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with the requirements of Section 28 of RA 7279 and EO 152,[12] on eviction and demolition.

WHEREFORE, the petition is hereby *DENIED* and the decision of the Court of Appeals in CA-G.R. SP No. 46861 is *AFFIRMED*.

SO ORDERED.

Puno (Chairman), Panganiban, Sandoval-Gutierrez and *Carpio Morales, JJ.*, concur.

EN BANC

[G.R. No. 139400. September 3, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MAURICIO WATIWAT,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing his ten-year old niece who was living in his house. He was sentenced to suffer the supreme penalty of death. Hence, this automatic review of the case where appellant assailed the credibility of the victim for her failure to report the matter immediately to the authorities.

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[12] Executive Order No. 152 entitled DESIGNATING THE PRESIDENTIAL COMMISSION FOR THE URBAN POOR AS THE SOLE CLEARING HOUSE FOR THE CONDUCT OF DEMOLITION AND EVICTION ACTIVITIES INVOLVING THE HOMELESS AND UNDERPRIVILEGED CITIZENS AND ESTABLISHING FOR THE PURPOSE A MECHANISM TO ENSURE STRICT COMPLIANCE WITH THE REQUIREMENTS OF JUST AND HUMANE DEMOLITION AND EVICTION UNDER THE URBAN DEVELOPMENT AND HOUSING ACT OF 1992, AND FOR OTHER PURPOSES, signed December 10, 2002.

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The Supreme Court ruled that it is not uncommon for young girls to conceal for some time the assault against their virtue. Barely out of childhood, the victim could be easily intimidated and cowed into silence. While it is true that it took her a long time to report her defloration, it must be stressed that she was merely ten years old when she was subjected to bestial abuse. Afraid and with no family to assist her, she could not report the incident to the authorities. Under the circumstances, it is unreasonable to judge her action by the norms of behavior expected of mature individuals. The delay in reporting the incident of rape ought not be taken against her and cannot be used to weaken her credibility.

The Court further ruled that the fact of rape and the identity of appellant as the malefactor were sufficiently and convincingly established by the prosecution through her straightforward narration. Thus, the Court found appellant guilty of statutory rape, the victim being under twelve years of age. However, the Court held that the trial court erred in imposing upon appellant the death penalty on the basis of its conclusion that he is her guardian. The appellant was not the victim's guardian, whether natural, legal or judicial. That he allowed his surname to be used as her surname in her Certificate of Live Birth is inconsequential. At most, appellant was only an uncommitted caretaker of the victim over a limited period of time. Neither is the victim the niece of appellant and hence, a relative within the third civil degree as alleged in the Information. The prosecution failed to prove that appellant was legally married to the victim's aunt. Relationship, as a qualifying circumstance in rape, must not only be alleged clearly; it must also be proved beyond reasonable doubt, just as the crime itself. Consequently, the Court imposed upon appellant the penalty of *reclusion perpetua*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY ACCORDED RESPECT ON APPEAL.**— [I]t is well entwined into the bedrock of our jurisprudence that the trial judge's evaluation of the testimony of a witness and its factual findings are accorded not only the highest respect, but

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also finality, unless some weighty circumstance has been ignored or misunderstood which could alter the result of the judgment rendered. Given the direct opportunity to observe the witness on the stand, the trial judge was in a vantage position to assess his demeanor and determine if he was telling the truth or not.

2. **ID.; ID.; ID.; NOT IMPAIRED BY DELAY IN REPORTING THE INCIDENT OF RAPE ON THE PART OF THE MINOR VICTIM; CASE AT BAR.**— It is not uncommon for young girls to conceal for some time the assault against their virtue. Barely out of childhood, Marites could be easily intimidated and cowed into silence. While it is true that it took her a long time to report her defloration, it must be stressed that she was merely 10 years old when she was subjected to bestial abuse. Afraid and with no family to assist her, she could not report the incident to the authorities. It was only when her grandaunt took care of her that she had the courage to do so. Under the circumstances, it is unreasonable to judge her action by the norms of behavior expected of mature individuals. The delay in reporting the incident of rape ought not to be taken against her and cannot be used to weaken her credibility.

3. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST PROVE HIS PRESENCE AT ANOTHER PLACE AT THE TIME OF THE COMMISSION OF THE CRIME AND THAT IT IS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE OF THE CRIME DURING THE INCIDENT.**— We have held that an accused who raises the defense of alibi must not only prove his presence at another place at the time of commission of the crime, he must also establish that it would be physically impossible for him to be at the scene of the crime during the incident. It must be observed that Barangay Salcedo and Barangay Bato are both within the municipality of Bansud. Clearly, it is safe to conclude that it was not physically impossible for him to be at the scene of the crime at that time.

4. **ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE PROSECUTION WITNESS.**— [A]libi and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. Such defense warrants the least credibility or none at all and cannot prevail over the positive identification of the accused

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by the prosecution witness. Denial is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matters.

5. **CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; WHEN VICTIM IS UNDER EIGHTEEN YEARS OF AGE AND THE OFFENDER IS A GUARDIAN; THE GUARDIAN REFERRED TO IN THE LAW IS EITHER A LEGAL OR JUDICIAL GUARDIAN.**— In *People vs. Garcia*, we held: "In the law on rape, the role of a guardian is provided for in Article 344 of the Revised Penal Code, specifically as one who, aside from the offended party, her parents or grandparents, is authorized to file the sworn written complaint to commence the prosecution for that crime. *In People vs. De la Cruz (59 Phil. 531 [1934]), it was held that the guardian referred to in the law is either a legal or judicial guardian as understood in the rules on civil procedure...."The law requires a legal or judicial guardian since it is the consanguineous relation or the solemnity of judicial appointment which impresses upon the guardian the lofty purpose of his office and normally deters him from violating its objectives.* Such considerations do not obtain in appellant's case or, for that matter, any person similarly circumstanced as a mere custodian of a ward or another's property. *The fiduciary powers granted to a real guardian warrant the exacting sanctions should he betray the trust."...* As shown by the facts in this case, appellant is not Marites' guardian, whether natural, legal or judicial. That he allowed his surname to be used as her surname in her Certificate of Live Birth is inconsequential. ... At most, appellant was only an uncommitted caretaker of Marites over a limited period of time. Clearly, he cannot be considered a guardian falling within the ambit of the amendatory provision of Section 11, Republic Act No. 7659.

6. **REMEDIAL LAW; SPECIAL PROCEEDINGS; GUARDIANSHIP; GUARDIANS; KINDS.**— A guardian is a person lawfully invested with the power and charged with the duty of taking care of the person and managing the property and rights of another person who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs. There are three kinds of guardians under the law: (a) the *legal guardian,* who is such by provision of law without the need of judicial appointment, as in the case of the parents

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over the persons of their minor children, or the father, or in his absence the mother, with respect to the property of the minor children not exceeding ₱50,000.00 in value; (b) the *guardian ad litem,* a competent person appointed by the court for purposes of a particular action or proceeding involving a minor; and (c) the *judicial guardian,* one appointed by the court over the person and/or property of the ward to represent the latter in all his civil acts and transaction.

7. **CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; RELATIONSHIP; MUST BE ALLEGED CLEARLY AND PROVED BEYOND REASONABLE DOUBT AS THE CRIME ITSELF.**— Relationship, as a qualifying circumstance in rape, must not only be alleged clearly; it must also be proved beyond reasonable doubt, just as the crime itself.

8. **CIVIL LAW; DAMAGES; MORAL DAMAGES; AWARDED WITHOUT NEED OF PROOF OF THE BASIS THEREOF.**— Moral damages are additionally awarded without need of pleading or proof of the basis thereof. This is because it is recognized that the victim's injury necessarily results from an abysmal crime to warrant by itself the award of moral damages. The anguish and the pain she has to endure are evident. Indeed, the offended party in a rape case is a victim many times over. In our culture, which puts a premium on the virtue of purity or virginity, rape stigmatizes the victim more than the perpetrator.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Rape is a repulsive crime done only by the most morally depraved individuals. When committed against a child of tender years, especially against an orphan born with nothing but hope and yearning for affection, the despicable lechery swells into manifest heartlessness that must be condemned.

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For automatic review is the Decision[1] dated April 22, 1999 of the Regional Trial Court of Pinamalayan, Oriental Mindoro in Criminal Case No. P-5690, Branch 42, the dispositive portion of which states:

"ACCORDINGLY, accused MAURICIO WATIWAT is hereby found GUILTY beyond reasonable doubt, as principal, of the heinous crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him to suffer the supreme penalty of DEATH.

