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In Criminal Case No. D-8176, petitioner is found *GUILTY* beyond reasonable doubt of violation of Batas Pambansa Blg. 22, and is sentenced to pay a fine of ₱200,000.00, and to indemnify Fertiphil Corporation in the amount of ₱340,000.00.

In Criminal Case No. D-8177, petitioner is found *GUILTY* beyond reasonable doubt of violation of Batas Pambansa Blg. 22, and is sentenced to pay a fine of ₱200,000.00 and to indemnify Fertiphil Corporation in the amount of ₱372,000.00.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio and *Azcuna, JJ.*, concur.

FIRST DIVISION

[G.R. No. 149075. August 7, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODRIGO BALLENO *y* PERNETES,** *appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of rape of the 13-year old complainant and was sentenced to suffer the penalty of *reclusion perpetua*. On appeal, appellant assailed the credibility of the victim by referring to the inconsistency between her testimony and her sworn statement.

In affirming the conviction of appellant, the Supreme Court ruled that some discrepancies between the affidavit and the testimony of the witness in open court do not necessarily impair the credibility of her testimony, for affidavits are generally taken *ex parte* and are often incomplete or even inaccurate

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for lack of searching inquiries by the investigating officer. In any case, open court declarations take precedence over written affidavits in the hierarchy of evidence. Unlike written statements, there is flexibility on the part of the questioner to adapt his questions to elicit the desired answer in order to ferret out the truth. In the case at bar, appellant has not shown any material discrepancy between the sworn statement and testimony of the victim that would seriously taint her credibility and warrant a reversal of the trial court's factual findings. Moreover, the trial court's assessment on the credibility of the victim's testimony is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case.

The Court likewise held that the trial court correctly convicted appellant of simple rape and sentenced him to suffer the penalty of *reclusion perpetua* for failure of the prosecution to prove the qualifying circumstance of step-parent relationship between appellant and the victim, as alleged in the information.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY DISCREPANCIES BETWEEN AFFIDAVIT AND TESTIMONY OF WITNESS IN OPEN COURT.**— [S]ome discrepancies between the affidavit and the testimony of the witness in open court do not necessarily impair the credibility of her testimony, for affidavits are generally taken *ex parte* and are often incomplete or even inaccurate for lack of searching inquiries by the investigating officer. An affidavit is not a complete reproduction of what the declarant has in mind because it is generally prepared by the administering officer and the affiant simply signs it after it has been read to him. In any case, open court declarations take precedence over written affidavits in the hierarchy of evidence. Unlike written statements, there is flexibility on the part of the questioner to adapt his questions to elicit the desired answer in order to ferret out the truth.

2. **CRIMINAL LAW; RAPE; NOT NEGATED BY THE ABSENCE OF HYMENAL LACERATION.**— [T]he mere touching of the labia of the woman consummates the crime of rape. Hence, the fact that no laceration and no ruptured hymen were found

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in this case, does not necessarily negate rape. The fact that the hymen was intact upon examination does not, likewise, belie rape, for a broken hymen is not an essential element of rape, nor does the fact that the victim remained a virgin exclude the crime. In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, which the prosecution in this case was able to prove beyond reasonable doubt.

3. **ID.; ID.; MEDICAL EXAMINATION IS NOT ESSENTIAL IN THE PROSECUTION OF RAPE CASES.**— [A] medical examination is not essential in the prosecution of a rape case. A medical examination and a medical certificate are merely corroborative in character. They are not indispensable requirements for conviction, for what matters greatly is the clear, unequivocal and credible testimony of the victim.

4. **ID.; ID.; NOT DISPROVED BY THE ABSENCE OF SPERMATOZOA IN THE VICTIM'S SEX ORGAN.**— [T]he absence of spermatozoa in the victim's sex organ does not disprove rape. It could be that the victim washed or urinated prior to her examination, which may well explain the absence of spermatozoa.

