayam, supra; People vs. Bawang*, G.R. No. 131942, October 5, 2000, 342 SCRA 147; *People vs. Tipay*, G.R. No. 131472, March 28, 2000, 329 SCRA 52.

[31] *People vs. Pagsanjan*, G.R. No. 139694, December 27, 2002.

[32] *People vs. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 193; *People vs. Agustin*, G.R. Nos. 132524-25, September 24, 2001, 365 SCRA 667.

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indemnity is mandatory.[33] We likewise affirm the award of ₱25,000.00 as exemplary damages for each count of rape, or a total of ₱100,000.00. Exemplary damages is awarded in view of the presence of the aggravating circumstance of relationship, and also to deter fathers with aberrant sexual behavior.[34]

WHEREFORE, the decision of the trial court is *AFFIRMED* with *MODIFICATION* as follows:

(a) Appellant is found *GUILTY* beyond reasonable doubt of four counts of *SIMPLE RAPE* in Criminal Cases Nos. 15199, 15200, 15201 and 15202 and is hereby sentenced to suffer the penalty of ***reclusion perpetua*** in each case; and

(b) In each case, appellant is ordered to pay Arlyn the sum of ₱50,000.00 as moral damages, or a total of ₱200,000.00; ₱50,000.00 as civil indemnity, or a total of ₱200,000.00; and ₱25,000.00 as exemplary damages, or a total of ₱100,000.00.

Costs *de oficio*.

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.

Azcuna, J., is on leave.

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[33] *People vs. Dalisay, supra.*

[34] *People vs. Francisco*, G.R. No. 135200, February 7, 2001, 351 SCRA 351.