"Additionally, accused is ordered to indemnify the victim MARITES WATIWAT, the amount of ₱50,000.00.

"Let the complete record of this case together with the transcript of stenographic notes be forwarded to the Honorable Supreme Court, for automatic review pursuant to Sec. 10, Rule 122 of the Revised Rules of Court.

"SO ORDERED."[2]

The accusatory portion of the Amended Information against appellant Mauricio Watiwat reads:

"That on or about the month of March, 1996 and subsequent thereto in barangay Bato, municipality of Bansud, province of Oriental Mindoro, 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 lay with and have carnal knowledge of one MARITES WATIWAT, his 10-year-old niece living in his own house and therefore a guardian and relative within the third civil degree, against her will and without her consent, to the damage and prejudice of the Offended Party.

"CONTRARY TO ART. 335 OF THE RPC, AS AMENDED BY R.A. 7659."[3]

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[1] Penned by Judge Manuel C. Luna, Jr.

[2] *Rollo* at 20.

[3] *Id.* at 7.

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Upon being arraigned, with the assistance of his counsel, appellant pleaded not guilty to the charge. Thereafter, trial ensued.

Evidence for the prosecution shows that Marites Watiwat, complaining witness, was born on April 7, 1986, as shown by her Certificate of Live Birth,[4] to her mentally deranged mother, Adoracion Areglado. Since her father was already dead, appellant caused its registration and had "Watiwat" recorded as her surname.[5] Marites grew with the belief that he was her uncle, being the husband of her mother's sister, Ineseria.

When Marites was one month old, she lived with appellant and his family in Bato, Bansud, Oriental Mindoro. When she reached the age of three, her grandfather Cipriano Areglado took her under his custody in Batangas where she studied. She returned to appellant's house when she was already in Grade III.

In March 1996, while Marites was sleeping in the house of appellant, he brought her to another room and undressed her. He then took off his clothes, placed himself on top of her and forcibly inserted his penis into her genitals. She felt pain. She could only beg and mutter "*huwag*." Her plea, however, was unheeded. Appellant succumbed to his lustful desires and completely penetrated her private part, making a pumping motion. The incident was repeated several times. He stopped molesting her only in November 1996 when her grandfather Cipriano brought her to Hilaria Amparo's house at Villapag-asa, Bansud.[6] Hilaria is Marites' grandaunt, being Cipriano's sister.

Hilaria observed that Marites seemed to be always lost in her thoughts and would constantly complain of pains in her stomach and head. On July 7, 1997, or after more than one (1) year from the incident, she finally revealed her harrowing experience to Hilaria who immediately brought her to Dr.

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[4] Exh. "E", Records at 65.

[5] TSN, August 17, 1998 at 3-7.

[6] TSN, October 20, 1998 at 3-16.

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Preciosa Soller for examination.[7] She issued a Medico-Legal Report[8] with the following findings:

"1. Breasts not developed.

2. Perineum – No pubic hair
– Labia majora not developed
– skin in labial area congested.

3. Hymen – complete old healed lacerations at 6 o'clock, 9 o'clock, 11 o'clock and 12 o'clock.
– Incomplete old healed laceration at 5 o'clock and 3 o'clock

REMARKS: Physical virginity lost"

Thereafter, Hilaria reported the matter to the police.

Eventually, an Information for rape was filed against appellant.

Appellant vehemently denied the charge. He testified that prior to the incident, he and his children transferred their residence from Bato, Bansud to Salcedo, also of the same town, after he separated from his live-in partner Ineseria Areglado in 1992. As proof that he was then residing in Salcedo, he presented a bible, Transfer Form of Application of Voters, and a Certification by the Commission on Elections attesting that he is a voter of Salcedo. While there, he cultivated the farm of Alberto Evangelista.

Alberto corroborated appellant's testimony.

Simeon Mores, the Barangay Captain of Barangay Batu, controverted appellant's claim that he resided in Barangay Salcedo from 1992–1998. Simeon presented the 1995 Census Files of Barangay Batu wherein appellant was enlisted as one if its residents[9] and a yellow pad paper containing a mortgage

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[7] TSN, August 17, 1998 at 3-7.

[8] Exhibit "A", Records at 5.

[9] Exhibits "F" and "F-1", Records at 74.

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agreement[10] between him and one Salustiano Gupit prepared by Alfredo Gonzales, councilor of Barangay Batu.

