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

EN BANC

[G.R. Nos. 140411-13. December 11, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AVELINO LATAG** *y* **DITA** ***alias*** **"PAUTO,"** *appellant.*

SYNOPSIS

Appellant was convicted of the crime of rape of his ten (10) year-old niece, Stephanie Sarmiento *y* Latag. On appeal, he claimed his right to be informed of the nature and cause of the offense charged against him was violated because the complaint filed against him merely stated that the crime was committed "sometime in the month of April, 1997." Sec. 6 of Rule 110 of the Rules of Court requires that the approximate time of the commission of the offense must be stated in the complaint or information.

Upholding his conviction on appeal, the Supreme Court held: (1) that the precise time or date of the commission of an offense need not be alleged in the complaint or information, unless it is an essential element of the crime charged. In rape, it is not; (2) that objections as to matters of form or substance in the complaint or information cannot be made for the first time on appeal; (3) that appellant's reliance on the *Dichao* case is misplaced. The allegation in the complaint that the rape was committed "sometime in the month of April, 1997," is a period that displays definiteness and certainty, unlike in the *Dichao* case in which the time of the commission of the crime, as stated in the Information, was too indefinite "on or about and during the interval between October, 1910, to August, 1912." Two

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years was too long an interval that it was extremely difficult for the accused in the *Dichao* case to plead alibi as a defense; and 4) that the death penalty imposed by the trial court should be reduced to *reclusion perpetua* because the Information failed to allege accused's relationship with the victim.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SUFFICIENCY OF COMPLAINT OR INFORMATION; PRECISE TIME OR DATE OF COMMISSION OF AN OFFENSE NEED NOT BE ALLEGED IN THE COMPLAINT OR INFORMATION; CASE AT BAR.** — Although the Complaint alleged that the crime was committed "sometime in the month of April, 1997," the trial court did not err in convicting him of rape. Pursuant to Section 11 of Rule 110 of the Rules of Court, the *precise* time or date of the commission of an offense need not be alleged in the complaint or information, unless it is an essential element of the crime charged. In rape, it is not.

2. **ID.; ID.; ID.; ID.; FACTS STATED WITH SUFFICIENT DEFINITENESS AND CLARITY IN THE COMPLAINT; RIGHT OF ACCUSED TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION, NOT VIOLATED IN CASE AT BAR.** — The rationale for Section 6 of Rule 110 of the Rules of Court is to inform the accused of the nature and cause of the accusation. This right has not been violated in the present case. Appellant's counsel took an active part in the trial by cross-examining the prosecution witnesses and presenting evidence for the defense. It is now too late in the day for appellant to claim that the Complaint was defective. Furthermore, the defense never objected to the presentation of the prosecution evidence proving that the offense had been committed in April 1997. It has not been shown that the testimony of the victim (to the effect that she had been raped during that month) caught appellant by surprise and thus made it difficult for him to defend himself properly. Moreover, the Complaint states all the facts that, with sufficient definiteness and clarity, would fully apprise him of the nature and cause of the accusation against him, in compliance with his constitutional right to be so informed.

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3. ID.; ID.; ID.; ID.; COURT RULING IN *DICHAO* CASE NOT APPLICABLE IN CASE AT BAR. — Appellant's reliance on *Dichao* is misplaced. The ruling of the Court therein is not applicable to the present case due to differences in the factual scenarios. . . In this case, the Complaint alleges that the rape was committed "sometime in the month of April, 1997." This is a period that displays definiteness and certainty, unlike in *Dichao* in which the time of the commission of the crime, as stated in the Information, was too indefinite — "on or about and during the interval between October, 1910, to August, 1912." Two years was too long an interval that it was extremely difficult for the accused to plead alibi as a defense.

