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SO ORDERED.

Vitug (Chairman), Corona, and *Carpio Morales, JJ.,* concur.

EN BANC

[G.R. Nos. 140873-77. February 6, 2004]

PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* **LEVI SUMARAGO,** *appellant.*

SYNOPSIS

Appellant was found by the Regional Trial Court guilty of five counts of rape committed against the minor daughter of his common-law wife. He was sentenced to death and hence, this appeal.

In Criminal Case No. 2541, the Court acquitted appellant for failure of the prosecution to prove his guilt beyond reasonable doubt. The victim testified therein that appellant boxed her rendering her unconscious. When she regained consciousness, she had her clothes on but suspected that appellant raped her because her vagina was painful and appellant warned her against telling it to anybody. The Court ruled that the possibility of rape was not synonymous with evidence. Rape cannot be presumed. In Criminal Cases Nos. 2537 to 2540, however, the Court ruled that the prosecution, through the victim's testimony, mustered the requisite quantum of evidence to prove consummated rape. And the proper penalty for each count of rape is *reclusion perpetua* as the Information failed to allege the qualifying circumstance of relationship between the victim and appellant. In addition, appellant was held liable for each count of rape ₱50,000 civil indemnity, ₱50,000 moral damages and ₱25,000 exemplary damages.

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SYLLABUS

1. **CRIMINAL LAW; RAPE; HOW ESTABLISHED.** — For the accused to be held guilty of consummated rape, the prosecution must prove beyond reasonable doubt that: (1) there had been carnal knowledge of the victim by the accused; (2) the accused achieves the act through force or intimidation upon the victim because the latter is deprived of reason or otherwise unconscious. Carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape had been committed and that the accused is the perpetrator thereof. A finding of guilt of the accused for rape may be based solely on the victim's testimony if such testimony meets the test of credibility. Corroborating testimony frequently unavailable in rape cases is not indispensable to warrant a conviction of the accused for the crime. This Court has ruled that when a woman states that she has been raped, she says in effect all that would be necessary to show that rape did take place. However, the testimony of the victim must be scrutinized with extreme caution. The prosecution's evidence must stand or fall on its own merits.

2. **ID.; ID.; REQUIRES PROOF THAT INDEED, THE PENIS TOUCHED AT LEAST THE *LABIA MAJORA*.** — In *People v. Campuhan,* we ruled that for the accused to be guilty of consummated rape, there must be sufficient and convincing proof that the penis, indeed, touched at least the *labia majora* or slid into the female organ and not merely stroked the external surface thereof. *Touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis* . . . . There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ and *not merely stroked the external surface thereof* for an accused to be convicted of consummated rape. As the *labias* are required to be "touched" by the penis, which are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or *minora* of the *pudendum* constitutes consummated rape. The Court emphasized that absent any showing of the slightest penetration

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of the female organ, *i.e.,* touching of the labia of the pudendum by the penis, there can be no consummated rape.

3. ID.; ATTEMPTED RAPE; NOT ESTABLISHED IN THE ABSENCE OF EVIDENCE OF OVERT ACTS. — The appellant may not even be convicted of attempted rape under Article 6 in relation to Article 335 of the Revised Penal Code because there is no evidence that the appellant commenced by overt acts the commission of the offense which had direct connection with the crime intended to be committed but did not perform all the acts of execution which should produce the felony. There is no evidence that the appellant boxed Norelyn for the purpose of raping her.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF YOUNG RAPE VICTIM UPHELD WHEN CORROBORATED BY THE MEDICAL FINDINGS AND ABSENT ANY ILL-MOTIVE AS AGAINST APPELLANT'S SURMISES AND DENIAL. — The appellant's assertion that the incomplete laceration in the hymen of Norelyn could have been caused by a stick or a finger is clutching at straws. In light of Norelyn's straightforward positive, and spontaneous testimony that the appellant inserted his penis into her vagina on the four occasions that she was raped, the appellant's surmises cannot prevail. Norelyn was less than eleven years old when the appellant raped her. In *People v. Castillo*, we held that in rape cases where the offended parties are young and immature girls, there is considerable receptivity on the part of this Court to lend credence to their testimonies, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. There is no showing that Norelyn was impelled by any ill-motive in charging the appellant with a heinous crime. Hence, her testimony is entitled to full faith and credence. No woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. The appellant's bare denial of the crime charged cannot prevail over the positive testimony of Norelyn, corroborated by no less than Dr. Vista's medical findings.

