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In fine, petitioner is not in a valid position to invoke the provisions of Article 448 of the Civil Code. The Court commiserates with petitioner in its present predicament; upon the other hand, respondent, too, is entitled to his rights under the law, particularly after having long been deprived of the enjoyment of his property. Nevertheless, the Court expresses hope that the parties will still be able to come up with an arrangement that can be mutually suitable and acceptable to them.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CV No. 56001 is AFFIRMED. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, and *Carpio, JJ.,* concur.

Azcuna, J., on sick leave.

EN BANC

[G.R. No. 149370. September 23, 2003]

PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* **MARTIN ALEJO**, *appellant.*

SYNOPSIS

Appellant Martin Alejo was convicted by the trial court of the crime of qualified rape for the sexual abuse he committed against his thirteen-year-old stepdaughter, Michelle Salazar, and the penalty of death was imposed upon him. In this automatic review, appellant insisted on his denial as a defense and that the complainant recanted twice her statement.

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The Court ruled that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. Like any other testimony, they are subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand. In the case at bar, the trial court's appreciation of the evidence, leading it to prefer Michelle's testimony for the prosecution over her testimony given for the defense, deserves respect. In the estimation of such conflicting versions, the appellate court cannot assert a preponderant competence over that of the trial judge. We have repeatedly held that the appellate court, absent cogent justifications that can warrant otherwise, would almost certainly defer to the findings and conclusions made thereon by the trial court.

However, the imposition by the trial court of the death penalty cannot be upheld considering that minority and relationship, as qualifying circumstances, were not proved beyond reasonable doubt. Consequently, appellant was found guilty of simple rape and was sentenced to suffer the penalty of *reclusion perpetua*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RETRACTIONS ARE GENERALLY UNRELIABLE AND ARE LOOKED UPON WITH CONSIDERABLE DISFAVOR BY THE COURTS.— Retractions are generally unreliable and are looked upon with considerable disfavor by the courts. Like any other testimony, they are subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand. In *Alonte v. Savellano,* Mr. Justice Reynato S. Puno explains the rationale for rejecting recantations in his Separate Opinion: "Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court. . . The reason is because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually through intimidation or for monetary consideration. Moreover, there is always the probability that they will later be repudiated and there would never be an end to criminal litigation. It would also be a dangerous rule for courts

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to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on changed their minds for one reason or another. This would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses."

2. **ID.; ID.; ID.; COURTS SHOULD ASCERTAIN WHICH OF THE CONTRADICTORY TESTIMONIES REPRESENTS THE TRUTH.**— Courts, therefore, should devise all the necessary means to ascertain which of the contradictory testimonies represents the truth. This includes not only noting the demeanor of the witness on the stand but also the demeanors of those persons present in court. In the case at bar, the trial court noted the demeanors of the accused before the victim testified and of the mother while her daughter was testifying on the stand[.] x x x In view of the above observations, the trial court was convinced that there was an effort on the part of Michelle's mother to suppress her testimony against the appellant. In explaining the contradictory testimonies of the victim, the trial court attributed it to the fact that when the recantations were made on March 24, 1998 and February 12, 2001, the victim was under the custody of her mother. They were tainted testimonies due to pressure from the mother who wanted the appellant exculpated.

3. **ID.; ID.; ID.; IN THE ESTIMATION OF CONFLICTING VERSIONS, APPELLATE COURT CANNOT ASSERT PREPONDERANT COMPETENCE OVER THAT OF THE TRIAL JUDGE.**— The trial court's appreciation of the evidence, leading it to prefer Michelle's testimony for the prosecution over her testimony given for the defense, deserves respect. In the estimation of such conflicting versions, the appellate court cannot assert a preponderant competence over that of the trial judge. We have repeatedly held that the appellate court, absent cogent justifications that can warrant otherwise, would almost certainly defer to the findings and conclusions made thereon by the trial court. Several reasons have been advanced, nurtured by a host of jurisprudential holdings, that are all too compelling to be ignored. The trial judge is he who gets the opportunity to directly and intimately observe the witnesses and to determine, by their demeanor on the witness stand, the probative strength or weakness of that which they declare. The witnesses can reveal much more than what can ordinarily be reflected in

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and perceived from the transcripts that merely would contain the matter which is stated but not how it is said. Tell-tale marks of either honesty or fabrication, truth or concoction, reality or imagination, may be discussed from a meaningful pause or spontaneous ready reply, the angry or subdued denial, the forthright stare or the elusive eyes, the sudden pallor or the flush of face, and all that characterizes the deportment and peculiar outward behavior of witnesses when their response to both direct examination and cross examination is elicited. These signs, available to the trial judge, are easily lost on the appellate court. After a careful review of the records of this case, we find no reason strong enough to persuade us to take a different stand.