4. ID.; ID.; ID.; ID.; OBJECTIONS AS TO MATTERS OF FORM OR SUBSTANCE IN THE COMPLAINT OR INFORMATION CANNOT BE MADE FOR THE FIRST TIME ON APPEAL; CASE AT BAR. — Appellant did not raise before the trial court any objection to the alleged insufficiency of the Complaint. Consequently, he is deemed to have waived whatever objections he had, and he cannot now seek affirmative relief. Objections as to matters of form or substance in the complaint or information cannot be made for the first time on appeal. The remedy available, which appellant did not pursue before the RTC, was to move either for a bill of particulars in order to be properly informed of the exact date of the alleged rape; or for the quashal of the Complaint on the ground that it did not conform substantially to the prescribed form.

5. CRIMINAL LAW; SECTION 11 OF R.A. NO. 7659, AMENDING ARTICLE 335 OF THE REVISED PENAL CODE; RAPE WHEN QUALIFIED; MINORITY OF RAPE VICTIM AND ACTUAL RELATIONSHIP TO THE ACCUSED MUST BE ALLEGED AND PROVED TO IMPOSE THE DEATH PENALTY; CASE AT BAR. — It must be noted that the rape was committed prior to the effectivity of RA No. 8353, otherwise known as "The Anti-Rape Law of 1997." Applicable then is the old provision – Section 11 of RA No. 7659, amending Article 335 of the Revised Penal Code. . . Indeed, the death penalty cannot be imposed upon the perpetrator, if his relationship with the victim is not duly alleged in the complaint or information. "If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the

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information, *i.e.*, that he is 'a relative by consanguinity or affinity [as the case may be] within the third civil degree.'" Both minority and actual relationship must be alleged and proved; if not, a conviction for rape in its qualified form will be barred. In the present case, while the minority of the victim was properly alleged in the Complaint, her relationship with appellant was not specifically stated therein.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PANGANIBAN, *J.*:

As a rule, the precise time of the commission of the rape need not be alleged in the complaint. Although appellant is guilty of rape, the death penalty imposed by the trial court should nonetheless be reduced to *reclusion perpetua*, because the Information failed to allege his relationship with the victim.

The Case

For automatic review before this Court is the May 10, 1999 Decision[1] of the Regional Trial Court (RTC) of Lipa City (Branch 12) in Criminal Case No. 0460-97, finding Avelino Latag *y* Dita guilty beyond reasonable doubt of rape. The decretal portion of the Decision reads:

"WHEREFORE, x x x.

"x x x x x x x x x

"Anent Crim. Case No. 0460-97, the Court finds Avelino Latag *y* Dita *alias* 'Pauto' guilty beyond reasonable doubt, as principal, of the crime of Rape, as defined and penalized under Article 335, par. 3 of the Revised Penal Code, as amended by Republic Act. No. 7659 and sentences him to suffer the supreme penalty of DEATH [and]

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[1] *Rollo*, pp. 19-36. Written by Judge Vicente F. Landicho.

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to pay the costs of this suit. In addition, he is also ordered to indemnify Stephanie Sarmiento an/or her heirs the sum of ₱75,000.00, to pay the amount of ₱10,000.00, as moral damages, pursuant to Article 2219(3) of the Civil Code and the sum of ₱5,000.00, as exemplary damages pursuant to Article 2229 of the same Code, in order that this case may serve as an object lesson to the public — that no uncle may ever again deprive his niece of 'the right to grow up and discover the wonder of womanhood in the normal way.'"[2]

Appellant was charged with two counts of rape, one in the criminal Complaint filed by Charen May L. Sarmiento and in another, by Stephanie L. Sarmiento. The Complaints, both dated June 24, 1997 and docketed as Criminal Case Nos. 0458-97 and 0460-97, respectively, read as follows:

Criminal Case No. 0458-97

"That on or about the 5th day of April, 1997 in the evening, at Sitio Santol, Barangay Nangkaan,[3] Municipality of Mataasnakahoy,[4] 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 wilfully, unlawfully and feloniously lie with and have carnal knowledge of the said twelve (12) year-old girl, Charen May Sarmiento *y* Latag, against her will and consent."[5]

Criminal Case No. 0460-97

"That sometime in the month of April, 1997, at Sitio Santol, Barangay Nagkaan, Municipality of Mataasnakahoy, 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 wilfully, unlawfully and feloniously lie with and have carnal knowledge of the said ten (10) year-old girl, Stephanie Sarmiento *y* Latag, against her will and consent."[6]

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[2] RTC Decision, pp. 17-18; *rollo*, pp. 35-36. In that Decision, his brother Yolito Latag was found guilty of attempted rape.