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5. CRIMINAL LAW; RAPE; DEATH PENALTY; WHEN PROPER. — Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the accused may be sentenced to death if rape is committed under any of the following attendant circumstances: The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.

6. ID.; ID.; PROPER PENALTY WHERE FILIATION BETWEEN ACCUSED AND VICTIM NOT ALLEGED IN THE INFORMATION. — The twin requisites of minority of the victim and her filiation with the appellant or the fact that the appellant was the common-law husband of Teodora, Norelyn's mother, must be alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure and proved by the prosecution. Although the crimes were committed before the effectivity of the new Rule, it should be applied retroactively, as the same is favorable to the appellant. The stepfather-stepdaughter relationship presupposes a legitimate relationship – a valid marriage between the accused and the mother of the private complainant. And the best evidence to prove the marriage between the accused and the mother of the private complainant is their marriage contract. Norelyn's bare testimony and that of her mother that the appellant is her stepfather is insufficient evidence to prove such allegation. No less than the presiding judge of the trial court stated during the trial that the appellant was merely Teodora's common-law husband. In these cases, the Informations failed to allege that the appellant is the legal or common-law husband of Teodora; or that he was Norelyn's stepfather. Hence, the appellant should be found guilty only of four counts of simple rape and not of rape in its qualified form. Accordingly, the appellant should be sentenced to suffer the penalty of *reclusion perpetua* for each count of rape.

APPEARANCES OF COUNSEL

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

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DECISION

CALLEJO, SR., *J.*:

The Spouses Vivencio and Teodora Brigole had four children. Two of them were girls — Norelyn, who was born on December 24, 1984,[1] and her older sister Doneza, who was born in 1983. However, Teodora left Vivencio and kept custody of their children.

In 1991, Teodora and the appellant, Levi Sumarago, an eighteen-year-old mestizo *Subanen*, started living together as husband and wife. They had two children, Maricel and Levi Sumarago, Jr. Teodora and Levi often quarreled because of their myriad problems. In 1993, then thirteen-year-old Doneza went to Malaysia for employment.

In the morning of March 5, 1995, Norelyn, who was then barely ten years old, was gathering firewood with the appellant in the latter's farmland. While they were nearing a guava tree, the appellant suddenly boxed her on the stomach. Norelyn lost consciousness. She had her clothes when she woke up. It was about noon. She had a terrible headache and felt pain in her vagina. She also had a bruise in the middle portion of her right leg. The appellant warned her not to tell her mother about it, otherwise he would kill her.

On March 13, 1995, Norelyn and the appellant were again gathering firewood. The appellant ordered her to follow him to the banana plantation owned by Mejorcada in *Barangay* Manlin, Buug, Zamboanga del Sur. He walked ahead, while Norelyn followed. She then lost sight of the appellant. As she passed by the banana plantation, the appellant suddenly appeared and grabbed her. He then forced her to lie down. He removed her panties and when she tried to shout, he covered her mouth with his hand. He mounted her and inserted his penis into her vagina. Norelyn felt excruciating pain. After he was satiated, the appellant stood up and ordered her to put on her panties. He warned her "Don't you ever tell, I will surely kill you."

[1] Exhibit "F".

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On March 24, 1995, Norelyn and the appellant were scheduled to gather firewood in the farmland owned by Mejorcada. Norelyn did not want to go, but she could not refuse as the appellant would get mad at her. She sat by a guava tree and waited for the appellant. When he arrived, he told her to come near him. Norelyn refused. The appellant then held her hand and brought her to an area hidden by bushes. He took off Norelyn's panties and undressed himself. He went on top of her and inserted his penis into her vagina. Norelyn could not move as the appellant pinned her legs with his own. She tried to shout but the appellant's hand was on her mouth. After he was done with her, he ordered her to put on her clothes. He then dressed himself and told her that they were going home. Norelyn did not tell her mother about the incident for fear that the appellant would kill them both.

On April 2, 1995, Norelyn and the appellant gathered firewood anew in the same farmland. She waited for the appellant before leaving for home. The appellant arrived. He undressed Norelyn and forced her to lie down and mounted her. She tried to shout but he covered her mouth with his hand. He then inserted his penis into her vagina. After he was satiated, he ordered her to put her clothes on and to stand up.

On April 11, 1995, the appellant told Norelyn that they were going to *Barangay* Lantawan where Subanen tribes resided to gather firewood. She told the appellant that she could not go with him because she had some chores to do in the house. The appellant insisted and told her to let her mother do the chores. After gathering firewood, the appellant told her that they would get some abaca with which to tie the wood. However, when they were near tall grasses, he pulled her down and took off all her clothes. After undressing himself, the appellant mounted her and inserted his penis into her vagina. Norelyn tried in vain to shout, but she could not as the appellant's hand covered her mouth. Afterwards, he ordered her to put on her clothes.