4. ID.; ID.; ID.; CARNAL KNOWLEDGE HAS BEEN ESTABLISHED WHEN THE TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS.— Michelle's claim that she was raped by her stepfather is not only corroborated by the testimony of Simeon Balderama, but is also consistent with the findings of Dr. Danilo Balana that she had superficial multiple incomplete healed hymenal lacerations at 3, 9 and 11 o'clock positions. We have consistently held that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisites of carnal knowledge has thereby been established.

5. ID.; ID.; ID.; MOTIVES SUCH AS FAMILY FEUDS, RESENTMENT OR REVENGE NEVER SWAYED THE COURT FROM GIVING FULL CREDENCE TO THE TESTIMONY OF A MINOR COMPLAINANT.— Neither can we give credence to appellant's self-serving assertion that the victim's grandmother concocted the rape charge because she did not approve of his marriage to her daughter and that the financial assistance from Lutgarda's former common-law husband was cut off by reason of such marriage. It is too trite, and unworthy of belief. Motives such as family feuds, resentment or revenge have never swayed us from giving full credence to the testimony of a minor complainant. More importantly, we cannot believe that the grandparents would expose their granddaughter, a young and innocent girl, to the humiliation and stigma of a rape trial just to stop the relationship between the father and the mother of the victim. No grandparent would expose his or her own granddaughter

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to the shame and scandal of having undergone such a debasing defilement of her chastity if the charge filed were not true.

6. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; VICTIM'S MINORITY AND HER RELATIONSHIP TO THE ACCUSED; MUST BE PROVED WITH EQUAL CERTAINTY AND CLEARNESS AS THE CRIME ITSELF.— Given the prevailing circumstances in this case, we find that the prosecution successfully proved that appellant had sexual intercourse with Michelle against her will. However, the imposition by the trial court of death penalty cannot be upheld considering that the minority and relationship, as qualifying circumstances, were not proved beyond reasonable doubt. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself, otherwise, there can be no conviction of the crime in its qualified form. As a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt.

7. ID.; ID.; ID.; ID.; NOT ESTABLISHED IN CASE AT BAR.— In the case at bar, no birth certificate or any similar authentic document was presented and offered in evidence to prove Michelle's age. Moreover, there is no evidence that said certificate of birth was lost or destroyed or was unavailable without the fault of the prosecution. The testimony of Michelle as to her age, even if corroborated by her mother, is not sufficient proof of minority. Likewise, the relationship between appellant and Michelle was not established with the same degree of proof. While the information alleged that the victim was appellant's stepdaughter, the prosecution failed to prove the said relationship. For appellant to be considered the stepfather of the victim, he must be legally married to her mother. The testimony of Lutgarda and the admission of the appellant regarding their marriage do not meet the required standard of proof. The best evidence of their marriage is the marriage certificate itself, absent any showing that the same was lost or destroyed.

8. ID.; ID.; PROPER PENALTY.— Therefore, for failure to prove the qualifying circumstances of minority and relationship, the appellant can be convicted only of simple rape under Article 335, as amended by Republic Act No. 7659, the law in effect at

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the time of the commission of rape. The penalty for simple rape or rape in its unqualified form is *reclusion perpetua.*

9. ID.; ID.; CIVIL LIABILITY; ₱50,000 AS CIVIL INDEMNITY AND ₱50, 000 AS MORAL DAMAGES AWARDED IN CASE AT BAR.— The trial court correctly awarded the amount of ₱50,000.00 to the offended party as civil indemnity. We have consistently ruled that upon a finding of the fact of rape, the award of civil indemnity *ex delicto* is mandatory. In addition, the amount of ₱50,000.00 is automatically granted to the offended party as moral damages in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Brotamonte Law Office for accused-appellant.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Appellant was charged with the crime of rape before the Regional Trial Court of Legazpi City, Branch 6, in Criminal Case No. 7846, in an Information that reads as follows:

That on October 11, 1997 at about 2:00 o'clock in the afternoon, more or less, at Barangay Fidel Surtida, Municipality of Sto. Domingo, 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 and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his stepdaughter, 13 year old Michelle Salazar, against the latter's will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[1]

Upon arraignment, appellant pleaded not guilty. Whereupon, trial on the merits ensued.