[3] Sometimes spelled in the records as "*Nagkaan*."

[4] Sometimes spelled in the records as "*Mataas na Kahoy*."

[5] *Rollo*, p. 5.

[6] *Id.*, p. 8.

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During his arraignment on August 27, 1997,[7] appellant, with the assistance of his counsel,[8] pleaded not guilty to both charges. After trial in due course, the court *a quo* rendered the assailed decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts in the following manner:

"Stephanie L. Sarmiento was born in Manila to the Spouses Virgilio and Babylita Latag Sarmiento. Stephanie and her brothers and sisters lived with their parents in Paco, Manila until they transferred to Sitio Santol, Brgy. Nangkaan, Mataas na Kahoy, Batangas in their maternal grandparents' house. In June 1996, the Spouses Sarmiento left all their children at said house as Virgilio had to attend to his occupation as a taxi driver in Manila.

"In April, 1997, at nigh[t]time, appellant Avelino Latag raped Stephanie. Stephanie at that time was only ten (10) years old. On that night of April, 1997, Stephanie was sleeping with her brothers and sisters, Charen May (12), Daisy (4), Regienalyn (3), Jandie (1) and Jenevecher (7), and their Tiya Nancy (10) and Tiyo Ronaldo (11) at the second floor of the house. While Stephanie was sleeping, appellant removed her short pants and panty which roused her from sleep. After appellant removed his short pants and briefs, he placed himself on top of her and inserted his penis into her vagina.

"Stephanie tried to resist by removing his penis from her vagina, but when she tried to remove it, appellant would box her. She felt pain in her vagina when appellant succeeded in inserting his penis into her vagina. She was not able to shout because everytime she would attempt to do so, appellant would slap her. Appellant stayed on top of her for about one (1) minute. While she was being abused, her grandparents, brothers and sisters, and her aunt and uncle, were sound asleep. After raping her, appellant went back to the lower portion of the house where he normally slept. Stephanie was able to

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[7] *See* Order dated August 27, 1997; records, Vol. 1, p. 17.

[8] Atty. Ernesto M. Vergara.

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recognize appellant Avelino Latag because of the lighted kerosene lamp placed on top of the cabinet at the place she had been sleeping.

"After the incident, Stephanie reported the incident to her older sister, Charen May. The sisters reported the incident to their maternal grandparents but they did not believe the children.

"Stephanie and Charen May submitted themselves to a medical examination on May 8, 1997 at the Lipa City District Hospital before Dr. Alex Agato. Upon internal examination of Stephanie, Dr. Agato found her vaginal opening inflamed and admitted the 5th digit of his examining finger, right hand, with difficulty up to 2 cms. in depth. Dr. Agato also noted that the hymen was absent, which was not natural, and its absence was due to penetration of an object, probably a finger or a penis. Dr. Agato also found that the vaginal opening could be seen and not coopted, something unusual for a ten (10) year-old girl because normally for her age, the vaginal opening can hardly be seen. Dr. Agato issued a medico-legal certificate in favor of Stephanie Sarmiento dated May 8, 1997 and concluded that she was no longer a virgin."[9] (Citations omitted)

Version of the Defense

On the other hand, the version of the defense is as follows:

"Enrique Latag averred that Stephanie Sarmiento is his granddaughter, while Avelino Latag is his son. Stephanie and her sister Charen Mae arrived in their house sometime in the month of June and lived with him at Nagkaraan, Mataasnakahoy, Batangas for almost one (1) year. He was the one who supported them.

