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EN BANC

[G.R. No. 133926. August 6, 2003]

PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* **RUBEN DALISAY *Y* HERNANDEZ**, *appellant*.

SYNOPSIS

Appellant was found guilty by the trial court of the crime of statutory rape for sexually abusing his eleven-year old daughter. He was sentenced to suffer the supreme penalty of death. Hence, this automatic review of the case.

The Supreme Court ruled that in a prosecution for rape, the victim's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof. In the case at bar, the victim's testimony has sufficiently and convincingly proved that appellant had carnal knowledge of her. Her candid and straightforward testimony, punctuated by her tears when she narrated how she was sexually ravished by her very own father, were earmarks of a truthful witness and thus, must be given full faith and credit.

The Court likewise ruled that the presence of either hymenal laceration or spermatozoa on the victim's private part is not an essential element of rape. Moreover, full penetration is not required to consummate carnal knowledge, as proof of entrance showing the slightest penetration of the male organ within the labia or pudendum of the female organ is sufficient.

However, in view of the failure of the prosecution to prove the victim's age as alleged in the information, the Court convicted appellant only of simple rape and sentenced him to *reclusion perpetua*, considering that he had carnal knowledge of the victim through force and intimidation.

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS.— [T]he essential elements of statutory rape are: (1) the offender had

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carnal knowledge of a woman; and (2) the woman is below 12 years of age.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, IF CREDIBLE, MAY BE THE BASIS OF CONVICTION OF ACCUSED; CASE AT BAR.**— In a prosecution for rape, the complainant's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof. Indeed, Lanie's testimony has sufficiently and convincingly proved that appellant had carnal knowledge of her on the night in question. Her candid and straightforward testimony, punctuated by her tears when she narrated how she was sexually ravished by her very own father, are earmarks of a truthful witness and thus, must be given full faith and credit.

3. **ID.; ID.; ID.; RAPE VICTIM'S TESTIMONY IS ENTITLED TO GREAT WEIGHT ESPECIALLY WHEN SHE ACCUSES HER OWN FATHER OR A CLOSE RELATIVE OF HAVING RAPED HER.**— [A] rape victim's testimony is entitled to great weight especially when she accuses her own father or a close relative of having ravished her. For there can be ascribed no greater motivation for a woman abused by her own kin than that innate yearning of the human spirit to declare the truth to obtain justice.

4. **ID.; ID.; ID.; WHEN A VICTIM SAYS SHE WAS RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT THE CRIME WAS COMMITTED.**— Rape is not an ordinary crime that can easily be manufactured. When a victim says she was raped, she says in effect all that is necessary to show that the crime was committed. Not a few offenders in rape cases attributed the charges brought against them to family feuds, resentment or revenge, but such alleged motives cannot prevail over the positive and credible testimonies of complainants who remained steadfast throughout the trial.

5. **CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF HYMENAL LACERATION OR SPERMATOZOA ON VICTIM'S PRIVATE PART.**— The presence of either hymenal laceration or spermatozoa on Lanie's private part is not an essential element of rape. In *People vs. Parcia*, we held

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that the absence of sperm does not disprove the charge of rape. Likewise, in *People vs. Regala,* we ruled that an intact hymen does not necessarily prove absence of sexual intercourse. Similarly, in *People vs. Rafales*, we declared: "x x x. For rape to be committed, entrance of the male organ within the labia or pudendum of the female organ is sufficient. Rupture of the hymen or laceration of the vagina are not essential. Entry to the least extent of the labia or the lips of the female organ is sufficient, the victim remaining virgin does not negate rape."

6. **ID.; ID.; FULL PENETRATION IS NOT REQUIRED TO CONSUMMATE CARNAL KNOWLEDGE.—** [F]ull penetration is not required to consummate carnal knowledge, as proof of entrance showing the slightest penetration of the male organ within the labia or pudendum of the female organ is sufficient.

7. **REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN DETERMINING THE SUFFICIENCY OF EVIDENCE OF THE VICTIM'S AGE AS ELEMENT OF THE CRIME OF RAPE OR AS QUALIFYING CIRCUMSTANCE.—** In *People vs. Pruna,* we specified the guidelines in determining the sufficiency of evidence of the victim's age as an element of the crime or as a qualifying circumstance, thus: "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; 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

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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 age of the victim."