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[1] *Rollo*, p. 11.

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The facts as found by the trial court are as follows:

At about 2:00 in the afternoon of October 11, 1997, Michelle was playing with her brothers and sisters in front of their house at Fidel Surtida, Sto. Domingo, Albay when appellant, her stepfather, arrived from attending a wedding celebration at Bayandong, Bacacay, Albay. As a sign of respect, Michelle kissed appellant on the cheek but he kissed her back on the lips. Thereafter, he brought her inside in one of the rooms of their house and forcibly removed her underwear. Appellant then undressed himself, mounted himself on top of Michelle and inserted his penis into her vagina. Michelle felt pain. She did not tell her mother, Lutgarda, for fear that it might aggravate her heart ailment.[2]

At about the same time, Simeon Balderama, the brother of Michelle's mother, went to their house to ask for rice. When he entered the house, he saw appellant in one of the rooms positioned on top of Michelle with his underwear lowered while Michelle's dress was raised to her waist. He was able to see the incident because the room had no door, only a provisional curtain. Frightened by what he saw, he immediately went home and reported the matter to her sister Beatriz,[3] who told Lutgarda about the incident and this angered the latter, who confronted Michelle. However, Michelle just cried, so Lutgarda slapped her on the face.[4]

On October 14, 1997, Onesima Balderama, Michelle's grandmother, reported the matter to the police authorities. Appellant, Lutgarda and Michelle were then summoned to the police station. Michelle was physically examined by Dr. Danilo Balana, the Municipal Health Officer of Sto. Domingo, Albay,[5] who found the following:

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[2] TSN, March 31, 1998, pp. 11-15.

[3] TSN, March 17, 1998, pp. 18-21.

[4] TSN, May 17, 1999, pp. 5-8.

[5] TSN, March 8, 1999, pp. 10-12.

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Internal Examination:
External Genitalia:
(-) pubic hair
Vulva – labia majora and manora are in close contact covering the external os.
Vagina – no bleeding, with clear whitish discharge noted.
Hymen – superficial, multiple, incomplete healed laceration at 3, 9, 11 o'clock positions, no bleeding
Vaginal Canal – on inserting the small finger of examining hand admits with resistance.[6]

Thereafter, Michelle's statement accusing appellant of the crime of rape was taken at the police station which led to the filing of this case.[7]

Appellant denied the charge against him and alleged that on October 11, 1997, he came home from a wedding celebration at around 2:00 p.m. and found all the children playing at the yard. He went immediately inside the house and took a nap. At about 3:00 p.m., he was awakened by his wife who asked him to go back to the wedding reception to help return the plates. He returned to their house at 7:00 in the evening. He could not have raped Michelle since she was outside of the house conversing with Florlyn Mandane when he arrived.[8]

On June 25, 2001, the trial court rendered judgment finding appellant guilty beyond reasonable doubt of Qualified Rape and sentencing him to the supreme penalty of death, the dispositive of which reads:

WHEREFORE, premises considered, decision is hereby rendered finding the accused Martin Alejo GUILTY beyond reasonable doubt of the crime of rape of her stepdaughter Michelle Salazar who was then thirteen and a half years old (13½) and hereby sentences him

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[6] Records, p. 3.

[7] Records, p. 4.

[8] TSN, June 28, 2000, pp. 4-5.

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to suffer the supreme penalty of death and to pay Michelle Salazar the sum of Fifty Thousand (₱50,000.00) pesos as indemnity and to pay the costs.

SO ORDERED.[9]

Hence, this automatic review.