"He came to know for the first time that his two (2) sons Yolito and Avelino Latag were charged with rape when Avelino was apprehended. Stephanie did not complain to him regarding the alleged rape committed by his sons. During the trial of these cases, he talked to Stephanie regarding the filing of these cases, but the latter just kept quiet.

"On the month of April 1997, his son Avelino lived at the house of his '*kumpare*' because he was working with the latter's son.

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[9] Appellee's Brief, pp. 7-10; *rollo*, pp. 131-134. Signed by Solicitor General Simeon V. Marcelo, Assistant Solicitor General Mariano M. Martinez and Associate Solicitor Noe L. Espenilla, Jr.

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"Avelino Latag denied the allegation that he raped Stephanie Sarmiento sometime in the month of April 1997. He was then living in the house of the '*kumpare*' of his father.

"He claimed that Stephanie is his niece, being the daughter of his sister. Stephanie, together with her brothers and sisters, arrived in their house at Nagkaan, Mataasnakahoy, Batangas in order to reside thereat. There are seven (7) children of her sister. When Stephanie and her brothers and sisters lived at Barangay Nangkaan, their father likewise lived at the house of his uncle Rogelio Tipan at Mataas Na Lupa. Whenever his brother-in-law would be scolded by his uncle, he would sleep in their house. His brother-in-law was staying in the house of his uncle because their house is very small.

"While his nieces and nephews were living in their house, he lived at the house of the '*kumpare*' of his father near the lakeshore at [S]itio Santol. He started living at the house of the '*kumpare*' of his father in February 1996 up to May 1997. He was then working with his father's '*kumpare*' in a construction. During the entire period of his stay at the house of his father's '*kumpare,*' there was no occasion that he sleeps in their own house. It was always late in the evening when they came from work, so he did not have time to go home and sleep in their house.

"His brother-in-law had mauled his sister many times. The last time that his sister was mauled by his brother-in-law was on April 1997 in their house. He and his brother Yolito were then present, so they helped each other in likewise mauling their brother-in-law."[10] (Citations omitted)

Ruling of the Trial Court

For insufficiency of evidence, the trial court acquitted appellant of the rape of Charen May. However, it found him guilty beyond reasonable doubt of raping Stephanie. The lower court held that he had sexually assaulted Stephanie during one night in April 1997.

The trial court, after carefully evaluating and observing the conduct and demeanor of Stephanie on the witness stand, found

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[10] Appellant's Brief, pp. 5-7; *rollo*, pp. 69-71. Signed by Atty. Elpidio C. Bacuyag of the Public Attorney's Office (PAO).

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her credible. It gave weight and credence to her candid and sincere testimony because, aside from being clear and positive, it was devoid of any artificiality and infused with truth and sincerity. The court *a quo* found it unthinkable that a 10-year-old child would fabricate such a serious charge as rape against her own uncle and consequently expose herself to the humiliation and embarrassment of a medical examination and a public trial.

Discarding the denial and alibi proffered by appellant, the trial court held that these defenses were inherently weak and could not prevail over the positive and credible testimony of the victim. Appellant palpably failed to show that it was physically impossible for him to be at the scene of the crime at the time of its commission.

Hence, this automatic review before us.[11]

The Issues

Appellant raises the following errors for our consideration:

I.

"The trial court gravely erred in not considering the Information in Criminal Case No. 0460-97 insufficient to support a judgment of conviction for failure of the prosecution to state the precise date of the commission of the alleged rape, it being an essential element of the crime charged.

II.

"The trial court gravely erred in imposing the penalty of death upon accused-appellant despite failure of the prosecution to allege in the information the relationship between the victim and accused-appellant on the assumption that he is guilty of the crime charged."[12]

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[11] This case was deemed submitted for decision on September 9, 2002, upon receipt by this Court of appellant's Reply Brief signed by Attys. Amelia C. Garchitorena and Elpidio C. Bacuyag of PAO. Appellant's Brief was received by this Court on April 20, 2001, while appellee's Brief was filed on March 5, 2002.

