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WHEREFORE, the instant petition is *DENIED*. The assailed decision of the Court of Appeals, dated September 8, 2000, in CA-G.R. CV No. 52275, as well as its resolution dated November 27, 2000, denying petitioner Cecilia Yambao's motion for reconsideration are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Tinga, JJ.*, concur.

EN BANC

[G.R. No. 146188. December 11, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DIONISIO ROTE @ TAMBUTSO,** *appellant.*

SYNOPSIS

Appellant was found guilty beyond reasonable doubt of qualified rape committed against Elma Luna, then only a 9-year old child, who is the daughter of his common-law spouse.

The Supreme Court affirmed his conviction on appeal, ruling: that the straightforward, candid and firm testimony of Elma Luna, then a minor, is worthy of full faith and credit; that medical examination conducted on Elma Luna buttressed her testimony that she was raped; that appellant's denial and alibi were feeble and self-serving in the face of Elma Luna's positive and credible testimony; that when the rape victim is below the age of twelve, proof of force, intimidation or consent is unnecessary; but that appellant is liable for simple rape punishable with *reclusion perpetua* because the information merely alleged the minority of the victim but not the fact of relationship with the accused.

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; STRAIGHTFORWARD, CANDID AND FIRM TESTIMONY OF RAPE VICTIM IS WORTHY OF FULL FAITH AND CREDIT; CASE AT BAR.** — Appellant does not point to any particular portion of Elma Luna's testimony or any other prosecution evidence which casts doubt on his guilt or evinces the improbability of the commission of the crime charged. The only conclusion is that Elma Luna's credibility is beyond dispute and her testimony is worthy of full faith and credence. Elma Luna recounted her ordeal in the hands of appellant in a straightforward, candid and firm manner.

2. **ID.; ID.; ID.; 9-YEAR OLD CHILD NOT LIKELY TO IMPUTE RAPE TO ANY MAN IF NOT TRUE; CASE AT BAR.** — It is improbable that Elma Luna, then only a 9-year old child and not exposed to the ways of the world, would impute a crime as serious as rape to any man if what she claims is not true. It becomes even more improbable if the man she accuses of rape is the common law husband of her mother, unless the man indeed raped her. Appellant claims that an argument he had with Elma Luna's mother prompted the latter to file the rape case against him. It is highly unlikely that a mother would expose her own daughter to the embarrassment and humiliation as well as to the trouble, ridicule and scandal arising from a public trial involving rape if such was not the truth.

3. **ID.; ID.; ID.; ID.; MEDICAL FINDINGS BUTTRESSED VICTIM'S TESTIMONY THAT SHE WAS RAPED; CASE AT BAR.** — The medical examination conducted on Elma Luna buttressed her testimony that she was raped. Dr. Wilfred Kenept who examined Elma Luna a day after the incident on 30 October 1998, testified that there were fresh lacerations with swelling in Elma Luna's vagina. Although he stated that the hymen might still be intact since he did not see it because of the lacerations, the rupture of the hymen is not necessary to consummate rape. As correctly held by the trial court, mere touching by the male's organ of the labia of the pudendum of the female's private part is sufficient to consummate rape.

4. **ID.; ID.; ID.; DENIAL AND ALIBI ARE FEEBLE AND SELF-SERVING IN THE FACE OF RAPE VICTIM'S POSITIVE AND**

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CREDIBLE TESTIMONY; CASE AT BAR. — Appellant's twin defenses of denial and alibi, already recognized as inherently weak, appear even more feeble and self-serving in the face of Elma Luna's positive and credible testimony.

5. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; HAVING CARNAL KNOWLEDGE OF A WOMAN BELOW 12 YEARS OLD; PROOF OF FORCE, INTIMIDATION OR CONSENT IS UNNECESSARY. — Where the girl is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, intimidation or consent is unnecessary since none of these is an element of statutory rape. There is a conclusive presumption of absence of free consent when the rape victim is below the age of twelve.