In his Brief, appellant assigned the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED ON THE BASIS OF THE AFFIDAVIT OF PRIVATE OFFENDED PARTY GIVEN BEFORE THE POLICE OF STO. DOMINGO, ALBAY WHERE MORE OF THE ANSWERS WAS SUPPLIED BY ONESIMA BALDERAMA;

II

THAT COURT *A QUO* GRAVELY ERRED IN HOLDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE PRIVATE OFFENDED PARTY'S DENIAL OF THE RAPE INCIDENT COMPLAINED OF BY ONESIMA BALDERAMA; AND

III

THE COURT *A QUO* GRAVELY ERRED BY IMPOSING THE CAPITAL PUNISHMENT OF DEATH TO THE ACCUSED-APPELLANT OF THE CRIME CHARGED ON THE BASIS OF UNSUPPORTED EVIDENCE OF THE RELATIONSHIP OF ACCUSED-APPELLANT TO THE MOTHER OF PRIVATE OFFENDED PARTY.[10]

Appellant denied raping his stepdaughter. Rather, he alleged that the charge was concocted by Onesima Balderama, his mother-in-law, who disapproved of his marriage to her daughter, Lutgarda. Moreover, credence should have been accorded to his testimony, it being corroborated by no less than the offended

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[9] *Rollo*, p. 37; penned by Vladimir B. Brusola.

[10] *Rollo*, pp. 79-80.

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party, who twice recanted the allegations that she was raped on October 11, 1997 by the appellant.

On March 24, 1998, Michelle was called by the prosecution to the witness stand. She contradicted her sworn affidavit-complaint executed on October 14, 1997 as follows:

ASST. PROS. DE MESA:

Q. On that particular date October 11, 1997, do you recall of any incident that happened to you at Fidel Surtida, Sto. Domingo, Albay in your house?
A. None, sir.

x x x x x x x x x

Q You said you were playing in front of the house of your grandmother. After playing, where did you go?
A. I did not go.

Q. You did not go to your house?
A. I went home, sir.

Q. What did you do in your house?
A. I drank a glass of water and returned to play.

Q. What time?
A. I don't know.

Q. Did you play until the evening?
A. When my mother arrived I stopped playing.

Q. What time?
A. Four o'clock.

Q. In the afternoon?
A. Yes, sir.

x x x x x x x x x

Q. Now, when your father arrived, what did you do?
A. I did nothing.

Q. You mean to say you did not greet him?

x x x x x x x x x

A. I greeted him.

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Q. How did you greet your father?
A. I kissed him on the hand.

Q. You kissed him on the hand or on the cheek?
A. On his hand, sir.

x x x x x x x x x

Q. Miss witness, what happened after kissing the hand of your stepfather?
A. Nothing, sir.

Q. What do you mean by that answer, nothing?
A. Because at that time when I kissed the hand of my stepfather I left and returned playing.

Q. Now, you returned playing. Until when did you stop playing?
A. (No Answer)

x x x x x x x x x

Q. When did you return to your house?
A. After my mother arrived.

Q. What time did your mother arrive?
A. Four o'clock in the afternoon, sir.

Q. Now, after your mother arrived, what happened?
A. I just met my mother.

Q. You did not enter the house?
A. Yes, sir.

Q. And how about your mother. Did she enter the house?
A. Yes, sir.

Q. When you and your mother entered the house, what did you do?
A. We fed the pigs.

Q. When you said "we" to whom are you referring?
A. My sister and I, sir.

Q. And after feeding the pigs, what did you do?
A. We fetched water.

Q. And then?
A. Nothing more, sir.

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Q. You did not eat?
A. Yes, sir. We ate what our mother brought to us from the wedding celebration.

Q. After eating, what happened next?
A. Nothing more, sir.[11]

Later, on February 12, 2001, the defense presented Michelle as its hostile witness. She reaffirmed her denial that she was raped by appellant.

Previously, however, on March 31, 1998, Michelle testified that she was indeed raped by appellant, to wit:

PROS. DE MESA

Q. Do you remember the date when this happened?
A. Yes madam.

Q. Could you tell us the date if you remember?
A. October 11, 1997.

COURT

Q. About what time?
A. At 2:00 o'clock in the afternoon.

PROS. DE MESA

Q. Where this happened?
A. In my house, madam.

Q. Where is it situated?
A. At Fidel Surtida, Sto. Domingo, Albay your honor please.

x x x x x x x x x

Q After playing when did you go up the house?
A Two o'clock madam.

Q. When your stepfather arrived?
A. Yes madam.

Q. When your father arrive, what did you do?
A. I kissed him on the cheek.

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[11] TSN, March 24, 1998, pp. 10-16.

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Q. After kissing him on the cheek, what did your stepfather do?
A. He kissed me on my lips.

