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ENBANC

[G.R. Nos. 146097-98. August 26, 2003.]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JUAN CARIÑAGA**, *appellant.*

SYNOPSIS

For the sexual assault committed on November 23, 1998 and December 15, 1998 by Juan Cariñaga against her minor daughter Venilda, the Regional Trial Court, Branch 13 of Ligao, Albay convicted him of two counts of rape and the penalty of death was imposed on him for each count. Hence, this automatic review.

The Court affirmed the decision of the trial court with modification as to the award of damages. It ruled that the trial court's evaluation of the testimony of a witness is accorded highest respect because the trial court had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court is uniquely positioned to determine whether a witness is telling the truth. It found no basis to deviate from the settled rule that the testimony of a rape victim of tender or immature age deserves full credit, as in this case, where the facts established the sexual assault on her. The testimony given was simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency or contradiction.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES AND DISCREPANCIES, NOT GROUNDS FOR ACQUITTAL.** — What is material is that the commission of rape by appellant against Venilda is proven beyond any doubt. Discrepancies should refer to significant facts that are crucial to the guilt or innocence of an accused. Inconsistencies and discrepancies in details, which are irrelevant to the elements of the crime, are not grounds for acquittal.

2. **CRIMINAL LAW; RAPE; NOT RESPECTER OF PEOPLE, TIME OR PLACE.** — The presence of people has never deterred the commission of rape. Rape is not a respecter of people, time or

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place. Rape has been committed in places where people congregate, in parks, along roadsides, in school premises, in a house where there are other occupants, and even in places which to many would appear unlikely and high-risk venues for its commission. In any case, there is no rule that rape can be committed only in seclusion.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ALLOWANCE MUST BE GIVEN TO SOME MINOR LAPSES OR AMBIGUITY IN VICTIM'S TESTIMONY.** — The alleged contradiction between the testimonies of Belinda and her mother, as to when the former disclosed to the latter the rape incidents appellant committed against Venilda, is more apparent than real. Allowance must be given to some minor lapses or ambiguity in Belinda's testimony on the matter, as she was only ten years old when she testified in court. A reading of her entire testimony would show that immediately after Belinda told her mother about the rape incidents, her mother brought Venilda to the doctor. Her mother stated that Belinda made the disclosure on 22 January 1999. After hearing Belinda's disclosure, her mother brought Venilda to the doctor. Then her mother brought Venilda to the police station to file a complaint against appellant.

4. **ID.; ID.; ID.; CONTRADICTION ON MINOR MATTERS DOES NOT OVERRULE THE COMMISSION OF THE CRIME CHARGED.** — In any case, the alleged contradiction refers only to a minor matter that does not overrule the commission by appellant of the crime charged. Belinda's testimony is merely corroborative. Venilda's own testimony by itself is strong, convincing and credible, and thus suffices to sustain appellant's conviction.

5. **ID.; ID.; PHYSICAL EVIDENCE; ADMISSIBILITY; VICTIM'S RUPTURED HYMEN IS PHYSICAL EVIDENCE OF HER SEXUAL ASSAULT.** — The other factors mentioned by the doctor do not exclude Venilda's ruptured hymen as physical evidence of the sexual assault on her. When the victim's testimony of her sexual violation is corroborated by the physician's findings of penetration, *i.e.*, a ruptured hymen, there is sufficient basis to conclude the existence of the essential requisite of carnal knowledge.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION IS ACCORDED HIGHEST RESPECT.** — The

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trial court's evaluation of the testimony of a witness is accorded highest respect because the trial court had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court is uniquely positioned to determine whether a witness is telling the truth.

7. **ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM OF TENDER OR IMMATURE AGE DESERVES FULL CREDIT.** — We find no basis to deviate from the settled rule that the testimony of a rape victim of tender or immature age deserves full credit, as in this case where the facts establish the sexual assault on her. The testimony given was simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency or contradiction. The same must be given full faith and credit.

8. **ID.; ID.; ID.; ALIBI AND DENIAL CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL STATEMENTS OF VICTIM.** — Appellant's trite defenses of alibi and denial cannot prevail over the positive and categorical statements of Venilda. Alibi is often viewed with suspicion and received with caution not only because it is inherently weak and unreliable but also because it is easy to fabricate. For the defense of alibi to prosper, it must be convincing to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* at the time of the incident. Other than his self-serving testimony, appellant did not present evidence to corroborate his alibi and denial. Self-serving declarations are inadmissible as evidence of the facts asserted.

9. **ID.; ID.; ID.; IT IS UNNATURAL FOR A PARENT TO USE HER OFFSPRING AS AN INSTRUMENT OF MALICE.** — Appellant's desperation to save himself is highlighted by his explanation as to why his wife caused the rape charges to be filed against him. Appellant alleged that his wife was having an extramarital affair. Even if it was not necessary, Vetelina chose to present witnesses to prove that appellant's allegations were untrue. Not a few persons convicted of rape have attributed the charges against them to family feuds, resentment, or revenge. However, such alleged motives have never swayed us from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examination. It is unnatural for a parent to use her offspring as an instrument of malice, especially if it will subject them to embarrassment and

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even stigma. No mother in her right mind would expose her daughter to the disgrace and trauma resulting from a prosecution for rape if she was not genuinely motivated by a desire to incarcerate the person responsible for her daughter's defilement.