6. ID.; ID.; ART. 335 THEREOF AS AMENDED BY RA NO. 7659 AND RA NO. 8353; QUALIFIED RAPE; MINORITY OF VICTIM AND HER RELATION TO THE ACCUSED MUST BE ALLEGED IN THE INFORMATION AND PROVED DURING THE TRIAL IN ORDER TO IMPOSE THE DEATH PENALTY; REQUIREMENTS NOT COMPLIED WITH IN CASE AT BAR. — Appellant was prosecuted and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 and Republic Act No. 8353. . . The prosecution established Elma Luna's minority by presenting her birth certificate which showed her date of birth as 14 May 1989. Hence, when appellant raped Elma Luna on 29 October 1998, she was only 9 years old. Nevertheless, the death penalty is not the correct penalty for the rape committed by appellant because the information filed against him failed to state his relationship with Elma Luna. To justify imposing the death penalty, the information must specifically allege the qualifying circumstances of the minority of the victim and her relationship to the offender, and the prosecution must prove during the trial these attendant circumstances. While the prosecution did prove that appellant was the common-law spouse of Elma Luna's mother, the information failed to allege such fact. The Court has consistently held that where the information merely alleged the minority of the victim but not the fact of relationship with the accused, the latter is liable only for simple rape punishable with *reclusion perpetua*. This is to comply with the constitutional right of the accused to be informed of the nature and cause of accusation against him.

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APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

For automatic review is the Decision[1] dated 5 October 2000 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4477 finding Dionisio Rote @ Tambutso ("appellant") guilty beyond reasonable doubt of qualified rape. The dispositive portion of the decision reads:

> WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of having committed the crime of rape and is sentenced to DEATH.
>
> The accused is further ordered to indemnify the complainant Elma Luna Bacelonia the amount of ₱75,000.00 plus ₱50,000.00 for moral damages.
>
> The accused who is presently detained at the Provincial Jail at Magbay, San Jose, Occidental Mindoro, is ordered immediately transferred to the New Bilibid Prisons, Muntinlupa City, Metro Manila.
>
> Costs against said accused.
>
> SO ORDERED.

The Charge

Appellant was charged with the crime of rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 and Republic Act No. 8353 for raping Elma Luna Bacelonia[2] ("Elma Luna"). The Information reads as follows:

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[1] Penned by Judge Ernesto P. Pagayatan.

[2] In the Information, Elma Luna's surname is spelled "Baselonia." In the criminal complaint signed by her mother, the surname is spelled "Bacelonia." In Elma Luna's birth certificate (Exhibit "D"), her surname is likewise spelled "Bacelonia" which we will thus be adopting.

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That on or about the 29th day of October 1998, at around 9:00 o'clock in the evening in Barangay San Francisco, Municipality of Sablayan, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of Elma Luna Ba(c)elonia, who is a minor, against her will and consent.

Arraignment and Plea

When arraigned on 8 January 1999, appellant, with the assistance of counsel, entered a plea of not guilty.[3] Thus, trial ensued.

The Trial

Version of the Prosecution

The prosecution presented four witnesses: (1) Elma Luna's mother, Marcelina dela Cruz Bacelonia; (2) Dr. Wilfred Kenept; (3) Elma Luna herself; and (4) Elma Luna's brother, Elvimar Bacelonia.

In the People's Brief, the Solicitor General summarized the prosecution's version of the incident as follows:

> The offended party was born on May 14, 1989 to Elpidio Bacelonia and Marcelina Bacelonia (Exhibit D, p. 2, TSN, July 7, 1999). After the death of Elpidio, Marcelina cohabited with appellant without the benefit of marriage (pp. 2, 13, TSN, July 7, 1999; p. 4, TSN, March 15, 1999). Appellant, complainant and her children by her former husband, including the offended party, lived in Barangay San Francisco, Sablayan, Occidental Mindoro.
>
> Around 9:00 o'clock in the evening of October 29, 1998, appellant invited the offended party and her brother Elvimar to fish at a pond about one hundred (100) meters away from their house. Appellant told Elvimar to stay at the road, while he brought the offended party to a place where straws were stacked (*dayamihan*). He undressed and laid her down and inserted his penis in her vagina. The offended

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[3] Records, p. 19.