Q. He kissed you on the lips, now after kissing you on the lips, what happened next, if any?
A. He removed my panty.

Q. On what part of your house, did he remove your panty?
A. In the room, madam.

Q. Whose room?
A. Ours madam.

Q. After removing your panty what happened next?
A. He also removed his underwear.

Q. And then after removing his underwear, what did he do to you?
A. He raped me.

Q. When you said raped, you mean he inserted his penis into your vagina?
A. Yes madam.

Q. And what did you feel when the penis of Martin Alejo was already inserted into your vagina?
A. I felt it was painful madam.

Q. Was it painful, was he moving?
A. Yes Madam.[12]

The trial court found Michelle's testimony given on March 31, 1998 to be credible. We agree.

Retractions are generally unreliable and are looked upon with considerable disfavor by the courts. Like any other testimony, they are subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[13] In *Alonte v. Savellano*,[14] Mr. Justice Reynato

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[12] TSN, March 31, 1998, pp. 11-15.

[13] *People v. Gonzales*, G.R. No. 133859, 24 August 2000, 338 SCRA 678, 690.

[14] G.R. No. 131652, 9 March 1998, 287 SCRA 245, 293-294.

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S. Puno explains the rationale for rejecting recantations in his Separate Opinion:

Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court. x x x. The reason is because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually through intimidation or for monetary consideration. Moreover, there is always the probability that they will later be repudiated and there would never be an end to criminal litigation. It would also be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on changed their minds for one reason or another. This would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.

Courts, therefore, should devise all the necessary means to ascertain which of the contradictory testimonies represents the truth. This includes not only noting the demeanor of the witness on the stand but also the demeanors of those persons present in court.

In the case at bar, the trial court noted the demeanors of the accused before the victim testified and of the mother while her daughter was testifying on the stand as follows:

(*As to the accused*)
COURT:

That's all.

Now, the court has noticed that there is an effort on the part of the accused to prohibit the testimony of the victim, and the court is constrained under the rules, to order her detention or to order her custody to another person if you will not present your witness now.[15]

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[15] TSN, March 17, 1998, p. 27.

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(*As to the mother*)
THE COURT:

Don't suggest to the court what question to ask the witness. Let her explain when your time comes but not now. The Court is caught in dilemma. Did you not notice the dagger look of the mother at her? I was looking at her mother and her child cannot answer.[16]

In view of the above observations, the trial court was convinced that there was an effort on the part of Michelle's mother to suppress her testimony against the appellant. In explaining the contradictory testimonies of the victim, the trial court attributed it to the fact that when the recantations were made on March 24, 1998 and February 12, 2001, the victim was under the custody of her mother. They were tainted testimonies due to pressure from the mother who wanted the appellant exculpated.[17]

The trial court's appreciation of the evidence, leading it to prefer Michelle's testimony for the prosecution over her testimony given for the defense, deserves respect. In the estimation of such conflicting versions, the appellate court cannot assert a preponderant competence over that of the trial judge. We have repeatedly held that the appellate court, absent cogent justifications that can warrant otherwise, would almost certainly defer to the findings and conclusions made thereon by the trial court. Several reasons have been advanced, nurtured by a host of jurisprudential holdings, that are all too compelling to be ignored. The trial judge is he who gets the opportunity to directly and intimately observe the witnesses and to determine, by their demeanor on the witness stand, the probative strength or weakness of that which they declare. The witnesses can reveal much more than what can ordinarily be reflected in and perceived from the transcripts that merely would contain the matter which is stated but not how it is said. Tell-tale marks of either honesty or fabrication, truth or concoction, reality or imagination, may be discussed from a meaningful pause or spontaneous ready reply, the angry or subdued denial, the forthright stare or the

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[16] TSN, March 24, 1998, p. 46.

[17] *Rollo*, Decision, p. 110.

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elusive eyes, the sudden pallor or the flush of face, and all that characterizes the deportment and peculiar outward behavior of witnesses when their response to both direct examination and cross examination is elicited. These signs, available to the trial judge, are easily lost on the appellate court.[18] After a careful review of the records of this case, we find no reason strong enough to persuade us to take a different stand.