10. **CRIMINAL LAW; RAPE; TO WARRANT THE IMPOSITION OF DEATH PENALTY, IT MUST BE ALLEGED AND PROVED THAT THE VICTIM WAS UNDER 18 YEARS OF AGE AND THE OFFENDER IS A PARENT OF THE VICTIM.** — For simple rape under Article 266-A(1)(a), the prosecution must allege and prove appellant's carnal knowledge of a woman by force, threat, or intimidation. To qualify rape so as to warrant the death penalty, it must also be alleged and proved that the victim was under 18 years of age at the time of the rape and that the offender is a parent of the victim.

11. **ID.; ID.; ID.; CASE AT BAR.** — Venilda's correct age has been overlooked in the preparation of the Information. Both Informations stated that Venilda was 12 years old at the time of the two rape incidents. However, the prosecution and the defense agreed during the pre-trial, and it was later proven during the trial, that Venilda's date of birth is 23 November 1987. The obvious conclusion is that Venilda was only 11 years old when she was raped on 23 November 1998 and 15 December 1998. Nevertheless, the prosecution proved that Venilda was under 18 years of age at the time of the rape and that the offender is her legitimate father.

12. **ID.; ID.; CARNAL KNOWLEDGE IS CONSUMMATED BY THE MERE TOUCHING OF THE WOMAN'S LABIA OF THE PUDENDUM BY THE MALE SEX ORGAN; CASE AT BAR.** — Carnal knowledge is consummated by the mere touching of the woman's labia of the pudendum by the male sex organ. It is proven by two details: pain in the victim's genitalia and the findings of the medico-legal officer. The pain in the victim's private part could only be caused by the penetration, albeit slight, of the male organ into its opening. In this case, Venilda's testimony of her sexual violation was corroborated by the physician's findings of penetration. Thus, there is sufficient basis to conclude the existence of the essential requisite of carnal knowledge.

13. **ID.; ID.; FORCE AND INTIMIDATION PRESENT IN CASE AT BAR.** — In the present case, the testimony of Venilda shows

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that appellant employed force and intimidation on her. Indeed, in the first incident of rape, there was a physical struggle as Venilda "was pushing appellant away" as appellant was trying to insert his penis into her vagina. Appellant even warned Venilda not to tell her mother, or else he would "kill them all." In the second incident of rape, Venilda tried to escape from her father's clutches by putting up the excuse that she had to move her bowel, but to no avail.

14. ID.; ID.; PROPER PENALTY. — Since the facts alleged in the Information and the facts proven in court establish the qualifying circumstance of minority and relationship, we hold appellant liable for qualified rape. Hence, death is the proper imposable penalty.

15. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES, AWARDED IN VARIOUS AMOUNTS IN CASE AT BAR. — In accordance with prevailing jurisprudence, we modify the award of damages by the trial court. For each count of rape, the following amounts are awarded to Venilda: a) ₱75,000 as civil indemnity; b) ₱50,000 as moral damages; and c) ₱25,000 as exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

Before us on automatic review is the Consolidated Decision[1] dated 14 September 2000 of the Regional Trial Court of Ligao, Albay, Branch 13, 5th Judicial Region ("trial court"), in Criminal Case Nos. 3836 and 3837. The trial court found appellant Juan Cariñaga ("appellant") guilty of two counts of qualified rape and sentenced him to suffer the death penalty for each count, and to pay damages to his daughter, Venilda Cariñaga ("Venilda").

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[1] Penned by Judge Jose S. Sañez.

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In Criminal Case No. 3836, the Information charged appellant with the crime of rape as follows:

That on November 23, 1998 at around 5:00 in the morning, more or less, at Barangay Bonga, Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, VENILDA CARIÑAGA, 12 years of age, which act was committed in full view of the latter's sister, 9 years old, BELINDA CARIÑAGA, all against the will and consent of said VENILDA CARIÑAGA, and to her damage and prejudice.

ACTS CONTRARY TO LAW.[2]

In Criminal Case No. 3837, the Information likewise charged appellant with the crime of rape as follows:

That on December 15, 1998 at around 5:00 in the afternoon, more or less, at Barangay Bonga, Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, VENILDA CARIÑAGA, 12 years of age, against her will and consent, and to her damage and prejudice.

ACTS CONTRARY TO LAW.[3]

When arraigned for both counts on 17 August 1999, appellant, with the assistance of his counsel, pleaded not guilty.[4]

The prosecution and the defense admitted the following in the joint pre-trial:

1. Identity of the accused in both cases is admitted;
2. That accused Juan Cariñaga is the legal husband of Vetelina Bataller;[5]

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[2] *Rollo*, p. 9.

[3] *Ibid.*, p. 10.

[4] Records, p. 18.

[5] Also referred to as Vetelina Cariñaga or Vitelina Cariñaga.

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3. That the accused Juan Cariñaga is the legitimate father of the victim, Venilda Cariñaga;
4. That Venilda Cariñaga, the victim[,] was born on November 23, 1987 as appearing in the birth certificate.[6]

Thereafter, trial commenced. The prosecution presented four witnesses: (1) the victim Venilda; (2) Venilda's younger sister and appellant's daughter, Belinda Cariñaga; (3) Venilda's mother and appellant's wife, Vetelina Cariñaga; and (4) Dr. Lea Remonte, municipal health officer of Ligao, Albay, who conducted the medical examination on Venilda.