In convicting appellant, the trial court held:

"While there is delay in reporting the incident in question, the story Marites presented is credible and consistent. Her testimony withstood the test of cross-examination and there is no cogent reason why she should not be believed as the defense had not even shown any reason at all why a *ten (10) year old Marites* would fabricate a story of rape upon herself and impute it to a person whom she looks up to as her very own father if her story were not true.

"When there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against an accused or to falsely implicate him in the commission of a crime, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credit (*People vs. Tabao*, G.R. No. 111290, Jan. 30, 1995, 240 SCRA 758).

"There is an explanation why there was such a delay. There is no one close to her and no shoulder to lean on so to speak, except the accused himself. Marites had no family to cling to. *Besides, accused and Marites are not strangers to each other, the former being the guardian, while the latter the ward*, living under the same roof. Had it not been for a mere coincidence that she was taken by her Nanay Laling to live with her in her house, there could have no chance for Marites to divulge her painful and horrifying ordeal. She could have kept for herself forever the humiliating secret. Thus, it would not be proper to apply the norms of behavior expected under the circumstances from mature women.

"*A ten-year old girl*, like Marites, unlike a mature woman, cannot be expected to have the courage and intelligence to immediately report a sexual assault committed against her especially when the offender is one she looks up to as her very own father.

"Marites should be looked upon despite her *minority* considering her courage and determination to seek justice and plea for redress for a crime of such a nature that is otherwise better left forgotten. She could have chosen to keep numb and silent and forget the whole incident, but she did not. It is a clear manifestation of her intent to

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[10] Exhibit "G-1", *Id.* at 73.

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pursue her morbid cry for the injustice committed against her, at the opportune time (*People vs. Guererro*, 242 SCRA 606).

"Where accused was positively identified by the victim of the rape herself who harbored no ill motive against the accused, the defense of alibi must fail. (*People vs. Canada*, 253 SCRA 256)

"Bare alibi and denial cannot prevail over the positive identification of the accused as the perpetrator of the crime. (*People vs. Alimon*, 257 SCRA 658) (*People vs. Nazareno*, 260 SCRA 256)" (Emphasis supplied)

In his brief, appellant ascribes to the trial court the following errors:

"I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME, AS DEFINED AND PUNISHED UNDER ARTICLE 335 OF THE REVISED PENAL CODE, AS AMENDED BY R.A. 7659.

"II

ASSUMING FOR THE SAKE OF ARGUMENT ONLY THAT THE ACCUSED-APPELLANT IS GUILTY AS CHARGED, THE TRIAL COURT STILL ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH."[11]

Appellant contends that Marites' failure to report the matter immediately to the authorities casts doubt on her credibility. Moreover, when the incident took place in March 1996, she was no longer living with his family in Bato, Bansud. As early as 1992, her grandfather brought her to Batangas. He, on the other hand, transferred residence to Barangay Salcedo. And even assuming that he is guilty of rape, the imposition of the death penalty upon him is erroneous since the qualifying circumstance of relationship was not proved. Neither can he be considered her guardian. Thus, he should not be convicted of qualified rape and that the penalty that should have been imposed against him should be *reclusion perpetua*.

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[11] *Rollo* at 40.

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The law governing the instant case is Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659,[12] the pertinent portions of which provide:

"SEC. 11. Article 335 of the same [Revised Penal] Code is hereby amended to read as follows:

'Article 335. *When and how rape is committed.* — Rape is committed *by having carnal knowledge of a woman under any of the following circumstances:*

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is *under twelve years of age* or is demented.

'The crime of rape shall be *punished by reclusion perpetua.*

x x x x x x x x x

'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.

x x x x x x x x x x'" (Emphasis supplied)

The trial court held that Marites was telling the truth when she testified that she was sexually abused by appellant. We see no reason to differ from such finding.

For one, it is well entwined into the bedrock of our jurisprudence that the trial judge's evaluation of the testimony of a witness and its factual findings are accorded not only the

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[12] "An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes." This law took effect on December 31, 1993 (*People vs. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 569).