Later, Norelyn told her sister Doneza that the appellant had raped her.

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On August 24, 1996, Sopiana Maque, Teodora's mother and Norelyn's grandmother, was in Zamboanga City visiting her other daughter. Norelyn and Doneza stayed with their grandmother. Doneza asked Sopiana if she knew about what happened to Norelyn. When Sopiana replied in the negative, Doneza told her that the appellant had raped Norelyn. When Sopiana confronted Norelyn, the latter confirmed what Doneza said. Sopiana was shocked. She cried as she thought of her granddaughter's terrible ordeal.

On August 30, 1996, Sopiana and her granddaughters returned to Barangay Manlin. Sopiana told Teodora what Doneza and Norelyn had related to her. Teodora confronted Norelyn and the latter confirmed that the appellant had indeed raped her. She told her mother that she did not say anything earlier because she was afraid the appellant might kill her and their family.

The appellant was then in jail on a rape charge. Teodora visited him there and confronted him about the matter. At first, the appellant denied that he raped Norelyn. He later had a change of heart and admitted that he had indeed raped Norelyn. Teodora was infuriated.

On October 18, 1996, Teodora had Norelyn examined by Dr. Avenida Vista. The doctor's findings were as follows:

DIAGNOSIS/FINDINGS:

(-)- MENARCHE
BREAST-SLIGHTLY DEVELOPED
VULVA:
LABIA MINORA — NOT WELL DEVELOPED
LABIA MAJORA — NOT WELL DEVELOPED
— LACERATION INCOMPLETE
AT HYMEN — 3 O'CLOCK AND
9 O'CLOCK POSITION
— NO ABRASION NOR HEMATOMA
NOTED
(-) ABSENCE OF SPERMATOZOA[2]

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[2] Exhibit "G".

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On October 29, 1996, Teodora and Norelyn filed a criminal complaint for rape against the appellant with the Municipal Trial Court of Buug, Zamboanga del Sur.[3]

The appellant was charged with five counts of rape in five Informations filed with the Regional Trial Court of Zamboanga del Sur, Branch 20. The docket numbers and the accusatory portion of each Information read as follows:

CRIMINAL CASE NO. 2537

"That on or about April 11, 1995 at 8:30 o'clock on the morning more or less at Barangay Lantawan, Municipality of Buug, Province of Zamboanga del Sur, 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 succeed, in having carnal knowledge with one Norilyn (*sic*) Brigole a minor of (10) ten years old, against the latter's will.

Act contrary to Article 335 of the Revised Penal Code."

CRIMINAL CASE NO. 2538

"That on March 24, 1995 at noon more or less, at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, 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 succeed in having carnal knowledge with one Norilyn Brigole, a minor of 10 years old, against her will.

Act contrary to Article 335 of the Revised Penal Code."

CRIMINAL CASE NO. 2539

"That on March 13, 1995 at 10:00 o'clock more or less in the morning at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, 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 succeed in having carnal knowledge with one Norilyn Brigole a minor of ten (10) years old against her will.

Act contrary to Article 335 of the Revised Penal Code."

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[3] Exhibits "A" to "E".

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CRIMINAL CASE NO. 2540

"That on April 2, 1995 at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, Republic of the 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 with one Norilyn Brigole a minor of 10 years old, against her will.

Act contrary to Article 335 of the Revised Penal Code as amended by R.A. 7659."

CRIMINAL CASE NO. 2541

"That on March 5, 1995 at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, 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 with one Norilyn Brigole a minor of ten (10) years old, against her will.

Act contrary to Article 335 of the Revised Penal Code as amended by R.A 7659."

The Case for the Appellant

The appellant denied the charges. He testified that he was a fisherman, and on those dates when he allegedly raped Norelyn, he was out at sea fishing. From his house, it would take hours for one to get to Pamintayan where he used to fish for Rudy Gamar. He was not aware of any reason why Norelyn would charge him of rape. He had been very good to Norelyn. Teodora filed the complaints against him because according to her, the *Barangay* Captain threatened to send her to jail if she would not charge the appellant with rape.

After due trial, the court rendered judgment, the decretal portion of which reads:

Accordingly, judgment is hereby rendered finding the accused, LEVI SUMARAGO, GUILTY, as principal, of the crime of Rape in these Criminal Cases Nos. 2537, 2538, 2539, 2540, and 2541, and sentences him to the capital punishment of DEATH. He is further ordered to indemnify the victim Norelyn Brigole in the sum of Two Hundred Fifty Thousand Pesos.