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party shouted in pain. Her cries of pain were heard by Elvimar, who remained nearby. After consummating his lust, appellant threatened the offended party that he would kill her if she would tell her mother about the incident (pp. 4-7, TSN, July 7, 1999).

When the offended party went home, Elvimar informed complainant (their mother, Marcelina) that he heard her sister cry. Complainant asked the offended party what happened. Instead of answering, the offended party just wept. Complainant noticed that her daughter had a "hickee" on her neck. Breaking her silence, the offended party confirmed that she was sexually abused by appellant (pp. 5-7, TSN, March 15, 1999).

Dr. Wilfred D. Kenept, the Municipal Health Officer of Sablayan, Occidental Mindoro, examined the offended party and found out:

x x x x x x x x x

GENITALIA — normal looking external genitalia. Laceration noted in the Labia Majora 9 o'clock position, laceration noted in the Labia Minora 3 o'clock and 9 o'clock position.

(Exhibit B, p. 81, Record)[4]

Version of the Defense

The defense presented three witnesses: (1) appellant himself; (2) Dr. Nuela Manzanida; and (3) Ricardo Aguirre.

The Public Attorney summarized the defense's version as culled from the testimonies of its witnesses as follows:

DIONISIO ROTE averred that Elma Luna Bacelonia is his stepdaughter. He denied that he invited Elvimar and Elma Luna to go fishing and that he intentionally left Elvimar by the road before they went fishing; and that he brought Elma Luna to a "*dayamihan*" and sexually abused her at around 9:00 o'clock in the evening on October 29, 1998. At that time, he was in the place of a certain Dodong Aguirre in Sitio Cabacungan which is about 50 meters away from their house. He, together with Giovanni Flores and Dodong Aguirre had a drinking spree in the said place from 6:00 o'clock in the evening up to 12:00 midnight. After consuming six (6) bottles of gin, he,

[4] *Rollo*, pp. 91-94.

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together with Giovanni Flores went home. When he arrived home, the children (Netnet and Jess) were already sleeping but his common-law wife was still awake. He likewise denied that on October 30, 1998, at around 6:30 o'clock in the morning the complainant (Elma Luna) had reported to her mother that he sexually abused her at the "*dayamihan.*" Apparently, prior to the filing of the criminal complaint against him, he had a quarrel with his common-law wife when he refused to lend money to her eldest daughter (Alma) who was then planning to build a house. In fact, the common-law wife even told him, "*bakit paabutin ng umaga, hiwalay kung hiwalay.*" He replied that if she does not leave the house the next morning, he would be the one to leave. So, she left the house the next morning and went to Sitio Kastila and she never returned. He further denied that he invited Elvimar and Elma Luna to go fishing on October 29, 1998, at around 9:00 o'clock p.m. and that Elvimar heard the cry of Elma Luna when the latter was allegedly sexually molested by him. He was arrested on October 30, 1998. (TSN, November 4, 1999, pp. 2-12)

DR. NUELA C. MANZANIDA, Municipal Health Officer of San Jose, Occidental Mindoro, testified that the complainant's hymen could still be intact because Dr. Kenept did not put anything about it in his findings. Based on the Medico Legal Certificate, the lacerations were found only in the labia minora and labia majora which could be caused by other objects aside from the insertion of a human penis. In fact, said lacerations could also be caused by accident. (TSN, February 16, 2000, pp. 2-6)