In its Consolidated Decision, the trial court summarized the prosecution's version of the incident as follows:

VENILDA CARIÑAGA, 12 years old, a Grade VI pupil and a resident of Bonga, Ligao, Albay, testified she was born on November 23, 1987. Her father is Juan Cariñaga, the accused, and her mother is Vetelina Cariñaga. They are five (5) in the family. She is the eldest, next is Belinda, then Nelson, Raymart, and Joanne, the youngest. On November 23, 1998 at about 4:00 o'clock in the morning, her mother and father left for the Poblacion of Ligao, Albay to go to the market. After her parents left, she slept again. While she was already sleeping at about 5:00 o'clock her father came back and opened the main door. Their house has no room and at that time she was sleeping on one side of the house. After opening the door, her father put out the fluorescent lamp and pulled down her shorts and panty. Her father also removed his shorts and his briefs] then laid on top of her. He opened her thighs and applied saliva on her vagina. He attempted to insert his penis inside her vagina but was able to put only the half of it inside. When her father tried to insert his penis she felt pain and pushed him away. Later she felt something slimy and noticed sticky substance on her thighs and vagina. Her father then removed his shirt and wiped her vagina with it and told her not to tell her mother or he will kill them all. After that her father left. Her mother returned home that day but she did not tell her or anybody of what happened because of fear.

On December 15, 1998 at about 5:00 o'clock in the afternoon she was outside their house playing with Belinda together with her other

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[6] Records, p. 43.

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siblings. The nearest house to their house is about 9 to 10 meters [away]. Then her father who was inside their house called her. She and her youngest sister who was then 2 years old went inside the house leaving the others behind outside. Her youngest sister was already walking then. Inside the house her father told her to lie down but she told him she will move her bowel but her father did not let her go. Then her father removed her shorts and panty and he also removed his shorts and brief[s] and then laid on top of her. Again he tried to insert his penis inside her vagina but half of his penis entered. After inserting his penis his [*sic*] father tried to press it down while his body was moving up and down. Her father remained on top for sometime. After that her father used his white shirt and wiped her vagina. At that time her mother was in the Poblacion of Ligao, selling vegetables in the market stall. Her mother that December 15, 1998 [*sic*], arrived already in the evening but she did not tell her again what happened to her. Her sister, Belinda, told her mother, that she was raped. And when her mother asked her if she was raped she answered she was. Then her mother brought her to the Poblacion at the Police Station to report the incident. When both incidents happened she was in Grade Five.

On cross-examination, Venilda describing their sleeping arrangement in their house testified that on her right was the wall and [to] her left was Belinda, next to Belinda was Nelson, Raymart, Joanne and next to Joanne was her mother. All sleep on the floor. When her father came back her father slept near Joanne and when she woke up her father was still sleeping beside Joanne. After waking up at 5:30 she cooked then their youngest brother also woke up. She admitted she had a peaceful sleep.

Cross-examined on the December 15, 1998 incident Venilda testified that in the afternoon at about 5:00 o'clock she was at their neighbor's place playing with Roda. Roda is 13 years old and is the daughter of her mother's brother. Noise in their house can be heard at Roda's parents' house and at that time Roda's parents were in their house. She went home with Joanne at 4:00 p.m. and her father was in the house sleeping. Inside the house she cooked and after she was finished cooking her father called her. Her other brother and sister were still outside then. After she went near her father, the latter told her to get inside the place they are sleeping and as told she went inside. Their house has a bedroom and a sala. Inside the bedroom her father told her to remove her shorts. She did not remove her shorts because she expected something again to happen. So, her father held her hand

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and pulled her. She did not shout because her siblings were outside and her father threatened her. Her brothers and sisters came home later and by 6:00 o'clock in the evening together with their father they ate their supper. Her mother arrived home at about 7:00 o'clock in the evening.

Giving a clearer account on redirect of the November 23, 1998 incident, Venilda declared her father was to accompany her mother only up to her Aunt's (mother's sister) store which is far from their house. Her mother was the one to proceed to the market. When her father arrived she did not cook yet because it was still dark. What her father did upon arrival and entering the house was to put off the light and then moved her sibling next to her then removed her shorts and panty and laid on top of her. And then while on top [he] applied saliva on the vagina.

She can remember well what her father did on November 23, 1998 because that was her birthday. That time Nelson was about 9 years old and Raymart was 5 years old. She did not shout because her sister was asleep. She cried when her father raped her but she was not able to cry out loud.

BELINDA CARIÑAGA, 10 years old and Grade III pupil when she took the witness stand testified that the accused is her father. On November 23, 1998 at about 5:00 o'clock in the morning she was in their house at Bonga, Ligao, Albay cooking. Her Papa undressed and removed the shorts and panty of her Ate then parted her knees and laid on top of her. Her father held his penis and inserted it to her Ate's vagina. At that time their mother was in Oas, Albay selling. When she returned she told her mother what her father did and her mother cried.