[12] Appellant's Brief, pp. 1-2; *rollo*, pp. 65-66. Original in upper case.

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The Court's Ruling

We affirm the conviction of appellant for the crime of rape, but reduce the penalty to *reclusion perpetua* for the failure of the Complaint to allege his relationship with the victim.

First Issue: *Date of Commission*

Appellant contends that Section 6[13] of Rule 110 of the Rules of Court requires that the approximate time of the commission of the offense must be stated in the complaint or information. According to him, this requirement was not followed in the instant case. He contends that since the sexual act in a crime of rape must be proved to have been committed during a precise date and time, the Complaint against him should have been considered fatally defective and, thus, void. He further argues that the doctrine laid down in *United States v. Javier Dichao*[14] applies to this case. In *Dichao*, we held that the allegation in the Complaint regarding the date and time of the rape was too indefinite to give the accused therein an opportunity to prepare his defense. In such a situation, the alibi of the accused would never be able to prosper.

Citing *Ilo v. Court of Appeals*,[15] appellant herein argues further that any evidence presented by the prosecution cannot cure this alleged fatal defect, as his right to be informed of the nature of the offense charged against him would be jeopardized.

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[13] "SEC. 6. *Sufficiency of complaint or information.* — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

"When an offense is committed by more than one person, all of them shall be included in the complaint or information."

[14] 27 Phil. 421, March 30, 1914.

[15] 108 Phil. 938, July 26, 1960.

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As the accused, his constitutionally protected right to be informed of the nature and cause of the accusation against him would be violated.

We find his arguments bereft of merit. Although the Complaint alleged that the crime was committed "sometime in the month of April, 1997," the trial court did not err in convicting him of rape.

First, the *precise* time or date of the commission of an offense need not be alleged in the complaint or information, unless it is an essential element of the crime charged.[16] In rape, it is not.[17] Section 11 of Rule 110 of the Rules of Court provides:

"SEC. 11. *Date of the commission of the offense.* — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission."

Furthermore, *People v. Gianan*[18] explained as follows:

"It is settled that the time of the commission of the rape is not an element thereof, as this crime is defined in Art. 335 of the Revised Penal Code. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated therein, *i.e.*, (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. In accordance with Rule 110, §11, as long as it alleges that the offense was committed 'at any time as near to the actual date at which the offense was committed,' an information is sufficient. x x x.

x x x x x x x x x

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[16] *People v. Alvero*, 386 Phil. 181, 191-192, April 5, 2000; *People v. Bernaldez*, 294 SCRA 317, 327, August 17, 1998; *People v. Quiñones*, 222 SCRA 249, 254, May 18, 1993.

[17] *People v. Elpedes*, 350 SCRA 716, January 31, 2001; *People v. Marquez*, 347 SCRA 510, December 8, 2000; *People v. Alicante*, 388 Phil. 233, May 31, 2000; *People v. Magbanua*, 377 Phil. 750, December 3, 1999; *People v. Quiñones, supra.*

[18] 340 SCRA 477, September 15, 2000.

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"Indeed, this Court has held that the allegations that rapes were committed, 'before and until October 15, 1994,' 'sometime in the year 1991 and the days thereafter,' and 'on or about and sometime in the year 1998' constitute sufficient compliance with Rule 110, §11. In any event, even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during the trial and any objections based on this ground must be deemed waived as a result of accused-appellant's failure to object before arraignment. Accused-appellant's remedy was to move either for a bill of particulars of for the quashal of the information on the ground that it does not conform substantially to the prescribed form."[19]

The rationale for Section 6 of Rule 110 of the Rules of Court is to inform the accused of the nature and cause of the accusation.[20] This right has not been violated in the present case. Appellant's counsel took an active part in the trial by cross-examining the prosecution witnesses and presenting evidence for the defense. It is now too late in the day for appellant to claim that the Complaint was defective. Furthermore, the defense never objected to the presentation of the prosecution evidence proving that the offense had been committed in April 1997. It has not been shown that the testimony of the victim (to the effect that she had been raped during that month) caught appellant by surprise and thus made it difficult for him to defend himself properly.