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Let the records of these cases, including the transcript of stenographic notes, and object evidence be forwarded to the Supreme Court within twenty days after promulgation or notice of denial of any motion for new trial or reconsideration, for its automatic review and judgment *en banc*.

SO ORDERED.[4]

The appellant assails the decision of the trial court contending that:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF CONSUMMATED RAPE DESPITE THE UNCERTAINTY OF ITS COMMISSION.

II

THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE FAILURE OF THE PROSECUTION TO ALLEGE THE RELATIONSHIP IN THE INFORMATION.[5]

On the first assignment of error, the appellant avers that the prosecution failed to prove that he had carnal knowledge of Norelyn on March 5, 1995 because of the following: (1) Norelyn merely testified that the appellant boxed her and when she regained consciousness, felt pains in her vagina and saw that her right leg was bruised; (2) she was fully clothed when she awoke; and (3) she only believed that the appellant raped her because her vagina was painful.

As for the four other counts of rape, the appellant insists, Norelyn's account of the crimes charged are but mere general narrations, without specific details of the events as they transpired. Her testimony that the appellant raped her on March 13, 1995 is incredible because she admitted that the appellant had sex with her only for a short time. Considering that, at her tender age, her vagina had not yet developed, the appellant

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[4] *Rollo*, p. 32.

[5] Appellant's Brief, p. 1.

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could not have inserted his penis only for a short time. Moreover, the doctor testified that she was unsure as to what had caused the hymenal laceration in Norelyn's vagina, and that it could have been caused by a finger or a stick.

We agree with the appellant that the prosecution failed to prove beyond reasonable doubt that the appellant had carnal knowledge of Norelyn on March 5, 1995.

For the accused to be held guilty of consummated rape, the prosecution must prove beyond reasonable doubt that: (1) there had been carnal knowledge of the victim by the accused; (2) the accused achieves the act through force or intimidation upon the victim because the latter is deprived of reason or otherwise unconscious.[6] Carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape had been committed and that the accused is the perpetrator thereof. A finding of guilt of the accused for rape may be based solely on the victim's testimony if such testimony meets the test of credibility. Corroborating testimony frequently unavailable in rape cases is not indispensable to warrant a conviction of the accused for the crime.[7] This Court has ruled that when a woman states that she has been raped, she says in effect all that would be necessary to show that rape did take place. However, the testimony of the victim must be scrutinized with extreme caution. The prosecution's evidence must stand or fall on its own merits.[8]

In *People v. Campuhan*,[9] we ruled that for the accused to be guilty of consummated rape, there must be sufficient and convincing proof that the penis, indeed, touched at least the labia majora or slid into the female organ and not merely stroked the external surface thereof. The Court further ruled that:

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[6] *People v. Painitan*, 349 SCRA 266 (2001).

[7] *People v. Osing*, 349 SCRA 310 (2001).

[8] *People v. Patalin*, 311 SCRA 186 (1999).

[9] 329 SCRA 270 (2000).

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. . . Thus, *touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the ***mons pubis*** . . . . There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ and *not merely stroked the external surface thereof* for an accused to be convicted of consummated rape. As the *labias* are required to be "touched" by the penis, which are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or *minora* of the *pudendum* constitutes consummated rape.[10]

The Court emphasized that absent any showing of the slightest penetration of the female organ, *i.e.,* touching of the labia of the pudendum by the penis, there can be no consummated rape.

In this case, Norelyn testified that in the morning of March 5, 1998, the appellant boxed her, rendering her unconscious. When she regained consciousness before noon, she had a severe headache. However, she still had her clothes on. She suspected that the appellant had carnal knowledge of her because her vagina was painful:

Q : Now, where were you sometime in March 5, 1995?
A : I was at our house.

Q : Who were your companions?
A : My mother.

Q : Aside from your mother?
A : My stepfather, Levi Sumarago.

Q : This Levi Sumarago is your stepfather?
A : Yes, sir.

Q : What did he do in that noon of May 5?
A: We were gathering firewood.

Q: And who was your companion in gathering firewood?
A: My stepfather, sir.

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[10] *People v. Alcoreza*, 366 SCRA 655 (2001).

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Q : And where did you proceed?
A : In the land owned by Levi Sumarago.

Q : Now, while gathering firewood, do you remember if there was an unusual incident that took place at that time?
A : Yes, sir.