5. **ID.; ID.; CAN BE COMMITTED IN PLACES WHERE PEOPLE CONGREGATE.**— Lust is no respecter of time and place. Several times, we held that rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which, to many, would appear unlikely and high risk venues for its commission.

6. **ID.; ID.; NOT NEGATED BY THE ABSENCE OF EXTERNAL SIGNS OF PHYSICAL INJURIES.**— The absence of external signs of physical injuries does not prove that rape was not committed, for proof thereof is not an essential element of the crime of rape. Settled is the rule that the force employed in rape need not be irresistible so long as it is present and brings the desired result. All that is necessary is that the force be sufficient to fulfill its evil end, or that it be successfully used; it need not be so great or be of such a character that it could not be repelled. Indeed, the degree of force or intimidation

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required for the act to constitute rape is relative, and must be viewed in the light of the complainant's perception and judgment at the time of the commission of the offense.

7. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY ENTITLED TO GREAT WEIGHT ON APPEAL.**— [W]hen a woman, more so if a minor, states that she has been raped, she says in effect all that is necessary to show that rape was committed. For no woman, least of all a child, would weave a tale of sexual assaults to her person, open herself to examination of her private parts and later be subjected to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her. Hence, we find no basis to depart from the well-settled rule that trial court's assessment of the credibility of complainant's testimony is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case.

8. **CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP OF VICTIM AND ACCUSED; FAILURE TO ACCURATELY ALLEGE THE RELATIONSHIP BETWEEN ACCUSED AND VICTIM IN THE INFORMATION BARS CONVICTION OF RAPE IN ITS QUALIFIED FORM.**— In *People v. Fraga,* we held that "although the rape of a person under eighteen (18) years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on accused-appellant x x x because his relationship was not what was alleged in the information. What was alleged was that he is the stepfather of the complainant." The filiation or kinship with the accused must be alleged in the information as part of the constitutional right of the accused to be informed of the nature and cause of the accusation against him. Therefore, the failure to accurately allege the relationship between appellant and his victim in the information bars his conviction of rape in its qualified form. The appellant, having been referred to as the stepfather of the victim in the information, is thus auspiciously spared from the supreme punishment of death by this technical flaw.

9. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.**— [I]n line with the prevailing jurisprudence, the award of ₱75,000.00 as civil

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indemnity for the crime of rape should be reduced to ₱50,000.00. Civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases. Moral damages in the amount of ₱50,000.00 are additionally awarded without need of pleading or proof of the basis thereof. This is because it is recognized that the victim's injury is concomitant with and necessarily resulting from the odiousness of the crime to warrant *per se* the award of moral damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is an appeal from the decision[1] dated January 17, 2001, of the Regional Trial Court of Pasay City, Branch 109, in Criminal Case No. 00-0408, finding accused-appellant Rodrigo Balleno *y* Pernetes guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information reads:

That on or about the 18th day of March 2000, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of complainant Jacquelyn Balandra *y* Alzate, a minor 13 years of age, with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with complainant against her will and consent.

Contrary to law.[2]

Upon arraignment, appellant pleaded "not guilty" to the crime charged. Trial on the merits ensued.

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[1] Penned by Judge Lilia C. Lopez. Records. pp. 228-239.

[2] Records. p. 4.

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The facts of the case as established by the prosecution:

At 12:15 p.m. of March 18, 2000, thirteen year-old Jacquelyn Balandra was with her step-sisters, Titin and Crismarie, inside the room of their home located at Old Air Academy, ATO, Don Carlos Village, Pasay City. Appellant Rodrigo Balleno, the live-in partner of Jacquelyn's mother, Lorna, entered the room and ordered Titin and Crismarie to go out.[3] When they were alone, appellant sat at the side of the bed where Jacquelyn was lying down. Then he touched her thighs, placed her hands on her back and covered her mouth. He then removed Jacquelyn's shorts and panties, lay on top of her and kissed her lips. He took off his shorts and inserted his penis into Jacquelyn's vagina who tried to push him away.[4]