Moreover, the Complaint states all the facts that, with sufficient definiteness and clarity, would fully apprise him of the nature and cause of the accusation against him, in compliance with his constitutional right to be so informed.

Second, appellant's reliance on *Dichao* is misplaced. The ruling of the Court therein is not applicable to the present case due to differences in the factual scenarios. In *People v. Magbanua*,[21] we ruled:

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[19] *Id.*, pp. 486-487, per Mendoza, *J.*

[20] *People v. Razonable*, 386 Phil. 771, April 12, 2000.

[21] 377 Phil. 750, December 3, 1999.

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"x x x A careful study of the *Dichao* case reveals that what was questioned therein was an order of the trial court sustaining a demurrer to an information on the ground that it failed to substantially conform to the prescribed form when it did not allege the time of the commission of the offense with definiteness. The information therein stated that the sexual intercourse occurred '[o]n or about and during the interval between October, 1910, to August, 1912,' which statement of time the Court described as 'x x x so indefinite and uncertain that it does not give the accused the information required by law x x x' and the 'x x x opportunity to prepare his defense x x x.' The lower court in allowing the demurrer authorized the dismissal of the case against the accused herein. The Court upheld the order of the trial court. x x x."[22]

The accused in *Dichao* submitted, within the prescribed time, a Motion to quash the Information. In the present case, however, no such motion was ever filed by appellant before the trial court. As he never raised any objection to the sufficiency of the Complaint, he is thus deemed to have waived whatever formal defect it had.[23]

To repeat, the Complaint alleges that the rape was committed "sometime in the month of April, 1997." This is a period that displays definiteness and certainty, unlike in *Dichao* in which the time of the commission of the crime, as stated in the Information, was too indefinite — "on or about and during the interval between October, 1910, to August, 1912." Two years was too long an interval that it was extremely difficult for the accused to plead alibi as a defense. Thus, the Court was impelled in that case to declare thus:

"In the case before us the statement of the time when the crime is alleged to have been committed is so indefinite and uncertain that it does not give the accused the information required by law. To allege in an information that the accused committed rape on a certain girl between October, 1910, and August, 1912, is too indefinite to give the accused an opportunity to prepare his defense, and that

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[22] *People v. Magbanua, supra*, p. 731, per Kapunan, *J.*

[23] *People v. Razonable, supra.*

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indefiniteness is not cured by setting out the date when a child was born as a result of such crime. x x x."[24]

Third, appellant did not raise before the trial court any objection to the alleged insufficiency of the Complaint. Consequently, he is deemed to have waived whatever objections he had, and he cannot now seek affirmative relief.[25]

Objections as to matters of form or substance in the complaint or information cannot be made for the first time on appeal.[26] The remedy available, which appellant did not pursue before the RTC, was to move either for a bill of particulars[27] in order to be properly informed of the exact date of the alleged rape; or for the quashal[28] of the Complaint on the ground that it did not conform substantially to the prescribed form.

Second Issue:
Relationship

Appellant contends that the trial court erred in appreciating his relationship with Stephanie as a qualifying circumstance and consequently imposing upon him the death penalty. Since his being her uncle was not alleged in the Complaint, the relationship should not have been used by the trial court to qualify the crime.

We agree.