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highest respect, but also finality, unless some weighty circumstance has been ignored or misunderstood which could alter the result of the judgment rendered. Given the direct opportunity to observe the witness on the stand, the trial judge was in a vantage position to assess his demeanor and determine if he was telling the truth or not.[13] Thus:

"In the resolution of the factual issues, the Court relies heavily on the trial court for its evaluation of the witnesses and their credibility. Having the opportunity to observe them on the stand, the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. *Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.*"[14]

For another, complainant never wavered in her assertion that appellant raped her. Her testimony is clear, positive, and convincing. Indeed, the fact of rape and the identity of appellant as the malefactor were sufficiently and convincingly established by the prosecution through her straightforward narration, thus:

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[13] *People vs. Manalo*, G.R. Nos. 144989-90, January 31, 2003; *People vs. Glabo*, G.R. No. 129248, December 7, 2001, 371 SCRA 567; *People vs. Navida*, G.R. Nos. 132239-40, December 4, 2000, 346 SCRA 821; *People vs. Valla*, G.R. No. 111285, January 24, 2000, 323 SCRA 74; *People vs. Lopez*, G.R. No. 129397, February 8, 1999, 302 SCRA 669.

[14] *People vs. De Guzman*, G.R. No. 76742, August 7, 1990, 188 SCRA 407. See also *People vs. Silvano*, G.R. Nos. 141105-11, March 8, 2002 and *People vs. Estorco*, G.R. No. 111941, April 27, 2000, 331 SCRA 38.

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"Q. Why did you file the case against your Kakang Muling or Mauricio Watiwat?
A. Because I was raped, sir.

Q. Do you still remember the date and month when you were raped by this Kakang Muling or Mauricio Watiwat?
A. It was in March, 1996, sir.

Q. In that particular month of March, 1996, how old were you if you still remember?
A. I was less than 10 years old, sir.

Q. Tell us how you were raped by your Kakang Muling or Mauricio Watiwat?
A. I was then living in his house and while I was sleeping beside with other children, I was carried by the accused to the other room, sir.

Q. After you were lifted and carried to the other room, what else was done by your Ka Muling?
A. He took off my shorts and panty, sir.

Q. After your shorts and panty were removed by the accused, what else did he do if any?
A. He undressed himself and put himself on top of me, sir. (*Naghubo po siya at pagkatapos ay pumatong sa akin.*)

FISCAL (Continuing):

Q. After he placed himself on top of you, what else did he do?
A. He insisted in inserting his penis inside me. (*Pilit po niyang ipinasok ang kanyang ari sa akin.*)

Q. When he forcibly tried to insert his penis to your body, what did you feel?
A. I was hurt, sir.

Q. And because you were hurt, what if any did you plea or say to you uncle?
A. I told him, *huwag*, but he continued to insert his penis in my private part, sir.

Q. Will you please tell the Court if your uncle Muling was successful in completely inserting his penis towards your sexual organ?
A. Yes, sir.

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Q. What else did your uncle Muling do after he was able to insert his penis to your sexual organ?
A. (No answer)

Note: After a few seconds. . . she answered: *'Siya po ay nagkakayod.'* (He made a pumping motion .)[15]

Indeed, complainant's testimony, stamped with consistency and accuracy, must be given full faith and credit.[16] When a woman testifies that she has been raped, she says in effect, all that is necessary to show that rape has been committed, for as long as her testimony meets the test of credibility.[17]

Also, Marites does not appear to have any strong reason or fiendish motive to fabricate such a grave charge against appellant and thus expose herself and her family to shame and scandal. A victim of sexual assault would certainly not be willing to undergo the humiliation of a public trial, let alone testify on the details of her torment, if she had reasons other than her natural passion to avenge her honor and to decry a grave injustice done to her.[18] To be sure, complainant's testimony, which is untainted with any proof of ill motive, bears the hallmarks of truth.

For his part, appellant assails Marites' inaction in reporting the crime for more than one year. It is not uncommon for young girls to conceal for some time the assault against their virtue.[19] Barely out of childhood, Marites could be easily intimidated and cowed into silence.[20] While it is true that it took her a long

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[15] TSN, October 20, 1998 at 4-5.

[16] *People vs. Bonghanoy*, G.R. No. 124097, June 17, 1999, 308 SCRA 383.

[17] *People vs. Antido*, G.R. No. 121098, September 4, 1997, 278 SCRA 425.

[18] *People vs. Reñola*, G.R. Nos. 122909-12, June 10, 1999, 308 SCRA 145.

[19] *People vs. Balmoria*, G.R. No. 134539, November 15, 2000, 344 SCRA 723; *People vs. Escala*, G.R. No. 120281, July 8, 1998, 292 SCRA 48.