Jacquelyn went to her friends, Toochie, Nanette and Mylene and related to them what happened. They accompanied her to the local *barangay* where she reported the incident. On the same day, *barangay* officials Luis Alintana, Efren Bais and Rogelio Basagre arrested appellant Rodrigo Balleno.[5] Jacquelyn executed her "*Sinumpaang Salaysay*"[6] and submitted herself to a medical examination.[7]

Dr. Estela Guerrero Manalo, a physician assigned at the Child Protection Unit of the Philippine General Hospital, Manila, conducted a physical and genital examination on Jacquelyn on March 20, 2000. Her examination showed that the victim's external genitalia and hymen were normal.[8] There was no evidence of spermatozoa. She, however, claimed that it was possible that the victim was sexually abused even if the result of the examination showed a normal genital.[9]

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[3] TSN, May 5, 2000, pp. 3-4 and p. 10.

[4] *Id.*, p. 4.

[5] Exhibit "D".

[6] Exhibit "B".

[7] *Id.*, p. 5; pp. 15-17.

[8] Exhibit "A".

[9] TSN, May 9, 2000, pp. 5-6, 8-9.

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In his defense, appellant denied the charge against him, and claimed that on March 18, 2000, he had a drinking spree at home with his cousin Lito Balleno and Sammy Alzate, uncle of Jacquelyn, from 11 a.m. to 1 p.m. They consumed three bottles of gin.[10] He admitted that he kissed Jacquelyn because the latter took care of his youngest child. Thereafter, Jacquelyn pushed him away and left. He fell asleep and was awakened by the *barangay* officials who arrested him. Appellant further alleged that the crime was imputed to him because Jacquelyn wanted her real father, Charlie, to be reunited with her mother.[11]

After trial, judgment was rendered against appellant, the dispositive portion of which reads:

> WHEREFORE, for failure of the prosecution to prove the qualifying circumstance of stepparent relationship between the accused and the complainant, as alleged in the information, this Court finds the accused guilty for simple rape.
>
> It would appear therefore that accused Rodrigo Balleno *y* Pernetes and the mother of the victim were not married to each other and therefore not the stepfather of the victim, hence, the Court finds the accused guilty of simple rape and hereby sentences him to *reclusion perpetua.* He is likewise ordered to pay civil indemnity in the amount of ₱75,000.00 and moral damages in the amount of ₱50,000.00 to the victim Jacquelyn Balandra *y* Alzate with subsidiary imprisonment in case of insolvency.
>
> SO ORDERED.[12]

In this appeal, appellant contends that:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

The appeal lacks merit.

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[10] TSN, June 14, 2000, pp. 9-10.

[11] *Id.*, pp. 6-10.

[12] Records, p. 239.

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Appellant assails Jacquelyn's credibility by referring to the inconsistency between her testimony and her sworn statement. In her statement before the police, Jacquelyn stated that there was no insertion of the penis inside her vagina — *"Hindi ko naramdaman na naipasok niya kasi po sa may itaas po ng pepe ko ito naramdaman. Sa loob ng labi ng ari ko."*[13] In open court, however, she testified that appellant inserted his penis inside her vagina.[14]

It has been held that some discrepancies between the affidavit and the testimony of the witness in open court do not necessarily impair the credibility of her testimony, for affidavits are generally taken *ex parte* and are often incomplete or even inaccurate for lack of searching inquiries by the investigating officer.[15] An affidavit is not a complete reproduction of what the declarant has in mind because it is generally prepared by the administering officer and the affiant simply signs it after it has been read to him. In any case, open court declarations take precedence over written affidavits in the hierarchy of evidence. Unlike written statements, there is flexibility on the part of the questioner to adapt his questions to elicit the desired answer in order to ferret out the truth.[16]

In the case at bar, appellant has not shown any material discrepancy between the sworn statement and testimony of the victim that would seriously taint her credibility and warrant a reversal of the trial court's factual findings. Even assuming for the sake of argument, that there was no penile penetration of private complainant's vagina because her legs were not spread apart, it has been consistently ruled that the mere touching of the labia of the woman consummates the crime of rape.[17] Hence, the fact that no laceration and no ruptured hymen were found

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[13] Exhibit "B", p. 109.