Q : What was that unusual incident?
A : We went to a certain guava tree and then the accused Levi Sumarago hit me by (*sic*) his fist and then I lost my consciousness.

Q : After you were being (*sic*) hit by (*sic*) the fist of Levi Sumarago and as you said you lost your consciousness after you regained your consciousness, what have you observed?
A : I felt dizzy, my head was aching so much and I felt pain on my vagina.

Q : And after you regained your consciousness and after having felt pain from your head as well as from your vagina, what did Levi Sumarago do?
A : He told me, "don't tell your mother about this because I will kill you."

Q : Then after that, what happen[ed] next?
A : He ordered me to stand up because we will already go home.

Q : Your mother was not with you when you were gathering firewood?
A : None (*sic*), sir.[11]

On clarificatory questions propounded by the trial court judge, Norelyn testified as follows:

Q : After your stepfather boxed you, you said you lost your consciousness and because you lost your consciousness, you don't know what happen[ed] next, am I right?
A : I don't know.

Q : Is it not a fact that you were already wearing pants on March 5, 1995?
A : Yes, sir.

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[11] TSN, 8 September 1997, pp. 2-3.

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Q : And at the time you regained your consciousness, your panty and your pants, you were still wearing (*sic*)?
A : Yes, sir.

Q : Including your dress?
A : Yes, sir.

Q : In fact, you did not see any blood in your panty, is that correct?
A : I have not seen.

Q : Likewise, with your pants or clothes?
A : There was none.

Q : There was also no blood on the shirt of your stepfather?
A : There was no blood.

Q : So after regaining your consciousness, your stepfather went home directly?
A : Yes, sir.

Q : You said that you were threatened on March 5, 1995? Warned you not to tell anybody?
A : Yes, sir.

Q : In fact, you were aware what happen[ed] to you when you lost your consciousness, is that correct?
A : Yes, sir, but I had a doubt because my vagina was painful.

Q : And that was the only reason why you doubted?
A : Yes, sir.[12]

. . . . . .

COURT:

Was there a time in all these five incidents that you noticed in your body the presence of white substance in your vagina?

A : I did not notice.

Q : Did you clean yours after the incident that you were abused?
A : Yes, sir.

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[12] *Id.* at 24-25.

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Q : Did you wash your private part after each incident?

A : I take (*sic*) a bath.

Q : And you did not notice any . . . do you know the word sperm?

A : I don't know what is sperm.

Q : You did not notice any white substance or fluid when you were taking a bath after its (*sic*) incident.

A : I did not.

Q : How long did the pain last in your vagina?

A : For a long time.[13]

There is no proof beyond reasonable doubt that the appellant's penis entered the labia of the pudendum of Norelyn. It is possible that while Norelyn was unconscious, the appellant undressed her, removed her panties and inserted his private organ into her vagina; and after satisfying himself, put her clothes back on before she regained consciousness. But such possibility is not synonymous with evidence. That the appellant had carnal knowledge of Norelyn cannot be presumed simply because she felt pain in her vagina when she regained consciousness, and that for over a period of time, the appellant warned her not to tell anybody.

The appellant may not even be convicted of attempted rape under Article 6 in relation to Article 335 of the Revised Penal Code because there is no evidence that the appellant commenced by overt acts the commission of the offense which had direct connection with the crime intended to be committed but did not perform all the acts of execution which should produce the felony.[14] There is no evidence that the appellant boxed Norelyn for the purpose of raping her. The testimony of Dr. Avenida Vista that she found an incomplete laceration on Norelyn's hymen when she examined the child on October 18, 1996 does not constitute proof that Norelyn sustained the laceration on March 5, 1998. It bears stressing that the appellant raped Norelyn

[13] *Id.* at 27-28.

[14] *People v. Lizada*, G.R. Nos. 143468-71, January 24, 2003.

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four times *after* March 5, 1995. She was examined by Dr. Vista only after the said rapes. It is entirely possible that Norelyn sustained the laceration on the subsequent dates: on March 13, 1995, March 24, 1995, April 2, 1995 and on April 11, 1995.

However, as regards the four other counts of rape, the prosecution, through Norelyn's testimony, mustered the requisite quantum of evidence to prove consummated rape, thus:

Q : Now, after that incident, when was the second time that Levi Sumarago rape you?
A : On March 13, 1995.

Q : And where did that happen?
A : In the banana plantation.

Q : And where was that banana plantation?
A : In the land of a certain Mejorcada.

Q : In what *barangay* is that land of Mejorcada located?
A : Barangay Manlin.