On cross-examination, Belinda said she was in the kitchen cooking rice when her sister was raped by their father. Their bedroom to their kitchen is near. Ate pushed her father but did not shout. She (Belinda) also did not shout for help. Her mother came home about 5:00 in the afternoon while her father was gathering gourds. She reported to her mother that same day. After learning about it her mother went to the doctor. She did not confront her father about it. There are five (5) siblings in their family, three (3) girls and two (2) boys. The eldest is her Ate. And in their house there is only one (1) room where all in the family sleep. Belinda declared she can recall that her Ate was raped by their father three (3) times. The second time she cannot recall but it was noon time. The third time she remembers was on

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December 15, 1998 at 4:00 o'clock in the afternoon. The second and third time her Ate was raped her siblings were with their grandmother.

VETELINA CARIÑAGA, 32, married, housewife[,] of Bonga, Ligao, Albay, testified she and the accused Juan Cariñaga are legally married (Exh. "A"). Venilda, the eldest in the family is their daughter (Exh. "B"). Her daughter Belinda told her on a Friday, January 22, 1999 that her husband raped Venilda. Belinda was crying when she told her about it. When she learned about it she felt she lost all her senses and [became] confused. The next thing she did was to dress Venilda and brought her to Dr. Prelligera. The latter, however, suggested to bring Venilda to the Municipal Health Office. Following Prelligera's advice she brought Venilda to the Municipal Health Office where she was examined and after her examination she went to the police where she executed an affidavit and complaint.

On cross-examination, Vetelina admitted that prior to November 23, 1998 she and her husband had already a misunderstanding because the latter made "passes" at her sister Jeannie Bataller.

DR. LEA REMONTE, Municipal Health Officer of Ligao, Albay testified that as a member of the municipality's Child Crises Management Unit which takes care of victims of rape and battered housewife, the PNP and DSWD made a request for her to conduct an examination on Venilda. The latter was brought to her by the DSWD accompanied by the mother and an aunt. She found out during that examination that the offender was the patient's father, Juan Cariñaga. Her medical findings are contained in the medical certificate she issued (Exh. "C") to wit:

> "External Examination:
> - Breast: flat, not yet developed, no signs of abrasions nor hematoma noted
> - Abdomen: flat, soft, no organomegaly, no signs of abrasion nor hematomas noted.
> - Genitalia: Normal external genitalia, nulliparous introitus, absence of pubic hair over mons pubis
>
> "Internal Examination:
> - labia minora slightly protruding beyond labia majora
> - prominent clitoris noted
> - hymen not intact

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- absence of lacerations noted
- vagina admits small finger with ease and one half of the length of the forefinger
- no discharge nor blood upon withdrawal of the examining fingers"

Explaining what could cause the conditions she noted on internal examination of the genitalia, Dr. Remonte mentioned several factors, namely, external manipulation or excessive physical exertion such as running or jumping, or falling on a hard object[,] and sexual intercourse.[7]

The defense's sole witness was appellant Juan Cariñaga.

The Public Attorney summarized the defense's version as follows:

Accused *Juan Cariñaga* branded the charges that he raped her [*sic*] daughter Venilda on November 23, 1998 and December 15, 1998 as pure fabrications. On November 23, 1998, he woke up early, around 3:00 to 4:00 o'clock in the morning, to accompany his wife to Centro, Poblacion, Ligao, Albay. On his way home, he fetched water for use at the house, then proceeded to tend to the plants. He went home only at around 11:00 in the morning.

On December 15, he was at Pandan, Ligao, Albay, together with his daughter Venilda, at the invitation of his "compadre," the godfather of Venilda, Boy Gacad. They proceeded to the place after lunch and only returned home at past 8:00 o'clock p.m.

The accused surmised that the baseless fabrications may have been brought about by his wife's desire to get rid of him. Accordingly, Vitelina is having an affair with one Ariel Modestano and the two (2) were [*sic*] now living together at their residence.

The accused likewise branded the testimonies of his daughter[s], Venilda and Benilda, as tutored, they being instructed of what to say or declare in court.[8]

On rebuttal, Vetelina Cariñaga testified that it was on the 25th and not on the 15th of December 1998 that appellant went with Venilda to Boy Gacad's house. She also denied the existence of her alleged illicit relationship with Ariel Modestano.[9] Bonga's

[7] *Rollo*, pp. 21–25.

[8] *Ibid.*, p. 53.

[9] TSN, 24 May 2000, pp. 3-5.

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Barangay Captain Edmundo Gomez, a sponsor during Vetelina and appellant's wedding, and Vetelina's employer Rosalie Cha, both testified that Vetelina is employed as a stay-in housemaid at Layon, Ligao, Albay.[10]

The trial court rendered a judgment of conviction on 14 September 2000. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered in both Criminal Cases Nos. 3836 & 3837 finding the accused Juan Cariñaga guilty beyond reasonable doubt of two (2) counts of rape committed against his 11-year old daughter Venilda Cariñaga and accordingly hereby sentences him to suffer twice (2x) the penalty of death and to indemnify the offended party the total amount of ₱150,000.00 and to pay another amount of ₱100,000.00 by way of moral damages and to pay the costs.
>
> Let the records of these cases together with all the exhibits and transcript of stenographic notes be immediately elevated to the Supreme Court for automatic review.
>
> SO ORDERED.[11]

In this automatic review, appellant makes a lone assignment of error:

> THE COURT *A QUO* GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE CLEAR INCONSISTENCIES IN THE TESTIMONIES OF THE PRINCIPAL WITNESSES FOR THE PROSECUTION.