RICARDO AGUIRRE testified that on October 29, 1998, at around 6:00 o'clock in the evening, while he was sitted (sic) in front of their house, Dionisio Rote and Diovanie (sic) Flores approached him because they were able to buy fish which they later cooked as "*pulutan.*" They had a drinking spree which lasted up to 12:00 o'clock midnight. They were able to consume 3 bottles of gin. During the duration of their drinking spree, there was no occasion that accused Dionisio Rote left the place. In fact, Dionisio went home at around 12:00 o'clock midnight. He knew the complainant (Elma Luna) by face and not by name. At around 7:00 o'clock the following day, he saw the complainant and her mother waiting for a bus going to Sitio Castila, Sablayan. While waiting for the bus, the complainant and her brother alternately rode a bicycle and roamed around their place. The complainant and her mother were able to board the bus at around 8:00 o'clock in the morning. He learned that the accused was charged

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by his own stepdaughter only on the afternoon of October 30, 1998. (TSN, March 21, 2000, pp. 2-8)[5]

The Trial Court's Judgment

The trial court did not give credence to appellant's imputation of ill-motive on the part of his common-law wife, Marcelina, in bringing the charges against him. The trial court also disbelieved appellant's defenses of denial and alibi which cannot hold up against Elma Luna's positive identification of appellant as her rapist. The trial court stated that appellant failed to show that it was physically impossible for him to be at the scene of the crime at the time of its commission. In the evening of 29 October 1998, appellant could have gone fishing, carried out his evil deed and then proceeded to Ricardo Aguirre's house for a drinking spree since these locations were well within a hundred meters from each other. Lastly, the trial court pointed out that the fact that Elma Luna's hymen has remained intact does not preclude the finding of rape since mere entrance of the male organ within the labia of the pudendum still constitutes rape.

Hence, this automatic review.

Issues

Appellant raises the following assignment of errors:

1. The trial court gravely erred in finding him guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 and Republic Act No. 8353;
2. The trial court gravely erred in imposing the capital punishment of death on the assumption that he is guilty of the crime charged.

The Court's Ruling

By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the victim's testimony

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[5] *Rollo*, pp. 52-55.

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because usually only the participants can testify as to its occurrence.[6] To exculpate himself, appellant tries to discredit and assail Elma Luna's credibility. However, he does not point to any particular portion of Elma Luna's testimony or any other prosecution evidence which casts doubt on his guilt or evinces the improbability of the commission of the crime charged. The only conclusion is that Elma Luna's credibility is beyond dispute and her testimony is worthy of full faith and credence. Elma Luna recounted her ordeal in the hands of appellant in a straightforward, candid and firm manner thus:

Q: On the evening of October 29, 1998, do you remember having invited (sic) by your stepfather to go with your brother Elvimar to go fishing?
A: Yes, sir.

Q: Did you in fact went (sic) fishing on that night?
A: Yes, sir.

Q: Together with your brother Elvimar?
A: Yes, sir.

Q: How far was that fishing ground away from your house?
A: From here up to the plaza.

FISCAL SALCEDO:

Estimated to be 100 meters.

Q: After you arrived at the place where you intended to fish with your stepfather Dionisio Rote what did he do to you?
A: "*Isinama po niya ako.*"

FISCAL SALCEDO:

Q: Where did you go when you said, "*isinama niya ako*"?
A: We went to the "*dayamihan*," sir.

Q: And when you went to that "*Dayamihan*" where was your brother Elvimar?
A: Elvimar was at that road, sir.

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[6] *People v. Abuan*, 348 Phil. 52 (1998).

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Q: How far was the road where your brother Elvimar was left to the "*dayamihan*" where the accused brought you?
A: Just near, from here up the Governor's building.

ATTY. CASTILLO:

About 20 meters, Your Honor.

FISCAL SALCEDO:

Q: Do you know why Dionisio Rote left your brother at the road and brought you in the "*dayamihan*"?
A: No, sir.