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; AWARD IS MANDATORY UPON FINDING OF THE FACT OF RAPE.— [U]pon a finding of the fact of rape, the award of civil indemnity is mandatory. If the death penalty is imposed, the indemnity *ex delicto* should be ₱75,000.00. Where, as here, the death penalty is not decreed, the victim should be entitled to ₱50,000.00 only.

9. ID.; ID.; MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— In line with current jurisprudence, moral damages is fixed at ₱50,000.00 without need of pleading or proof of basis therefor. In addition, exemplary damages of ₱25,000.00 is awarded to deter fathers with aberrant sexual behavior.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Cipriano U. Asilo for accused-appellant.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For automatic review is the Decision[1] dated May 5, 1998, of the Regional Trial Court, Branch 4, Pallocan, Batangas City, in Criminal Case No. 8776 convicting Ruben Dalisay *y* Hernandez, appellant, of statutory rape, and imposing upon him the supreme penalty of death. He was further ordered to indemnify the victim,

[1] Footnote text not supplied in the original.

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Ma. Lanie Dalisay (Lanie for brevity), his own daughter, the sum of ₱200,000.00 as moral and exemplary damages and to pay the costs.

On February 10, 1997, a criminal complaint was filed with the said court by Lanie against appellant, her own father, alleging as follows:

"That on or about the 26th day of September 1996, at Barangay Pulong Anahao, Municipality of Mabini, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lay and have carnal knowledge with the said Ma. Lanie Dalisay, daughter of the accused and below twelve (12) years old, against her will and consent.

"Contrary to law."[2]

Upon arraignment, appellant pleaded not guilty to the crime charged. Trial ensued thereafter.

Lanie's testimony is as follows: On September 26, 1996, she was 11 years old, having been born on September 26, 1985.[3] Her mother, Celestina Dalisay, has been working abroad, leaving her and her two siblings, Luz and Ruben, under appellant's care. They reside in Barangay Pulong Anahao, Mabini, Batangas.

In the evening of September 26, 1996, appellant arrived home from work.[4] Lanie was then lying on bed when suddenly he removed her pants and underwear. *She resisted but he boxed her on her thigh.*[5] So when he told her to hold his penis, *she fearfully obliged.* Then he touched her vagina and licked it. Thereafter, while in a kneeling position, he placed his penis at the entrance of Lanie's vagina and inserted his private organ into hers. He then proceeded to make push and pull movements

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[2] *Rollo* at 5.

[3] Transcript of Stenographic Notes (TSN), July 8, 1997 at 7.

[4] *Id.* at 14.

[5] *Id.* at 16.

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(*nakanyog*).[6] Lanie felt pain, but she did not complain because *she was afraid of him.*[7] When she held appellant's penis and tried to remove it, something sticky came out. Appellant then wiped his penis and Lanie's vagina with a blanket. After that, he again licked her vagina, wiped it and went to sleep.[8]

Lanie further testified that appellant has sexually abused her since she was in grade III, or in 1994. She estimated that he had raped her seventeen (17) times, although she could no longer remember the exact dates when they took place.[9] She did not tell anyone about those previous incidents because she was afraid he would harm her, as he used to do in the past.[10]

The following day, September 27, Lanie went to school and pretended as if nothing happened. However, her Grade V teacher, Luminada Sangcate, noticed that Lanie looked depressed that day. When she inquired, Lanie answered that she was raped (*hinalay*) by her father.[11] Immediately, Luminada reported the matter to the school principal who, in turn, relayed the same to their Barangay Chairman. On September 30, 1996, a meeting was held among the Barangay Chairman, the school principal, and appellant's brother, Feliciano Dalisay, who all conferred with Lanie[12] and decided to bring her to the Mabini Police Station where she executed an affidavit on the incident.[13]

Incidentally, Lanie's sister, Luz, also filed a complaint for acts of lasciviousness against appellant. Both sisters were brought to the Lingap Center of Mabini for temporary custody pending the resolution of their cases.[14]

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[6] *Id.* at 17.

[7] *Id.* at 5–6, 16, 18.

[8] *Id.* at 15–18.

[9] *Id.* at 7.

[10] *Id.* at 13.

[11] TSN, July 29, 1997 at 4.

[12] *Id.* at 5–6, 9.

[13] RTC Records at 9.

[14] *Id.* at 88–91.