The appeal has no merit. We agree with the trial court that the prosecution has proven beyond reasonable doubt that appellant is guilty of the crime of rape.

First. The trial court found the testimony of the prosecution witnesses credible and straightforward. Appellant, on the other hand, cites the following circumstances to support his assertion that the trial court erred in giving credence to the prosecution evidence:

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[10] *Ibid.*, 28 August 2000, pp. 3-8 (Rosalie Cha); 14 August 2000, pp. 4-7 (Edmundo Gomez).

[11] *Rollo*, pp. 29-30.

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(a) Belinda Cariñaga, younger sister of Venilda, could not have vividly seen the incident on 23 November 1998. Belinda testified that appellant first put out the fluorescent lamp in the room before having sexual intercourse with Venilda;

(b) Appellant could not have been so brazen in sexually abusing Venilda while Belinda was cooking rice in another corner of the house;

(c) Belinda testified that she informed her mother Vetelina about the rape incidents on the same days that they occurred, or on 23 November 1998 and 15 December 1998, respectively. However, Vetelina testified that she was informed of the incidents by Belinda on 22 January 1999; and

(d) The physical evidence failed to show with moral certainty that appellant sexually abused Venilda.[12]

Appellant quibbles on impertinent matters. What is material is that the commission of rape by appellant against Venilda is proven beyond any doubt. Discrepancies should refer to significant facts that are crucial to the guilt or innocence of an accused. Inconsistencies and discrepancies in details, which are irrelevant to the elements of the crime, are not grounds for acquittal.[13] Nevertheless, we shall still discuss the matters appellant has raised.

It is not hard to believe that Belinda, who was cooking rice in the kitchen, saw the rape incident at 5:00 in the early morning even if appellant put out the light in the room. This is just about the time when day breaks and darkness slowly fades to give way to light.

Belinda's testimony that there is also a kitchen in the house does not contradict Venilda's testimony that their house has only one room. It appears that only a partition separates the kitchen from the main room where the family slept. It is not

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[12] *Ibid.*, pp. 55-59.

[13] *People v. Sancha*, 381 Phil. 646 (2000).

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really another room which has a door or is enclosed.[14] Thus, the circumstances of time and place do not affect the credibility of Belinda's eyewitness account. Rather, it corroborates Venilda's account.

Appellant asserts that he could not have raped Venilda in the presence of his other children. The presence of people has never deterred the commission of rape.[15] Rape is not a respecter of people, time or place.[16] Rape has been committed in places where people congregate, in parks, along roadsides, in school premises, in a house where there are other occupants, and even in places which to many would appear unlikely and high-risk venues for its commission. In any case, there is no rule that rape can be committed only in seclusion.[17]

During the first incident, appellant timed his criminal act when it was still early morning. His wife had left the house and his brood of young children was still asleep, with the exception of Belinda whom he probably did not know was already awake.

The alleged contradiction between the testimonies of Belinda and her mother, as to when the former disclosed to the latter the rape incidents appellant committed against Venilda, is more apparent than real. Allowance must be given to some minor lapses or ambiguity in Belinda's testimony on the matter, as she was only ten years old when she testified in court. A reading of her entire testimony would show that immediately after Belinda told her mother about the rape incidents, her mother brought Venilda to the doctor.[18] Her mother stated that Belinda made the disclosure on 22 January 1999. After hearing Belinda's disclosure, her mother brought Venilda to the doctor. Then her mother brought Venilda to the police station to file a complaint against appellant.[19]

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[14] TSN, 21 September 1999, p. 16.

[15] *People v. Perez*, 357 Phil. 17 (1998).

[16] *People v. Agbayani*, 348 Phil. 341 (1998).

[17] *People v. Silvano*, 368 Phil. 676 (1999).

[18] TSN, 21 September 1999, p. 17.

[19] *Ibid.*, pp. 7-8.

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In any case, the alleged contradiction refers only to a minor matter that does not overrule the commission by appellant of the crime charged. Belinda's testimony is merely corroborative. Venilda's own testimony by itself is strong, convincing and credible, and thus suffices to sustain appellant's conviction.

Finally, appellant argues that the medical findings showing Venilda's hymen is no longer intact does not conclusively establish that it was due to sexual intercourse. He cites Dr. Lea Remonte's testimony that the rupture of the hymen could be caused by external manipulation, excessive physical exertion, running, or jumping, aside from sexual intercourse.[20]

The other factors mentioned by the doctor do not exclude Venilda's ruptured hymen as physical evidence of the sexual assault on her.[21] When the victim's testimony of her sexual violation is corroborated by the physician's findings of penetration, i.e. a ruptured hymen, there is sufficient basis to conclude the existence of the essential requisite of carnal knowledge.[22]

The trial court's evaluation of the testimony of a witness is accorded highest respect because the trial court had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court is uniquely positioned to determine whether a witness is telling the truth. We find no basis to deviate from the settled rule that the testimony of a rape victim of tender or immature age deserves full credit, as in this case where the facts establish the sexual assault on her.[23] The testimony given was simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency or contradiction. The same must be given full faith and credit.[24] Venilda testified thus:

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[20] *Ibid.*, 20 September 1999, pp. 9–10.