It must be noted that the rape was committed prior to the effectivity of RA No. 8353, otherwise known as "The Anti-Rape Law of 1997." Applicable then is the old provision — Section 11 of RA No. 7659, amending Article 335 of the Revised Penal Code — which states in part:

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[24] *United States v. Javier Dichao, supra*, p. 426, per Moreland, *J.*

[25] *People v. Elpedes, supra.*

[26] *Id.; People v. Marquez, supra; People v. Razonable, supra.*

[27] *Ibid.*

[28] *People v. Gianan, supra; People v. Razonable, supra.*

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

Art. 335. *When and how rape is committed.* —

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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim."

Indeed, the death penalty cannot be imposed upon the perpetrator, if his relationship with the victim is not duly alleged in the complaint or information.[29] "If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the information, *i.e.*, that he is 'a relative by consanguinity or affinity [as the case may be] within the third civil degree.'"[30] Both minority and actual relationship must be alleged and proved; if not, a conviction for rape in its qualified form will be barred.[31] In the present case, while the minority of the victim was properly alleged in the Complaint, her relationship with appellant was not specifically stated therein.

We are convinced that appellant raped the complainant. We do not doubt the trial court's assessment of the evidence or appellant's culpability for the crime charged.

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[29] *People v. Daganio*, 374 SCRA 365, January 23, 2002; *People v. Dizon*, 419 Phil. 703, October 17, 2001; *People v. Labayne*, 357 SCRA 184, April 20, 2001.

[30] *People v. Esperas*, GR No. 128109, November 18, 2003, pp. 22-23, per Panganiban, *J.*; citing *People v. Esperanza*, GR Nos. 139217-24, June 27, 2003, p. 16, per Davide, *CJ.*

[31] *People v. Labayne, supra.*

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It is doctrinal that the competence and the credibility of witnesses are best determined by the trial court because of its unique opportunity to observe their deportment while testifying.[32] Likewise, well-settled is the rule that when a woman — more so when she is a minor — says she has been raped, she says in effect all that is required to prove the ravishment.[33] Binding and conclusive on this Court are the trial court's factual findings, absent any arbitrariness or oversight of facts or circumstances of weight and substance.[34] In the present case, the court *a quo* gave more credence to the positive testimony of the victim, and we find no reason to set aside its factual findings.

The victim testified how appellant had defiled her on that fateful night:

"Q Will you please tell us how Avelino Latag rape[d] you?
A He raped me in the evening of April 1997, sir.

Q In what exact place in your house were you raped by Avelino Latag?
A At the place where he was lying down, sir.

x x x x x x x x x

Q Now, you said that you were raped by this Avelino Latag, will you please tell the court how he [did it to] you?
A He undressed me, thereafter he also remove[d] his clothes, after that he inserted his private organ to my private organ, sir.

Q By the way who undressed you?
A Avelino Latag, sir.

x x x x x x x x x

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[32] *People v. Esperas, supra*; *People v. Gomez*, 419 Phil. 732, October 17, 2001.

[33] *People v. Balas*, 372 SCRA 80, December 11, 2001; *People v. Manayan*, 368 SCRA 300, October 25, 2001; *People v. Tagaylo*, 345 SCRA 284, November 20, 2000.

[34] *People v. Obordo*, 382 SCRA 98, May 9, 2002; *People v. Bertulfo*, 381 SCRA 762, May 7, 2002; *People v. Sanchez*, 375 SCRA 355, January 31, 2002; *People v. Abella*, 339 SCRA 129, August 28, 2000.

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Q After removing your short and panty and after Avelino Latag also removed his short and brief what else did he do, if any?
A He inserted his private organ into my private organ, sir.

Q Will you please tell the Honorable Court the position of Avelino Latag in relation to you when he inserted his private organ into your private organ?
A He laid me down and he also lie[d] down, sir.

Q Where was he, was he on top of you while inserting his private part to your private part?
A Yes[,] sir.

Q What were you doing while he was on top of you and inserting his private part into your vagina?
A I was removing it and whenever I was removing it he boxed me, sir.

Q You said that you were removing something whenever you removed it you were being boxed by Avelino Latag[,] what was that something that you were removing?
A His private organ which was inserted into my private organ, sir.

x x x x x x x x x

Q How did you come to know that it was inserted into your private part?
A Because I felt pain, sir.