Michelle's claim that she was raped by her stepfather is not only corroborated by the testimony of Simeon Balderama, but is also consistent with the findings of Dr. Danilo Balana that she had superficial multiple incomplete healed hymenal lacerations at 3, 9 and 11 o'clock positions. We have consistently held that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisites of carnal knowledge has thereby been established.[19]

Neither can we give credence to appellant's self-serving assertion that the victim's grandmother concocted the rape charge because she did not approve of his marriage to her daughter and that the financial assistance from Lutgarda's former common-law husband was cut off by reason of such marriage. It is too trite, and unworthy of belief. Motives such as family feuds, resentment or revenge have never swayed us from giving full credence to the testimony of a minor complainant.[20] More importantly, we cannot believe that the grandparents would expose their granddaughter, a young and innocent girl, to the humiliation and stigma of a rape trial just to stop the relationship between the father and the mother of the victim. No grandparent would expose his or her own granddaughter to the shame and scandal of having undergone such a debasing defilement of her chastity if the charge filed were not true.[21]

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[18] *People v. Borce*, 352 Phil. 275, 284-285 [1998].

[19] *People v. Somodio*, G.R. Nos. 134139-40, 15 February 2002.

[20] *People v. Blazo*, G.R. No. 127111, 19 February 2001, 352 SCRA 94, 103.

[21] *People v. Ardon*, G.R. Nos. 137753-56, 16 March 2001, 354 SCRA 609, 624-625.

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Given the prevailing circumstances in this case, we find that the prosecution successfully proved that appellant had sexual intercourse with Michelle against her will. However, the imposition by the trial court of death penalty cannot be upheld considering that the minority and relationship, as qualifying circumstances, were not proved beyond reasonable doubt. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself, otherwise, there can be no conviction of the crime in its qualified form.[22]

As a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt.[23]

In the recent case of *People v. Pruna*,[24] we laid down the following guidelines in appreciating age either as an element of the crime or as a qualifying circumstance:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

   a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

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[22] *People v. Ramos*, G.R. No. 142577, 27 December 2002.

[23] *Id.*

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

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b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

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

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

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

In the case at bar, no birth certificate or any similar authentic document was presented and offered in evidence to prove Michelle's age. Moreover, there is no evidence that said certificate of birth was lost or destroyed or was unavailable without the fault of the prosecution. The testimony of Michelle as to her age, even if corroborated by her mother, is not sufficient proof of minority.[25]

Likewise, the relationship between appellant and Michelle was not established with the same degree of proof. While the information alleged that the victim was appellant's stepdaughter, the prosecution failed to prove the said relationship. For appellant to be considered the stepfather of the victim, he must be legally married to her mother.[26] The testimony of Lutgarda and the admission of the appellant regarding their marriage do not meet the required standard of proof.[27] The best evidence of their marriage is the marriage certificate itself, absent any showing that the same was lost or destroyed.[28]

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[25] *People v. Radam*, G.R. Nos. 138395-99, 18 July 2002.

[26] *People v. Hilet*, G.R. Nos. 146685-86, 30 April 2003.

[27] *People v. Alcoreza*, 419 Phil. 105, 119 [2001].

[28] *People v. Corral*, G.R. Nos. 145172-74, 28 February 2003.

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Therefore, for failure to prove the qualifying circumstances of minority and relationship, the appellant can be convicted only of simple rape under Article 335, as amended by Republic Act No. 7659, the law in effect at the time of the commission of rape. The penalty for simple rape or rape in its unqualified form is *reclusion perpetua*.[29]

The trial court correctly awarded the amount of ₱50,000.00 to the offended party as civil indemnity. We have consistently ruled that upon a finding of the fact of rape, the award of civil indemnity *ex delicto* is mandatory.[30] In addition, the amount of ₱50,000.00 is automatically granted to the offended party as moral damages in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[31]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Legazpi City, Branch 6, dated June 25, 2001, in Criminal Case No. 7846, is *MODIFIED*. Appellant Martin Alejo is found guilty beyond reasonable doubt of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the offended party the sum of ₱50,000.00 as moral damages in addition to the sum of ₱50,000.00 which the trial court awarded as civil indemnity.

Costs *de oficio*.

SO ORDERED.

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

Azcuna, J., is on leave.

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[29] *People v. Tundag*, G.R. Nos. 135695-96, 12 October 2000.

[30] *People v. Funesto*, G.R. No. 143432, 9 April 2003.

[31] *People v. Umayam*, G.R. No. 147033, 30 April 2003.