[21] *People v. Marcelo*, 364 Phil. 576 (1999).

[22] *People v. Manag-banag,* G.R. No. 140101, 7 December 2001, 371 SCRA 615.

[23] *People v. Pine*, G.R. No. 133441, 29 November 2000, 346 SCRA 383.

[24] *People v. Llamo*, 380 Phil. 759 (2000).

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PROSECUTOR

Q Now, on the said date and time, meaning November 23, 1998 at about 5:00 o'clock in the morning, where was your mother and your father?
A In Ligao, in the town. In the poblacion.

xxx xxx xxx

Q Do you know the time when your mother and father went to the poblacion, Ligao, Albay?
A 4:00 o'clock.

Q In the morning.
A 4:00 o'clock in the morning.

Q Now, while your mother and father went to Centro Poblacion you slept again?
A Yes, sir.

Q Now, after your father and mother left, what happened?
A My father went back.

Q Now, when your father went back, were you still sleeping?
A He opened the door.

xxx xxx xxx

Q Now, you said that you noticed that your father opened the door of the house. After opening the door of the house, what did your father do, if any?
A He put out the light.

xxx xxx xxx

Q Now, after putting of [*sic*] the fluorescent lamp, what did your father do next?
A He pulled down my shorts.

Q What else?
A He also removed his shorts.

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Q Now, aside from your shorts which was removed, what else, if any, were further removed from you?
A My panty.

Q Now, you said that your father was removing his shorts, what else did he remove?
A His briefs].

Q Now, after removing your panty and your shorts by your father, also, after removing his shorts and brief[s], what did your father do next, if any?
A He laid on top of me.

Q Now, after laying on top of you, what did your father do to you?
A He opened my thighs.

Q After opening your thighs, what next happened?
A He took some saliva from his mouth and applied [it] to my vagina.

Q After doing that, what else did your father do?
A He removed his shirt and wiped me.

Q After doing that, what happened next?
A He told me not to report the incident to my mother.

Q Now, you said that your father laid on top of you. After laying on top of you, what did your father do?
A He was trying to insert his penis.

Q Was your father able to? You said that your father was trying to insert his penis. Where was he inserting it?
A Inside my vagina.

Q Was he able to insert it to your vagina?
A About halfway penetrated, but not able to insert fully.

Q Now, after your father inserted his penis halfway to your vagina, what else happened?
A He left. Afterwards, he left.

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Q Now, when you said your father was able to insert his penis halfway, are you referring to his penis, or a portion of his penis was able to penetrate your vagina?
A Yes, sir.

Q Now, what did you feel when the penis of your father was inserted to your vagina?
A It was painful.

Q While your father was trying to insert his penis into your vagina, what did you do?
A I was pushing him away.

Q Now, what did you notice from the penis of your father before he left?
A I did not see it because it was dark.

Q You did not see it. What did you feel before your father left?

COURT
She said that she felt pain.

PROSECUTOR

Q Aside from feeling pain what else did you feel before you saw him leave?
A I felt something slimy in my thighs.

Q Near your vagina?
A Yes.

COURT
She said thighs.

PROSECUTOR

Q You said your father used a shirt in wiping you. Why did your father wipe that portion of your body?

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COURT

Q Which part of your body was wiped by your father?
A My vagina.

PROSECUTOR

Q Why, what did you notice from your vagina after your father left?
A There was something, that is a sticky substance in my vagina.

xxx xxx xxx

Q Before he left, what did your father tell you, if any?
A Not to tell my mother.

Q Aside from telling you not to tell your mother, what else did he tell you?
A He further told me that if I am going to report to my mother, he will kill us all.

xxx xxx xxx

Q Did you tell your mother about what happened to you or what your father did to you?
A I did not tell her because I was afraid.

Q Did you tell anybody aside from your mother what your father had done to you?
A None, sir.

Q On December 15, 1998 at about 5:00 o'clock in the afternoon, where were you?
A I was in our house.

Q What were you doing in your house?
A I was playing.

Q You mean you are playing inside the house?
A Outside the house.

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Q While playing outside your house, what happened?
A My father called me.

Q And where was your father when he called you?
A Inside.

Q Inside of what?
A He was inside the house.

Q Your father was inside the house when he called you playing outside the house. What did you do when your father called you?
A I went inside.

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Q So, you were alone when you went inside the house upon being called by your father?
A Including my youngest sister.

Q And how old was your youngest sister sometime last November 1998?
A Two (2) years old.

xxx xxx xxx

Q Now, after going inside the house, what did your father do?
A He told me to lie down.

Q And when you were ordered to lie down, what did you do?
A I told my father that I am going to answer the call of nature or I am going to move my bowel[s].

Q Now, when you told your father you were going to move your bowel, did your father consent?
A No, sir.

Q Now, when you were not able to leave your house in order to answer the call of nature, what else happened at that time?
A He removed my shorts and my panty.

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Q After removing your shorts and panty, what else did your father do, if any?
A He also removed his shorts.

Q What else did he remove from himself?
A He also removed his brief[s].

Q After removing his shorts and brief[s], what followed next?
A He laid on top of me.

Q You mean you were made to lie down and your father laid on top of you?
A Yes, sir.

Q After your father laid on top of you, what did your father do?
A He was trying to insert his penis.