[14] TSN, May 5, 2000, p. 4.

[15] *People v. Sabredo*, G.R. No. 126114, 11 May 2000, 331 SCRA 663.

[16] *People v. Cueto*, G.R. No. 147764, 16 January 2003.

[17] *People v. Tagaylo*, G.R. Nos. 137108-09, 20 November 2000, 345 SCRA 284.

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in this case, does not necessarily negate rape. The fact that the hymen was intact upon examination does not, likewise, belie rape, for a broken hymen is not an essential element of rape, nor does the fact that the victim remained a virgin exclude the crime. In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, which the prosecution in this case was able to prove beyond reasonable doubt.[18] In any event, a medical examination is not essential in the prosecution of a rape case. A medical examination and a medical certificate are merely corroborative in character. They are not indispensable requirements for conviction, for what matters greatly is the clear, unequivocal and credible testimony of the victim.[19]

Similarly, it must be stressed that the absence of spermatozoa in the victim's sex organ does not disprove rape. It could be that the victim washed or urinated prior to her examination, which may well explain the absence of spermatozoa.[20]

Appellant contends that he could not have possibly raped Jacquelyn inside a room in a thickly populated squatter's area wherein a commotion can be easily heard by their neighbors and where houses were built close to each other. The argument deserves scant consideration. Lust is no respecter of time and place. Several times, we held that rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which, to many, would appear unlikely and high risk venues for its commission.[21]

Moreover, appellant's allegation that there was no force or intimidation because private complainant did not suffer injuries and her clothes were not torn is not well taken. The testimony

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[18] *People v. Llanto*, G.R. No. 146458, 20 January 2003.

[19] *People v. Iluis*, G.R. No. 145995, 20 March 2003.

[20] *People v. Lacaba*, G.R. No. 130591, 17 November 1999, 318 SCRA 301.

[21] *People v. Mangompit, Jr.*, G.R. Nos. 139962-66, 7 March 2001, 353 SCRA 833.

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of Jacquelyn established the fact that, through force and intimidation, appellant pinned her hands at her back, covered her mouth and succeeded in abusing her. The absence of external signs of physical injuries does not prove that rape was not committed, for proof thereof is not an essential element of the crime of rape.[22] Settled is the rule that the force employed in rape need not be irresistible so long as it is present and brings the desired result. All that is necessary is that the force be sufficient to fulfill its evil end, or that it be successfully used; it need not be so great or be of such a character that it could not be repelled.[23] Indeed, the degree of force or intimidation required for the act to constitute rape is relative, and must be viewed in the light of the complainant's perception and judgment at the time of the commission of the offense.[24]

In the case at bar, Jacquelyn's testimony is clear, candid, straightforward and consistent. She had positively identified appellant as her malefactor. No ulterior motive was offered to explain why the victim would concoct a story charging appellant with the crime of rape. Jacquelyn testified:

Q: As a matter of fact, you do not treat your stepfather, the suspect in this case, as your father?

A: I consider him as my father.

x x x x x x x x x

Q: Was it true that before this incident happened on March 18, 2000 your mother Lorna and your stepfather has a serious quarrel?

A: No, sir.

Q: Your father Charlie Balandra is not the friend of your stepfather, am I correct?

A: Yes, they are friends.

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[22] *People v. De Guzman*, G.R. No. 132071, 16 October 2000, 343 SCRA 267.

[23] *People v. De Guzman, supra.*

[24] *People v. Duranan*, G.R. Nos. 134074-75, 16 January 2001, 349 SCRA 180.