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Lucila Bacay, a Social Worker at Mabini, testified that on October 4, 1996, she interviewed the appellant and he admitted that he raped Lanie. He explained though that he could not understand why he did it to his own daughter.[15]

For his part, appellant denied the charge, claiming that his wife's relatives instigated Lanie to file the complaint against him because they wanted to take from him the custody of his children which he resented.[16]

Dr. Emma Panaligan, Medico-Legal Officer of the Batangas Regional Hospital, testified that on September 30, 1996, she examined Lanie after the latter complained that she was raped by the appellant. She confirmed her Medico-Legal Certificate dated October 2, 1996,[17] stating that Lanie's "external genitalia" is "infantile" and has a "non-gaping *labia majora*"; that her "hymen is intact," and "no sperm cell was seen" during the examination.[18] She explained that the normal size of the penis of an adult person could not fully penetrate Lanie's vagina "considering the small size and the condition of her external genitalia."[19]

On May 5, 1998, the trial court rendered the assailed Decision convicting appellant of statutory rape, the dispositive portion of which reads:

"Premises considered and upon the evidence, accused Ruben Dalisay *y* Hernandez is found Guilty beyond reasonable doubt of Statutory Rape as charged in the criminal complaint filed by her minor daughter Ma. Lanie Dalisay and defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. Wherefore, he is sentenced to suffer the capital punishment of Death to be made and exacted in the manner provided for under existing law which is by lethal injection. He is further

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[15] TSN, July 29, 1997 at 15.

[16] *Id.*, January 27, 1998 at 4.

[17] Exhibit "I," RTC Records at 118.

[18] TSN, October 20, 1997 at 15–16.

[19] *Id.* at 17.

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directed to indemnify complainant Ma. Lanie Dalisay with the sum of Two Hundred Thousand Pesos (₱200,000.00) as moral and exemplary damages and to pay the costs.

"SO ORDERED."[20]

Hence, this automatic review.

In his brief, appellant claims that the trial court erred:

"I

x x x in giving full weight and credence to private complainant's testimony, which is insufficient to establish the commission of the offense by the appellant; and

"II

x x x in failing to appreciate in appellant's favor the testimony of Dr. Emma Panaligan who physically examined the private complainant."

The trial court convicted appellant of statutory rape because he had carnal knowledge of Lanie who was "below 12 years of age" when the crime was committed.

The law governing the instant case is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[21] which partly provides:

"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"

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[20] *Rollo* at 11.

[21] "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."

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Based on the above-quoted provisions, the essential elements of statutory rape are: (1) the offender had carnal knowledge of a woman; and (2) the woman is below 12 years of age.[22]

The trial court found Lanie's testimony credible and trustworthy, thus:

"x x x suffice it to state that the demeanor of the complainant, Ma. Lanie Dalisay, as she gave her testimony has led this court to give her utmost credibility. She was barely eleven years of age and the manner by which she courageously gave evidence to what her father had done to her showed no taint whatsoever that she was not telling the truth. Her tears which flowed from her eyes as she narrated the 'gift' from hell which her father gave her on the very night of her birthday accentuated the truth of her unfortunate and devilish ordeal x x x."[23]

In a prosecution for rape, the complainant's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof.[24]

Indeed, Lanie's testimony has sufficiently and convincingly proved that appellant had carnal knowledge of her on the night in question. Her candid and straightforward testimony, punctuated by her tears when she narrated how she was sexually ravished by her very own father, are earmarks of a truthful witness and thus, must be given full faith and credit.[25] Lanie described how appellant raped her, thus:

"Q: Now, *on September 26, 1996 in the evening* while you were in bed, do you remember if there was anything done to you by your father?

A: *He inserted his organ to my organ,* sir.

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[22] *People vs. Gerry Libeta y Torre*, G.R. No. 139231, April 12, 2002; *People vs. Ronnie Rullepa y Guinto*, G.R. No. 131516, March 5, 2003, citing *People vs. Bato*, G.R. No. 134939, February 16, 2000, 325 SCRA 671.

[23] *Rollo* at 14.

[24] *People vs. Agustin*, G.R. Nos. 132524-25, September 24, 2001, 365 SCRA 667.

[25] *People vs. Melchor Estomaca*, G.R. Nos. 134288-89, January 15, 2002.

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Q: And, that was inside your house?
A: Yes, sir.

Q: And, where is your house located at that time?
A: At Barangay Pulong Anahao, Mabini, Batangas, sir.