Q Your father was trying to insert his penis where?
A In my vagina.

Q Was your father able to insert his penis into your vagina?
A Only halfway.

Q And when you say halfway, you are referring to the penis of your father, only half of it went inside your vagina?
A Yes, sir.

Q After your father inserted his penis, according to you, halfway in your vagina, what else did he do?
A He was trying to press it.

Q Press where?
A Inside my vagina.

Q Did you notice the body of your father, whether it was moving?
A Yes, his body was moving.

Q Now, can you describe the body of your father, how the body of your father was moving while on top of you?
A Up and down.

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xxx xxx xxx

Q How long did your father stay in that position when he laid on top of you and was moving up and down?
A He stayed for quite a long time.

xxx xxx xxx

Q All right. And after doing the sexual act, to you by your father, what else happened after that?
A He used his white clothes to wipe me.

Q What portion of your body was wiped by your father?
A My vagina.

Q Now, after, where was your mother at that time when your father, according to you, raped you last December 15, 1998? At more or less, 5:00 o'clock in the afternoon?
A She was in the store.

xxx xxx xxx

Q x x x Did you not tell your mother what your father did to you at 5:00 o'clock in the afternoon of the same day?
A No, sir because I was afraid.

xxx xxx xxx

COURT

Why did you in particular remember the first time your father abused you on November 23?
A I cannot forget that date.

Q Aside from the fact that it was the day you were first sexually abused why do you remember that it was November 23 and not on some other dates in November?
A Because, it was my birthday.[25]

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[25] TSN, 10 January 2000, pp. 7-17; 6 March 2000, p. 22.

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Venilda's claim that she was raped is corroborated by the medical findings of Dr. Lea Remonte, the physician who examined her. Dr. Remonte testified:

Q Then, Genitalia: normal external genitalia, nulliparous, introitus, absence of pubic hair over mons pubis. What do you mean by this?

A It means that externally there are no abnormalities. Normal external genitalia. The mons pubis or mons veneris is another term for that. Nulliparous introitus, meaning, that particular genitalia has not given birth yet. Absence of pubic hair, no pubic hair.

Q In your Internal Examination, there is stated here: labia minora slightly protruding beyond labia majora. What do you mean by this?

A Normally, the labia minora is covered by the labia majora. Labia majora in layman's term [are] the outer lip[s] and the labia minora [are] the inner lip[s]. Normal in virgin or those who have not given birth yet, they are in close position. Meaning, the labia minora is covered by the labia majora.

Q With this [*sic*] findings considering that you stated labia minora is slightly protruding, what could have been the cause of that?

A There are several causes. One of these is external manipulation, or excessive physical exertion, running or jumping, falling [on] a hard object, that could also rupture the hymen.

Q How about sexual intercourse?

A That could also be.

Q Prominent clitoris noted. What do you mean by this?

A Normally, it is covered by both labia but in this case, it is slightly prominent. Meaning, it is exposed.

Q Now, there is a finding here, hymen not intact. What do you mean by this?

A Meaning, the thin covering of the vaginal orifice has already been removed. Absolutely removed.

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Q Do you mean the covering itself was already removed? What could have been the cause for the removal of that?
A Sexual intercourse is one and then the previous factors that I have mentioned a while ago.
Q How about this absence of lacerations noted? What do you mean by this?

A Although hymen is not intact, yet I was not able to see or to locate any laceration in the vaginal orifice.

Q Do you mean, no hymenal laceration?
A No.

Q Now, ordinarily when the hymen is penetrated by, let us say penis, it is usually lacerated or ruptured, something like that. Now, in your findings, labia minora is slightly protruding, you gave us the opinion that sexual intercourse is a possible factor, is it not?
A Yes, sir.

Q Now, if there is no hymenal laceration, it would not necessarily mean that there is no penetration in the hymen of any matter?
A Even if there is sexual intercourse, yet there is no laceration or there is no rupture of the hymen, it is because not all hymens are delicate. There are hymens which are elastic or extensible [*sic*] that even after several child bearing episodes, yet the hymen is still intact.

Q Now, vagina admits small finger with ease and one half of the length of the forefinger. What do you mean by this?
A Meaning, the usual examining fingers are the forefinger and the middle finger. But since this is a child, I started with the small finger. But when I examined the child, this finger was able to penetrate. Now, I again tried the forefinger and this went in. One-half of this length went it.

Q No discharge or blood upon withdrawal of the examining fingers. What do you mean by this?
A In terms of, there are traumatic penetration wherein, like for example, instrumentation that will cause the bleeding inside the vagina. But in this case, there was no discharge nor bleeding noted upon withdrawal of the examining finger.[26]

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[26] *Ibid.*, 20 September 1999, pp. 9-11.