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Q: They have quarreled before this incident, am I correct?
A: None.[25]

Time and again, we have consistently held that when a woman, more so if a minor, states that she has been raped, she says in effect all that is necessary to show that rape was committed. For no woman, least of all a child, would weave a tale of sexual assaults to her person, open herself to examination of her private parts and later be subjected to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.[26] Hence, we find no basis to depart from the well-settled rule that trial court's assessment of the credibility of complainant's testimony is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case.[27]

The Information alleged that appellant was the stepfather of the victim. This was inaccurate. The word "step," when used as prefix in conjunction with a degree of kinship, is repugnant to blood relationship and is indicative of a relationship by affinity.[28] Since appellant and the victim's mother were not married, no such relationship by affinity existed between appellant and the victim. The records indicate that the victim's mother, Lorna, and the appellant were "live-in partners," the former, in fact, lawfully married to Charlie Balandra, the victim's father. A stepfather-stepdaughter relationship presupposes a legitimate relationship, *i.e.,* the appellant should have been legally married to Lorna, the victim's mother. A stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[29] A stepdaughter is a daughter of one's spouse by previous marriage or the daughter of one of the spouses by a former marriage.[30]

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[25] TSN, May 5, 2000, pp. 9 and 16.

[26] *People v. Sarazan*, G.R. Nos. 123269-72 & 131243, 22 January 2003.

[27] *People v. Caldona*, G.R. No. 126019, 1 March 2001, 353 SCRA 308.

[28] *People v. Hofileña*, G.R. No. 134772, 22 June 2000, 334 SCRA 214.

[29] *People v. Tolentino*, 367 Phil. 755 (1999).

[30] *People v. Villaraza*, G.R. Nos. 131848-50, 5 September 2000, 339 SCRA 666.

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In *People v. Fraga*[31] we held that "although the rape of a person under eighteen (18) years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on accused appellant x x x because his relationship was not what was alleged in the information. What was alleged was that he is the stepfather of the complainant." The filiation or kinship with the accused must be alleged in the information as part of the constitutional right of the accused to be informed of the nature and cause of the accusation against him.[32] Therefore, the failure to accurately allege the relationship between appellant and his victim in the information bars his conviction of rape in its qualified form.[33] The appellant, having been referred to as the stepfather of the victim in the information, is thus auspiciously spared from the supreme punishment of death by this technical flaw.[34]

Thus, the trial court correctly convicted appellant of simple rape and sentenced him to suffer the penalty of *reclusion perpetua*, pursuant to Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997", which reads:

ART. 266-A. *Rape; When and How Committed.* — Rape is committed.

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

x x x x x x x x x.

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

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[31] G.R. Nos. 134130-33, 12 April 2000, 330 SCRA 669.

[32] *People v. Awing*, G.R. Nos. 133919-20, 19 February 2001, 352 SCRA 188; *People v. dela Cuesta*, G.R. No. 133904, 5 October 2000, 342 SCRA 106.

[33] *People v. Villaraza*, G.R. Nos. 131848-50, 20 September 2000.

[34] *Id.*

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Lastly, in line with the prevailing jurisprudence, the award of ₱75,000.00 as civil indemnity for the crime of rape should be reduced to ₱50,000.00.[35] Civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases.[36] Moral damages in the amount of ₱50,000.00 are additionally awarded without need of pleading or proof of the basis thereof. This is because it is recognized that the victim's injury is concomitant with and necessarily resulting from the odiousness of the crime to warrant *per se* the award of moral damages.[37]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Pasay City, Branch 109, in Criminal Case No. 00-0408, finding appellant Rodrigo Balleno *y* Pernetes guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the offended party P50,000.00 as moral damages, is *AFFIRMED* with the *MODIFICATION* that the civil indemnity in the amount of ₱75,000.00 is reduced to ₱50,000.00.

Costs *de officio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and *Azcuna, JJ.*, concur.

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[35] *People v. Rafales*, 379 Phil. 980 (2000).

[36] *People v. Baway*, G.R. No. 130406, 22 January 2001, 350 SCRA 29.

[37] *People v. Elpedes*, G.R. Nos. 137106-07, 31 January 2001, 350 SCRA 716.