Q: While you were already at the "*dayamihan*" what did Dionisio Rote do if any?
A: "*Hinubaran po niya ako,*" he undressed me, sir.

Q: By the way, what were you wearing at the time?
A: Shorts and T-shirt, sir.

Q: You said "*hinubaran*" what apparel did Dionisio Rote remove?
A: Shorts, sir.

Q: Are you wearing panty at the time?
A: Yes, sir.

FISCAL SALCEDO:

Q: What did he do to your panty after he removed your shorts?
A: He also removed my panty, sir.

Q: After he removed your panty and short what did he do to himself?
A: After undressing me he removed his shorts.

Q: After he removed his shorts what did he do to you, if any?
A: He inserted his private part to my private part, "*ipinasok po niya.*"

Q: But before he inserted his private part in your private part did he lay you down?
A: Yes, sir.

Q: Where?
A: At the "*dayamihan,*" sir.

FISCAL SALCEDO:

We would like to manifest, Your Honor, that these "*dayamihan*" are *palay* straws.

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Q: What did he say if any before he inserted his private part into your private part?
A: Before inserting his private part he told me, *"kung magsusumbong ka sa Nanay mo papatayin kita!"*

Q: What did you do at the time he was inserting his private part in your private part?
A: I cried, sir.

Q: Why did you not refuse?
A: Because I was afraid, sir.

Q: Why, your stepfather had a bolo at the time?
A: There was, sir.

FISCAL SALCEDO:

Q: Considering your tender age which you are barely 9 years old at the time what do you feel at the time when the accused was inserting his penis in your private part?
A: I felt pain, sir.

Q: When you said "*masakit*" what did you say, if any when he was inserting his private part in your private part?
A: "*Napaaray po ako*," sir.

Q: And when you were "*napaaray*" where was your brother Elvimar?
A: At the road, sir.

Q: Your voice when you said "*napaaray*" was loud that could be heard by your brother?
A: Yes, sir.

Q: After the accused inserted his private part in your private part what else did he do to you, if any?
A: After that he dressed himself, sir.

Q: And you also dressed yourself?
A: Yes, sir.

Q: And where did you proceed after that?
A: We went fishing, sir.[7]

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[7] TSN dated 7 July 1999, pp. 4-7.

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It is improbable that Elma Luna, then only a 9-year old child and not exposed to the ways of the world, would impute a crime as serious as rape to any man if what she claims is not true. It becomes even more improbable if the man she accuses of rape is the common law husband of her mother, unless the man indeed raped her.[8] Appellant claims that an argument he had with Elma Luna's mother prompted the latter to file the rape case against him. It is highly unlikely that a mother would expose her own daughter to the embarrassment and humiliation as well as to the trouble, ridicule and scandal arising from a public trial involving rape if such was not the truth.[9]

Moreover, the medical examination conducted on Elma Luna buttressed her testimony that she was raped. Dr. Wilfred Kenept who examined Elma Luna a day after the incident on 30 October 1998, testified that there were fresh lacerations with swelling in Elma Luna's vagina. Although he stated that the hymen might still be intact since he did not see it because of the lacerations,[10] the rupture of the hymen is not necessary to consummate rape.[11] As correctly held by the trial court, mere touching by the male's organ of the labia of the pudendum of the female's private part is sufficient to consummate rape.[12]

Appellant's twin defenses of denial and alibi, already recognized as inherently weak, appear even more feeble and self-serving in the face of Elma Luna's positive and credible testimony.

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[8] *People v. Manggasin*, 365 Phil. 683 (1999).

[9] *People v. Yparaguirre*, G.R. No. 124391, 5 July 2000, 335 SCRA 69.

[10] TSN dated 14 June 1999, pp. 6-9.

[11] *People v. Rafales*, 379 Phil. 980 (2000); *People v. Lerio*, 381 Phil. 80 (2000).