[20] *People vs. Ortega*, G.R. No. 137824, September 17, 2002.

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time to report her defloration, it must be stressed that she was merely 10 years old when she was subjected to bestial abuse. Afraid and with no family to assist her, she could not report the incident to the authorities. It was only when her grandaunt took care of her that she had the courage to do so. Under the circumstances, it is unreasonable to judge her action by the norms of behavior expected of mature individuals.[21] The delay in reporting the incident of rape ought not to be taken against her and cannot be used to weaken her credibility.

Appellant's defense merely consists of alibi and bare denial. His claim that he was residing in another place during the incident does not persuade us. We have held that an accused who raises the defense of alibi must not only prove his presence at another place at the time of commission of the crime, he must also establish that it would be physically impossible for him to be at the scene of the crime during the incident. It must be observed that Barangay Salcedo and Barangay Bato are both within the municipality of Bansud. Clearly, it is safe to conclude that it was not physically impossible for him to be at the scene of the crime at that time.

Moreover, firmly established is the rule that alibi and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted.[22] Such defense warrants the least credibility or none at all[23] and cannot prevail over the positive identification of the accused by the prosecution witness.[24] Denial is a self-serving negative evidence that cannot be given greater weight than the

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

[22] *People vs. Danao*, G.R. No. 116058, February 1, 1996, 253 SCRA 146.

[23] *People vs. Paragua*, G.R. No. 96923, May 24, 1996, 257 SCRA 118.

[24] *People vs. Dacoba*, G.R. Nos. 121995-96, April 20, 1998, 289 SCRA 265; *People vs. Pano*, G.R. Nos. 100460-61, June 5, 1996, 257 SCRA 274; *People vs. Panlilio*, G.R. Nos. 113519-20, March 29, 1996, 255 SCRA 503.

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declaration of a credible witness who testified on affirmative matters.[25]

The prosecution has not only established beyond reasonable doubt that appellant had carnal knowledge of Marites, it has likewise proved that, at the time the offense was committed, she was only 10 years old as shown by her Certificate of Live Birth. Thus, appellant must be held guilty of *statutory rape* under paragraph 1, No. 3, Article 335 of the Revised Penal Code, as amended by R.A. 7659, quoted earlier, the victim being "under twelve years of age." It bears stressing that the Information specifically alleges that Marites was 10 years old when appellant sexually abused her in March 1996. Consequently, he must be sentenced to *reclusion perpetua*.

The trial court imposed upon appellant the death penalty on the basis of its conclusion that he is her guardian. We hold that the lower court erred in this point.

In *People vs. Garcia*,[26] we held:

"In the law on rape, the role of a guardian is provided for in Article 344 of the Revised Penal Code, specifically as one who, aside from the offended party, her parents or grandparents, is authorized to file the sworn written complaint to commence the prosecution for that crime. *In People vs. De la Cruz (59 Phil. 531 [1934]), it was held that the guardian referred to in the law is either a legal or judicial guardian as understood in the rules on civil procedure.*

x x x x x x x x x

"It would not be logical to say that the word 'guardian' in the third paragraph of Article 344 which is mentioned together with parents and grandparents of the offended party would have a concept different from the 'guardian' in the recent amendments of Article 335 where he is also mentioned in the company of parents and ascendants of the victim. In Article 344, the inclusion of the guardian is only to invest him with the power to sign a sworn written complaint to initiate the

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[25] *Tecson vs. Sandiganbayan*, G.R. No. 123045, November 16, 1999, 318 SCRA 80.

[26] G.R. No. 120093, November 6, 1997, 281 SCRA 463.

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prosecution of four crimes against chastity, while his inclusion in the enumeration of the offenders in Article 335 is to authorize the imposition of the death penalty on him. *With much more reason, therefore, should the restrictive concept announced in De la Cruz, that is, that he be a legal or judicial guardian, be required in the latter article.*

"The Court notes from the transcripts of the proceedings in Congress on this particular point that the formulators were not definitive on the concept of 'guardian' as it now appears in the attendant circumstances added to the original provisions of Article 335 of the Code. They took note of the status of a guardian as contemplated in the law on rape but, apparently on pragmatic considerations to be determined by the courts on an *ad hoc* basis, they agreed to just state 'guardian' without the qualification that he should be a legal or judicial guardian. It was assumed, however, that he should at the very least be a *de facto* guardian. *Indeed, they must have been aware of jurisprudence that the guardian envisaged in Article 335 of the Code, even after its amendment by Republic Act No. 4111, would either be a natural guardian, sometimes referred to as a legal or statutory guardian, or a judicial guardian appointed by the court over the person of the ward.*