Q: Now, before your father was inserting his private organ to you, were you wearing any underwear?
A: None, sir.

Q: Why?
A: Because he removed it first, sir.

Q: How about your pants, did you wear your pants at that time?
A: Yes sir, but it was also removed by my father.

Q: Now, was the place where you were undressed by your father lighted?
A: It was dark, sir.

Q: And, how did you know that the private organ of your father was being inserted in you?
A: Because my father asked me to hold his organ, sir.

Q: Did you hold his organ when he told you that?
A: Yes, sir.

Q: And, after it was held by you, what did he do next?
A: He touched also my organ, sir.

Q: And, what else did he do, if any?
A: After touching my private organ he licked it (*nilawayan at hinimud*).

PROS. JUDIT:

May we request that the Tagalog answer of the witness be incorporated to the record.

Q: *After doing that* ***(nilawayan at hinimud)***, *what else did he do?*
A: *He inserted his organ into my organ,* sir.

Q: *Was his private part able to penetrate yours?*
A: *In the entrance,* sir.

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Q: *And what did you feel when his private organ was inserted to you?*

A: *It was painful,* sir.

Q: Did you complain to your father?

A: I cannot complain, sir.

Q: Why?

A: *Because I'm afraid* ***(natatakot po ako),*** sir.

PROS. JUDIT:

May we request to put on record that when the witness answered ***'natatakot po ako,'*** *she was teary eyed,* Your Honor.

x x x x x x x x x

Q: And was this the first time that your father inserted his penis to you on September 26, 1996, or was there any other incident?

A: There were other times, sir.

Q: And previous to this incident, how many times if you can recall?

A: What I estimated was seventeen (17) times, sir.

Q: And, since when did he first do this to you?

A: When I was still in grade 3, sir.

COURT:

Do you mean to say when you were still in grade 3 your father had already inserted his penis to your organ?

A: Yes, Your Honor."[26] (Emphasis ours)

Upon cross-examination, Lanie remained steadfast in her story that appellant sexually ravished her against her will on the night in question.

"On Cross-examination:

ATTY. ASILO:

Q: Was there somebody else who told you to file this instant case against your father?

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[26] TSN, July 8, 1997 at 5–8.

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A: None, sir.

COURT:

You are saying that the filing of this case against your father was of your own initiative?

A: Yes, sir.

ATTY. ASILO:

Q: *You were lying down while your father was inserting his private organ to your private organ?*

A: *Yes,* sir.

Q: *And what was the relative position of your father when he was inserting his private organ to your private organ?*

A: *He was kneeling down,* sir.

COURT:

Did he say anything to you before he inserted his penis to your organ?

A: None, sir.

ATTY. ASILO:

Q: But before he inserted his penis to your private organ, you stated that your father told you to undress yourself?

A: Yes, sir.

Q: *Was it your father who undressed you or you undressed yourself when told by your father?*

A: *It was my father who was trying to remove my pants and panty and I tried to pull them up and resisted.*

Q: *But despite your resistance your father was able to remove your pants and panty?*

A: *Yes,* sir. *My father was able to remove my pants and panty because he boxed me on my thigh.*

Q: And, is it correct that your father told you to hold his private organ before he inserted the same to your private organ?

A: *Yes,* sir.

Q: *And did you obey your father?*

A: *Yes, sir. I followed him because if not he will again box me on my thigh.*

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Q: *But you stated that your father had inserted his penis slightly to your private organ?*

A: *The tip of his private organ was inserted in my private organ,* sir.

Q: *And, your father was moving while the tip of his organ was inside your private organ, is that correct?*

A: *Yes,* sir.

Q: *And could you describe before this Honorable Court the movement of your father while the tip of his organ was penetrating your private organ?*

A: ***Siya po ay nakanyog,*** sir.

Q: *For how long did your father remain in that movement?*

A: *Quite long,* sir.

Q: *And, when your father was inserting his private organ to your organ you were still holding his penis, is that correct?*

A: *Yes, sir. I was holding his penis because I was trying to pull it out.*

Q: *And, was there something which came out from the penis of your father while the same was inserted in your private organ?*

A: *Yes,* sir.

Q: *And could you tell to this Honorable Court what was that something which came out from your father's private organ?*

A: *It was something sticky,* sir.

Q: Did it come out while his private organ was being inserted or while the same was outside your private organ?