[12] *People v. Ulgasan*, G.R. No. 131824-26, 11 July 2000, 335 SCRA 441; *People v. Castillo*, G.R. No. 130205, 5 July 2000, 335 SCRA 100.

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Appellant was prosecuted and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659[13] and Republic Act No. 8353,[14] which reads:

Article 266-A. *Rape; When And How Committed.* — Rape is Committed —

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

x x x x x x x x x

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present.

x x x x x x x x x.

Article 266-B. Penalties. — x x x.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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.

The prosecution has proven beyond reasonable doubt that appellant succeeded in having carnal knowledge with Elma Luna. The prosecution established Elma Luna's minority by presenting her birth certificate which showed her date of birth as 14 May 1989. Hence, when appellant raped Elma Luna on 29 October 1998, she was only 9 years old. Where the girl is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place.[15] Proof of force, intimidation or consent

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[13] Effective 31 December 1993.

[14] Effective 22 October 1997.

[15] *People v. Lerio, supra*, see note 11.

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is unnecessary since none of these is an element of statutory rape. There is a conclusive presumption of absence of free consent when the rape victim is below the age of twelve.[16]

Nevertheless, the death penalty is not the correct penalty for the rape committed by appellant because the information filed against him failed to state his relationship with Elma Luna. To justify imposing the death penalty, the information must specifically allege the qualifying circumstances of the minority of the victim and her relationship to the offender, and the prosecution must prove during the trial these attendant circumstances.[17] While the prosecution did prove that appellant was the common-law spouse of Elma Luna's mother, the information failed to allege such fact. The Court has consistently held that where the information merely alleged the minority of the victim but not the fact of relationship with the accused, the latter is liable only for simple rape punishable with *reclusion perpetua*.[18] This is to comply with the constitutional right of the accused to be informed of the nature and cause of accusation against him.[19]

Lastly, we reduce the trial court's award of civil indemnity from ₱75,000 to ₱50,000 following prevailing jurisprudence in rape cases.[20] We affirm the award of ₱50,000 in moral damages, which we award to a rape victim without need of pleading or proof of its basis.

WHEREFORE, the Decision dated 5 October 2000 of the Regional Trial Court of San Jose, Occidental Mindoro (Branch 46), in Criminal Case No. R-4477, is *AFFIRMED* with *MODIFICATION*. Appellant DIONISIO ROTE @

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[16] *People v. Castillo, supra*, see note 12.

[17] *People v. Santos*, G.R. No. 145305, 26 June 2003.

[18] *People v. Baybado*, G.R. No. 132136, 14 July 2000, 335 SCRA 712; *People v. Bartolome*, 380 Phil. 804 (2000).

[19] *Ibid.*

[20] *People vs. Bato*, 382 Phil. 558 (2000).

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TAMBUTSO is adjudged guilty only of *SIMPLE RAPE* and sentenced to suffer the penalty of *reclusion perpetua* and to pay Elma Luna Bacelonia ₱50,000 as civil indemnity and ₱50,000 as moral damages.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 147793. December 11, 2003]

BOAZ INTERNATIONAL TRADING CORPORATION and F. R. CEMENT CORPORATION, *petitioners, vs.* **WOODWARD JAPAN, INC. and NORTH FRONT SHIPPING SERVICES, INC.,** *respondents.*

SYNOPSIS

Respondent Woodward Japan, Inc. (Woodward) filed a complaint for a sum of money and damages against petitioners. The latter filed their answer to the complaint with a third-party complaint against respondent North Front Shipping Services, Inc. (North Front). North Front filed its answer to the third-party complaint with counterclaim against herein petitioners. During the pre-trial, Woodward and its counsel failed to appear which caused the dismissal of the complaint upon motion of petitioners. Upon motion of North Front, the third-party complaint filed against it was likewise dismissed. Woodward's urgent *ex-parte* motion to present evidence was denied by the trial court, thus petitioners presented their evidence. Subsequently, Woodward filed a Motion to Reinstate its