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Appellant's trite defenses of alibi and denial cannot prevail over the positive and categorical statements of Venilda. Alibi is often viewed with suspicion and received with caution not only because it is inherently weak and unreliable but also because it is easy to fabricate. For the defense of alibi to prosper, it must be convincing to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* at the time of the incident.[27] Other than his self-serving testimony, appellant did not present evidence to corroborate his alibi and denial. Self-serving declarations are inadmissible as evidence of the facts asserted.[28]

Appellant's desperation to save himself is highlighted by his explanation as to why his wife caused the rape charges to be filed against him. Appellant alleged that his wife was having an extramarital affair. Even if it was not necessary, Vetelina chose to present witnesses to prove that appellant's allegations were untrue. Not a few persons convicted of rape have attributed the charges against them to family feuds, resentment, or revenge. However, such alleged motives have never swayed us from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examination.[29] It is unnatural for a parent to use her offspring as an instrument of malice, especially if it will subject them to embarrassment and even stigma.[30] No mother in her right mind would expose her daughter to the disgrace and trauma resulting from a prosecution for rape if she was not genuinely motivated by a desire to incarcerate the person responsible for her daughter's defilement.[31]

Second. The qualified rape of an underage relative for which appellant was charged is classified as a heinous crime and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353,[32] as follows:

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[27] *People v. Catu*big, 416 Phil. 102 (2001).

[28] *People v. Hamton*, G.R. Nos. 134823-25, 14 January 2003.

[29] *People v. Itdang*, G.R. No. 136393, 18 October 2000, 343 SCRA 624.

[30] *People v. Bayona*, 383 Phil. 943 (2000).

[31] *People v. Quilatan*, G.R. No. 132725, 28 September 2000, 341 SCRA 247.

[32] Effective 22 October 1997.

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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;

   xxx xxx xxx

   d) When the offended party is under twelve (12) years of age x x x.

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

xxx xxx xxx

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

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

xxx xxx xxx

For simple rape under Article 266-A(1)(a), the prosecution must allege and prove appellant's carnal knowledge of a woman by force, threat, or intimidation. To qualify rape so as to warrant the death penalty, it must also be alleged and proved that the victim was under 18 years of age at the time of the rape and that the offender is a parent of the victim. All these elements are undisputedly present in this case.

Carnal knowledge is consummated by the mere touching of the woman's labia of the pudendum by the male sex organ.[33] It is proven by two details: pain in the victim's genitalia and the findings of the medico-legal officer.[34] The pain in the victim's private part could only be caused by the penetration, albeit slight, of the male organ into its opening.[35] In this case, Venilda's testimony of her sexual violation

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[33] *Supra*, note 17.

[34] *Supra*, note 22.

[35] *People v. Dagaojo*, G.R. Nos. 137834-40, 3 December 2001, 371 SCRA 321.

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was corroborated by the physician's findings of penetration. Thus, there is sufficient basis to conclude the existence of the essential requisite of carnal knowledge.[36]

In the present case, the testimony of Venilda shows that appellant employed force and intimidation on her. Indeed, in the first incident of rape, there was a physical struggle as Venilda "was pushing appellant away"[37] as appellant was trying to insert his penis into her vagina. Appellant even warned Venilda not to tell her mother, or else he would "kill them all."[38] In the second incident of rape, Venilda tried to escape from her father's clutches by putting up the excuse that she had to move her bowel,[39] but to no avail.

Venilda's correct age has been overlooked in the preparation of the Information. Both Informations stated that Venilda was 12 years old at the time of the two rape incidents. However, the prosecution and the defense agreed during the pre-trial,[40] and it was later proven during the trial,[41] that Venilda's date of birth is 23 November 1987. The obvious conclusion is that Venilda was only 11 years old when she was raped on 23 November 1998 and 15 December 1998. Nevertheless, the prosecution proved that Venilda was under 18 years of age at the time of the rape and that the offender is her legitimate father.

Since the facts alleged in the Information and the facts proven in court establish the qualifying circumstance of minority and relationship, we hold appellant liable for qualified rape. Hence, death is the proper imposable penalty.[42]

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[36] TSN, 10 January 2000, pp. 7–17 (Venilda Cariñaga); 20 September 1999, pp. 9–11 (Dr. Lea Remonte).

[37] *Ibid.*, 10 January 2000, p. 10.

[38] *Ibid.*, p. 12.

[39] *Ibid.*, p. 15.

[40] Records, p. 43.

[41] Exhibit "B"; TSN, 10 January 2000, p. 4 (Venilda Cariñaga); 21 September 1999, p. 6 (Vetelina Cariñaga).

[42] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty should be imposed in this case.

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Third. In accordance with prevailing jurisprudence, we modify the award of damages by the trial court. For each count of rape, the following amounts are awarded to Venilda:

a) ₱75,000 as civil indemnity;[43]

b) ₱50,000 as moral damages;[44] and

c) ₱25,000 as exemplary damages.[45]

WHEREFORE, the Decision dated 14 September 2000 of the Regional Trial Court of Ligao, Albay, Branch 13, 5th Judicial Region, finding appellant Juan Cariñaga guilty beyond reasonable doubt of two counts of rape in Criminal Case Nos. 3836 and 3837, and sentencing him to suffer the death penalty for each count of rape, is *AFFIRMED* with the *MODIFICATION* that for each count of rape, appellant is ordered to pay complainant Venilda Cariñaga ₱75,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let certified true copies of the records of this case be forwarded to the President of the Philippines for the possible exercise of the pardoning power.

Costs *de oficio.*

SO ORDERED.

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

Corona, J., on leave.

Carpio, Morales, J., on official leave.

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[43] *People v. Victor*, 354 Phil. 195 (1998).

[44] *People v. Prades*, 355 Phil. 150 (1998).

[45] *Supra*, note 27.