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"The law requires a legal or judicial guardian since it is the consanguineous relation or the solemnity of judicial appointment which impresses upon the guardian the lofty purpose of his office and normally deters him from violating its objectives. Such considerations do not obtain in appellant's case or, for that matter, any person similarly circumstanced as a mere custodian of a ward or another's property. *The fiduciary powers granted to a real guardian warrant the exacting sanctions should he betray the trust."* (Emphasis supplied)

A guardian is a person lawfully invested with the power and charged with the duty of taking care of the person and managing the property and rights of another person who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs.[27]

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[27] *People vs. Romero*, G.R. Nos. 137037-38, August 5, 2002.

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There are three kinds of guardians under the law: (a) the *legal guardian*, who is such by provision of law without the need of judicial appointment, as in the case of the parents over the persons of their minor children, or the father, or in his absence the mother, with respect to the property of the minor children not exceeding ₱50,000.00 in value;[28] (b) the *guardian ad litem*, a competent person appointed by the court for purposes of a particular action or proceeding involving a minor; and (c) the *judicial guardian*, one appointed by the court over the person and/or property of the ward to represent the latter in all his civil acts and transaction.[29]

As shown by the facts in this case, appellant is not Marites' guardian, whether natural, legal or judicial. That he allowed his surname to be used as her surname in her Certificate of Live Birth is inconsequential. It appears that such arrangement was merely upon Cipriano's request.

At most, appellant was only an uncommitted caretaker of Marites over a limited period of time. Clearly, he cannot be considered a guardian falling within the ambit of the amendatory provision of Section 11, Republic Act No. 7659.

Neither is Marites the "niece" of appellant and hence, a "relative within the third civil degree," as alleged in the Information. The prosecution utterly failed to prove that appellant is legally married to Marites' aunt. In fact, it did not present the marriage contract between them to establish that Marites is appellant's niece, a relative within the third civil degree by affinity. Relationship, as a qualifying circumstance in rape, must not only be alleged clearly; it must also be proved beyond reasonable doubt, just as the crime itself.[30]

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[28] Art. 225, *The Family Code of the Philippines*, as amended.

[29] Regalado, Florenz B., *Remedial Law Compendium*, Vol. II, Seventh Revised Edition, at 106.

[30] *People vs. Alcoreza*, G.R. Nos. 135452-53, October 5, 2001, 366 SCRA 655.

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In view of the failure of the prosecution to prove the qualifying circumstance of guardianship or relationship, it is error for the trial court to convict appellant for qualified rape and impose upon him the supreme penalty of death.

Anent the award of damages, we observed that the trial court failed to award moral damages to Marites.

Moral damages are additionally awarded without need of pleading or proof of the basis thereof.[31] This is because it is recognized that the victim's injury necessarily results from an abysmal crime to warrant by itself the award of moral damages. The anguish and the pain she has to endure are evident. Indeed, the offended party in a rape case is a victim many times over. In our culture, which puts a premium on the virtue of purity or virginity, rape stigmatizes the victim more than the perpetrator.[32]

WHEREFORE, the appealed Decision dated April 22, 1999 of the Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro in Criminal Case No. P-5690, is *MODIFIED* in the sense that appellant *MAURICIO WATIWAT* is found *GUILTY* beyond reasonable doubt of the crime of *statutory rape* and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* and to pay the victim Marites Watiwat ₱50,000.00 as moral damages, in addition to the civil indemnity of ₱50,000.00 awarded by the trial court.

Costs against appellant.

SO ORDERED.

Bellosillo (Acting C.J.), Puno, Vitug, Panganiban, Quisumbing, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Davide, Jr., C.J., Ynares-Santiago and *Carpio, JJ.,* on official leave.

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[31] *People vs. De Villa*, G.R. No. 124639, February 1, 2001, 351 SCRA 25.

[32] *People vs. Baway*, G.R. No. 130406, January 22, 2001, 350 SCRA 29; *People vs. Banela*, G.R. No. 124973, January 18, 1999, 301 SCRA 84.