Q : What municipality?
A : Buug.

Q : Will you please narrate briefly what transpired on that date, March 13, 1995?
A : We were again gathering firewood together with my stepfather and he told me to follow him because he would get banana from the banana plantation so I followed him but he was lost immediately from my sight and as I passed by the banana plantation, he immediately grabbed me.

Q : Who grabbed you?
A : My stepfather.

Q : After your stepfather grabbed you, what happen[ed] next?
A : He made me lie down, took off my panty and then that was the time I shouted but he covered by (*sic*) mouth with his hands.

Q: After that, what happen[ed]?

COURT:
This time, you were not box[ed]?

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A : Not (*sic*) sir.

Q : So, you were aware of what was happening to you?
A : Yes, sir.

Q : Now after your stepfather made you lie down on the ground and after he removed your panty as well as your clothes, what did he do next?
A : He had sexual intercourse with me.

Q : What do you mean by sexual intercourse?
A : He mounted (*sic*) me and inserted his penis to my vagina.

Q : After your stepfather inserted his penis to your vagina, what did you feel?
A : My vagina was very painful.

Q : Now, what did you do when you felt pain of what he has done with you (*sic*)?
A : I was trying to shout but he was covering my mouth.

Q : In your own estimate, how long did Levi Sumarago [laid] himself on top of you and inserted his penis in your vagina?
A : It was just for a short time he immediately stood up and advised me to wear my panty.

Q : Now, after you were instructed to wear your panty, what happen[ed] next?
A : He told me to stand up because we will already go home.

Q : Were you able to reach home that day?
A : Yes, sir.

Q : Did you see your mother in your house?
A : Yes, sir.

Q : And you mentioned that incident to your mother?
A : I did not.

Q : What is the reason again why you did not inform your mother about the incident?
A : Because of his words that if I will tell my mother, he will kill me.

COURT:
Exactly what are the words he used?

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A : *"Ayaw gyud ug sumbong kay kung mosumbong ka, patyong to gyud ka."*

Q : You were the one threatened by your stepfather?
A : I was the one.

Q : How about on March 15, 1995, what were the exact words of your stepfather when you woke up.
A : *Ayaw ug sumbong kay kung mosumbong ka, patyon ta gyud ka.*

: "Meaning, don't you ever tell, I would surely kill you."

Q : Now, can you still remember the third time Levi Sumarago sexually abused you?
A : On March 24, 1995.

Q : And where did it take place?
A : At the guava tree.

Q : And where is that guava tree situated?
A : In the land owned by Moncada.

Q : And why were you there in that place?
A : We again gather[ed] firewood.

Q : Who were your companions?
A : Only my stepfather, sir, and myself.

Q : Other than you and your stepfather, was (*sic*) there other people in that place?
A : None, sir.

Q : Will you kindly narrate before this Court what actually transpired on that date on the said place?
A : Again, during that date, March 24, 1995, I went with my father to gather firewood. While he was gathering firewood, I was waiting at the guava tree and near the guava tree, there were grasses, after he gathered firewood, he told me, please come near me but I did not because I already knew his intention and because I did not go near him, he held my hand and brought me to the bushes.

Q : When your stepfather again brought you to the bushes, what happened next?
A : He again took off my panty and after that, he also took off his pants and his underwear.

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Q : After he took off your panty and he also took off his pants and underwear, what happened next?
A : He attempted to have sexual intercourse with me and he mounted on top of me and covering (*sic*) my mouth the time I tried to shout.

Q : When your stepfather was lying on top of you, what else did he do?
A : He inserted again his penis to my vagina and because of the pain, I was trying to shout but I cannot because he was holding (*sic*) my mouth.

Q : How about your legs, did you not kick him?
A : No, I cannot because his legs were positioned on top of my legs.

Q : So his legs are (*sic*) pinning down your legs?
A : Yes, sir.

Q : Why did you not refuse going with your stepfather to gather firewood this time?
A : Because according to him, there was no more firewood and if I will say no, he will surely get mad.

Q : And when he gets mad of (*sic*) you, what would he do to you?
A : He would kick me.

Q : Is it not more painful to be raped than to be kicked?
A : Being raped is more painful.

COURT:
Proceed.

ATTY. LINGATING:
Now, after your stepfather Levi Sumarago succeeded in having sexual intercourse against (*sic*) you, what happened next?

A : He again told me to wear my panty and stood up and he also wore his own clothes and he advised me that we will already go home.

Q : Did you reach home that time?
A : Yes, sir.

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Q : And you saw your mother inside your house?
A : Yes, sir.