A: *When that sticky thing came out, his private organ was outside mine and then he removed it, sir.*

COURT:

After that, what happened?

A: He stopped, sir.[27]

x x x x x x x x x

[27] TSN, July 8, 1997 at 18.

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On Re-cross examination:

Q: And you still maintain your answer that nobody among your relatives from the mother side asked you or initiated you to file this case against your father because of personal grudge against him?

A: No, sir. *It was my own decision that this case was filed against my father.*[28] (Emphasis ours)

Lanie was fully aware that if her father would be convicted of the crime charged, he would be sentenced to death. Yet, she remained firm in her testimony and wanted him to be penalized with death, thus:

"COURT:

Do you know the gravity of the offense charged to your father?

A: Yes, sir.

Q: Do you know that if your father is found guilty he might be sentenced to death?

A: Yes, sir.

Q: Do you want your father to die?

A: Yes, sir.[29]

Certainly, such statements could only be expressed by an aggrieved daughter who values the sanctity of her womanhood more than the life of his father. We have held that a rape victim's testimony is entitled to great weight especially when she accuses her own father or a close relative of having ravished her.[30] For there can be ascribed no greater motivation for a

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[28] *Id.* at 20.

[29] *Id.* at 15.

[30] *People vs. Sagarino*: G.R. Nos. 135356-58. September 4. 2001. 364 SCRA 438. citing *People vs. Razonable*. G.R. Nos. 128085-87. April 12. 2000. 330 SCRA 562. 572: *People vs. Sevilla*. 377 Phil. 933 (1999): *People vs. Catoltol, Sr.*, 332 Phil. 883 (1996).

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woman abused by her own kin than that innate yearning of the human spirit to declare the truth to obtain justice.[31]

Appellant would like us to believe that Lanie's charge against him was instigated by his parents-in-law who want to have the custody of his children.

We are not swayed by appellant's bare claim. We find no reason to disturb the lower court's finding that Lanie's story is credible. It is inconceivable that she would falsely testify against her own father if the charge were not true. Rape is not an ordinary crime that can easily be manufactured.[32] When a victim says she was raped, she says in effect all that is necessary to show that the crime was committed. Not a few offenders in rape cases attributed the charges brought against them to family feuds, resentment or revenge, but such alleged motives cannot prevail over the positive and credible testimonies of complainants who remained steadfast throughout the trial.[33]

Moreover, appellant contends that since Lanie's hymen is intact and that there was no spermatozoa in her genitalia[34] when Dr. Emma Panaligan examined her on September 30, 1997, he could not have committed the crime.

We disagree. It was sufficiently and convincingly established by the prosecution that appellant had carnal knowledge of Lanie against her will, as clearly shown by her testimony quoted earlier. The presence of either hymenal laceration or spermatozoa on Lanie's private part is not an essential element of rape.[35] In

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[31] *People vs. Sagarino, id.*, citing *People vs. Francisco*, 328 Phil. 64 (1996); *People vs. Bernabe*, G.R. No. 141881, November 21, 2001, 370 SCRA 142, citing *People vs. Sacapaño*, G.R. No. 130525, September 3, 1999, 313 SCRA 650; *People vs. Buenviaje*, G.R. No. 130949, April 4, 2001, 356 SCRA 238.

[32] *People vs. Flores*, G.R. Nos. 134488-89, January 25, 2002.

[33] *People vs. Salalima*, G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 193.

[34] Records at 11.

[35] *People vs. Parcia*, G.R. No. 141136, January 28, 2002; *People vs. Regala*, G.R. No. 140995, August 30, 2001, 364 SCRA 134; *People vs. Bismonte*, G.R. No. 139563, November 22, 2001, 370 SCRA 305.

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People vs. Parcia,[36] we held that the absence of sperm does not disprove the charge of rape. Likewise, in *People vs. Regala*,[37] we ruled that an intact hymen does not necessarily prove absence of sexual intercourse. Similarly, in *People vs. Rafales*,[38] we declared:

"x x x. For rape to be committed, entrance of the male organ within the labia or pudendum of the female organ is sufficient. Rupture of the hymen or laceration of the vagina are not essential. Entry to the least extent of the labia or the lips of the female organ is sufficient, the victim remaining virgin does not negate rape."