Q : And what did you say to your mother about the incident?
A : I did not say anything.

Q : Why did you not say anything to your mother?
A : Because if I will tell my mother, he would kill me.

Q : Do you think that your stepfather would really kill you if ever you will reveal to your mother?

ATTY. BONGALOS:
Objection.

COURT:
Objection overruled.

A : Yes, sir.

Q : What made you think so?
A : Because he really told me, "you try to tell your mother, will surely kill you tonight."

Q : And you believe that?
A : Yes, sir.

Q : Now, when for the fourth time did your stepfather rape you?
A : April 2, 1995.

Q : And where did that incident take place?
A : At the *Katagbakan* located at the land of a certain Moncada.

Q : What do you mean by *katagbakan*?
A : I'm referring to a fruit named *katagbak*.

Q : And where is that *katagbakan* located?
A : In the land of Moncada.

Q : In what *barangay*?
A : Manlin.

Q : What municipality?
A : Buug, ZDS.

Q : And what actually happened in that place at *katagbakan*?
A : We again gathered firewood in the land of Moncada, this time, I was waiting for him at the *katagbakan* plantation and when he returned after he gathered firewood, he went near me and he again abused me.

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Q : Did you not suspect that he would do or abuse you again this time?
A : I thought about it.

Q : Why did you not run away?
A : Because of fear that if we will reach home, he would kill me.

Q : Now, how did he actually abuse you?
A : He again took off his clothes and mounted on [top of] me and I shouted but he held my mouth.

Q : When your stepfather was on top of you, what happen[ed] next?
A : He again inserted his penis to my vagina.

Q : After that, what happen[ed]?
A : My vagina was very painful.

Q : After you felt pain, what did you do?
A : I shouted.

Q : Were you able to shout?
A : No because he was covering my mouth.

Q : For how long did your stepfather had sexual intercourse with you in that place and date?
A : Just for a short time.

Q : And after your stepfather did that, what happen[ed] next?
A : Again, he advised me to stand up because we will already go home.

Q : When was the last time that your stepfather abused you?
A : April 11, 1995.

Q : And where did that incident take place?
A : At *Barangay* Lantawan.

Q : Is Brgy. Lantawan a barangay?
A : Yes, sir.

Q : Part of what municipality?
A : The only thing I can remember, it is a *barangay* where the subanen reside, I do not know about the municipality.

Q : On April 11, 1995, he also asked you to accompany him to gather firewood?
A : Yes, sir.

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Q : And, of course, you suspected that you will again be raped by your stepfather?
A : Yes, I believed I would again be abused.

Q : And you did not do anything to prevent your going with him?
A : This time when he told me to go with him, I did something at home in order to present myself to go with him and, he told me, "let your mother do that."

ATTY. LINGATING:
Why were you then in that place?

A : To gather firewood.

Q : And who are your companions?
A : Only the two of us.

Q : Were you able to gather firewood?
A : Yes, sir.

Q : Now, after you were able to gather firewood, what happen[ed] next?
A : After gathering firewood, my stepfather told me that we will get *abaka* to tie our firewood and when we reach[ed] a place where there were tall grasses and he again ordered me to lie down and took off his clothes and mine and he mounted on top of me.

Q : After your stepfather mounted himself on top of you, what did he do next?
A : He inserted his penis to my vagina.

Q : After he inserted his penis to your vagina, what did you do?
A : I shouted.

Q : Were you able to shout?
A : No, because he covered my mouth with his hand.

Q : And when your father sexually abused you, what happened next?
A : After having sexually abused me, he told me to stand up because we were about to go home.[15] (Italics ours.)

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[15] TSN, 8 September 1997, pp. 7-16.

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The credibility of Norelyn and the probative weight of her testimony cannot be assailed simply because of her admission that it took the appellant only a short time to insert his penis into her vagina and to satiate his lust. The mere entry of his penis into the labia of the pudendum, even if only for a short while, is enough. Insofar as the consummation of the crime of rape is concerned, the brevity of time that the appellant inserted his penis into the victim's vagina is of no particular importance. As this Court held in *People v. Nequia*:[16]

> . . . [I]n rape cases, there are no half measures or even quarter measures, nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. In either case, rape is deemed consummated. We further said that in a manner of speaking, "bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle.[17]

The appellant's assertion that the incomplete laceration in the hymen of Norelyn could have been caused by a stick or a finger is clutching at straws. In light of Norelyn's straightforward, positive, and spontaneous testimony that the appellant inserted his penis into her vagina on the four occasions that she was raped, the appellant's surmises cannot prevail.

Norelyn was less than eleven years old when the appellant raped her. In *People v. Castillo*,[18] we held that in rape cases where the offended parties are young and immature girls, there is considerable receptivity on the part of this Court to lend credence to their testimonies, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. There is no showing that Norelyn was impelled by any ill-motive in charging the appellant with a heinous crime. Hence, her testimony is entitled to full faith and credence. No woman, much less a child, would willingly

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[16] G.R. No. 146569, October 6, 2003.

[17] *Id.* at 14.

[18] 335 SCRA 100 (2000).

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submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. The appellant's bare denial of the crime charged cannot prevail over the positive testimony of Norelyn, corroborated by no less than Dr. Vista's medical findings. The appellant's claim that the charges against him were but the concoction of Norelyn's mother because of the latter's fear of being sent to jail by the *Barangay* Captain is flimsy. The appellant failed to prove this assertion. The evidence on record shows that when Norelyn told her mother she had been repeatedly raped by the appellant, Teodora forthwith had her daughter examined by Dr. Vista and thereafter filed a complaint for multiple rape against her common-law husband.

On the second issue, the Office of the Solicitor General agrees with the contention of the appellant that the trial court erroneously sentenced him to suffer the death penalty despite the absence of any allegation in the Informations that he was the victim's stepfather.

We agree with the appellant and the Office of the Solicitor General that the trial court erred in convicting the appellant four counts of rape in its qualified form. Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the accused may be sentenced to death if rape is committed under any of the following attendant circumstances:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.

The twin requisites of minority of the victim and her filiation with the appellant or the fact that the appellant was the common-law husband of Teodora, Norelyn's mother, must be alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure and proved by the

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prosecution.[19] Although the crimes were committed before the effectivity of the new Rule, it should be applied retroactively, as the same is favorable to the appellant.[20]

The stepfather-stepdaughter relationship presupposes a legitimate relationship — a valid marriage between the accused and the mother of the private complainant. And the best evidence to prove the marriage between the accused and the mother of the private complainant is their marriage contract.[21] Norelyn's bare testimony and that of her mother that the appellant is her stepfather is insufficient evidence to prove such allegation.[22] No less than the presiding judge of the trial court stated during the trial that the appellant was merely Teodora's common-law husband.[23] In these cases, the Informations failed to allege that the appellant is the legal or common-law husband of Teodora; or that he was Norelyn's stepfather. Hence, the appellant should be found guilty only of four counts of simple rape and not of rape in its qualified form. Accordingly, the appellant should be sentenced to suffer the penalty of *reclusion perpetua* for each count of rape.

The appellant is liable to the victim Norelyn Brigole in the amount of ₱50,000 as civil indemnity and ₱50,000 as moral damages for each count of simple rape, or in the total amount of ₱400,000.[24] The appellant is also liable to Norelyn in the amount of ₱25,000 for each count of rape, as exemplary damages.[25]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Zamboanga del Sur, Branch 20,

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[19] *People v. Victor*, G.R. No. 127904, December 5, 2002.

[20] *Ibid.*

[21] *People v. Silvano*, 309 SCRA 362 (1999).

[22] *People v. Victor, supra.*

[23] TSN, 16 September 1997, p. 16.

[24] *Ibid.*

[25] *People v. Galvez*, 365 SCRA 681 (2001).

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is *AFFIRMED WITH MODIFICATION*. The appellant Levi Sumarago is acquitted in Criminal Case No. 2541 for failure of the prosecution to prove his guilt beyond reasonable doubt for the said crime charged therein. In Criminal Cases Nos. 2537 to 2540, the appellant is found guilty beyond reasonable doubt of four (4) counts of simple rape under Article 335 of the Revised Penal Code, as amended, by Republic Act No. 7659. He is sentenced to suffer the penalty of *reclusion perpetua* for each count. He is ordered to pay the victim Norelyn Brigole the amount of ₱50,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 for each count of rape.

SO ORDERED.

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

Azcuna, J., on official leave.

SECOND DIVISION

[G.R. No. 142066. February 6, 2004]

CRISELDA LEONARDO and CELING MARTINEZ, *petitioners, vs.* **S.T. BEST, INC.,** *respondent.*

SYNOPSIS

Respondent filed an action for damages against petitioners who were doing illegal quarrying activities in their land adjacent to respondent's land. Later, petitioners were declared in default and the trial court ruled in favor of respondent. Petitioners filed a petition to annul the trial court's decision with the Court of Appeals but the same was dismissed. Hence, the present action.