As testified to by Lanie, "the tip" of appellant's penis was *inserted*[39] into her vagina,[40] as a result of which *she felt pain*. In other words, there was no full penetration, and this explains why her hymen remained intact. Nonetheless, carnal knowledge was consummated by the *entry of "the tip" of appellant's private organ into the labia or pudendum of Lanie's genitalia.*[41] It is well-settled that full penetration is not required to consummate carnal knowledge, as proof of entrance showing the slightest penetration of the male organ within the labia or pudendum of the female organ is sufficient.[42]

We now come to the second element of statutory rape, *i.e.*, that the woman is under 12 years of age.

In *People vs. Pruna*,[43] we specified the guidelines in determining the sufficiency of evidence of the victim's age as an element of the crime or as a qualifying circumstance, thus:

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[36] *Id.*

[37] *Id.*

[38] G.R. No. 133477, January 21, 2000, 323 SCRA 13.

[39] TSN, July 8, 1997 at 17.

[40] *Id.* at 6.

[41] *People vs. Gerry Libeta y Torre, supra*, citing *People vs. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 270.

[42] *People vs. Bernabe, supra.*

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

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"*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;

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 age of the victim." (Italics supplied)

In the present case, the trial court made the following finding:

"From the evidence of both parties, the following facts appear to be *uncontroverted*, to wit:

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(a) That the *complainant is an eleven year-old* Grade V student and the eldest daughter of the accused.

x x x x x x x x x"[44]

Such finding as to Lanie's age is erroneous since it is based *solely* on Lanie's testimony that she was 11 years old when appellant raped her on September 26, 1996.[45] In *Pruna*, cited earlier, we held that the *best evidence* to prove Lanie's age is the original or certified true copy of her certificate of live birth, or, in its absence, an authentic baptismal certificate or school records showing her age. However, the prosecution failed to present any of such documents. Neither was it shown that they were lost, destroyed or unavailable at the time of the trial. Also, the prosecution did not present Lanie's mother or relatives to testify concerning her age. Lanie's testimony alone is not sufficient to prove her actual age considering that appellant did not expressly and clearly admit the same as required in *Pruna*. And the fact that there was no objection from the defense regarding the victim's age could not be taken against him since it is the prosecution that has the burden of proving her age.

In view of the failure of the prosecution to prove Lanie's age as alleged in the information, we hold that appellant cannot be convicted of statutory rape. Nonetheless, he should be convicted of *simple rape* under paragraph 1 of Article 335 of the Revised Penal Code, as amended, quoted earlier, and sentenced accordingly to *reclusion perpetua,* considering that he had carnal knowledge of Lanie *through force or intimidation*. She testified that she was afraid of the appellant and succumbed to his bestial desires because he boxed her on her thigh.

The damages awarded by the trial court in favor of the complainant must be corrected. We have consistently ruled that upon a finding of the fact of rape, the award of civil indemnity is mandatory. If the death penalty is imposed, the indemnity *ex delicto* should be ₱75,000.00. Where, as here,

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[44] *Rollo* at 12.

[45] TSN, July 8, 1997 at 7.

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the death penalty is not decreed, the victim should be entitled to ₱50,000.00 only.[46]

In line with current jurisprudence, moral damages is fixed at ₱50,000.00 without need of pleading or proof of basis therefor.[47] In addition, exemplary damages of ₱25,000.00 is awarded to deter fathers with aberrant sexual behavior.[48]

WHEREFORE, the Decision dated May 5, 1998, of the Regional Trial Court, Branch 4, Batangas City, in Criminal Case No. 8776, is hereby *MODIFIED* in the sense that appellant RUBEN DALISAY *Y* HERNANDEZ is found *GUILTY* beyond reasonable doubt of *simple rape*, and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim Ma. Lanie Dalisay, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

Costs *de oficio*.

SO ORDERED.

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

Callejo, Sr., J., on leave.

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[46] *People vs. Armando Tagud, Sr.*, G.R. No. 140733, January 30, 2002, citing *People vs. Poñado*, 370 Phil. 558 (1999); *People vs. Maglente*, 366 Phil. 221 (1999); *People vs. Olarte*, G.R. Nos. 129530-31, September 24, 2001, 365 SCRA 635; *People vs. Elpedes*, G.R. Nos. 137106-07, January 31, 2001, 350 SCRA 716.

[47] *People vs. Salalima, supra; People vs. Agustin, supra.*

[48] *People vs. Docena*, 379 Phil. 903 (2000).