Q What was the cause of that [pain]?
A The inside of my vagina was painful, sir.

Q Why was it painful?
A I felt pain because he inserted his private organ into my private organ, sir.

Q How long did Avelino Latag stay on top of you and inserted his private part into your private part?
A Only one (1) minute, sir.

Q Did you not shout when he stayed on top of you and inserted his private part into your private part?
A No, sir.

Q Why?
A Whenever I shout[ed] he slapped me, sir."[35]

[35] TSN, November 4, 1997, pp. 14-21.

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Civil Liability

We likewise modify the civil liability imposed by the RTC upon appellant. In line with prevailing jurisprudence, the amount of ₱75,000 indemnity *ex delicto* should be reduced to ₱50,000[36] because he is guilty only of simple, not qualified, rape. The amount of ₱75,000 is awarded as indemnity *ex delicto* only if the crime of rape is qualified by any of the circumstances under which the death penalty is authorized by applicable laws.[37]

On other hand, the award of ₱10,000 as moral damages should be increased to ₱50,000.[38] Likewise, the increase of the amount of exemplary damages from ₱5,000 to ₱25,000[39] is proper, even if the relationship of appellant with the victim was not alleged in the Complaint. Since the prosecution was able to give, during the trial, ample proof of their relationship, this *civil* liability has sufficient basis.[40]

WHEREFORE, the May 10, 1999 Decision of the Regional Trial Court (RTC) of Lipa City, Branch 12, finding appellant guilty of qualified rape, is ***MODIFIED***. He is found ***GUILTY*** of ***SIMPLE RAPE*** only and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Furthermore, he is ordered to pay the victim indemnity *ex delicto* of ₱50,000, moral damages of ₱50,000 and exemplary damages of ₱25,000. No pronouncement as to costs.

SO ORDERED.

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[36] *People v. Esperas, supra; People v. Garcia*, 341 SCRA 502, September 29, 2000; *People v. Antonio*, 333 SCRA 201, June 8, 2000; *People v. Rafales*, 379 Phil. 981, January 21, 2000.

[37] *People v. Canonigo*, 337 SCRA 310, August 4, 2000.

[38] *People v. Esperas, supra; People v. Baldosa*, 381 SCRA 712, May 7, 2002; *People v. Arofo*, 380 SCRA 663, April 11, 2002; *People v. Dumanon*, 348 SCRA 461, December 18, 2000.

[39] *People v. Esperas, supra; People v. Villanueva*, GR Nos. 146464-67, November 15, 2002; *People v. Barcelon Jr.*, GR No. 144308, September 24, 2002; *People v. Rodavia*, 376 SCRA 320, February 6, 2002; *People v. Francisco*, 351 SCRA 351, February 7, 2001.

[40] *People v. Lachica*, 382 SCRA 162, May 9, 2002.

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

THIRD DIVISION

[G.R. No. 141332. December 11, 2003]

LIGAYA S. NOVICIO, *petitioner, vs.* **ALMA AGGABAO,** *respondent.*

SYNOPSIS

Petitioner, stockholder and treasurer of Philippine International Life Insurance Company (Philinterlife), wrote a letter informing banks in which Philinterlife maintained its corporate accounts of the CA's resolution in a separate action for annulment of sale of the company's shares, restraining several stockholders of Philinterlife, including respondent Aggabao, from exercising their rights as shareholders of Philinterlife and of the corresponding change of bank signatories in their corporate accounts. Respondent filed three (3) counts of libel against the petitioner. The informations were identically worded except as to the names of the depository banks. Petitioner filed a motion to quash the informations, alleging that the facts charged therein did not constitute libel. The trial court and the CA denied her motion.

On *certiorari*, the Supreme Court ordered the dismissal of the defective informations which did not constitute libel. Except for the element of identification, the informations filed against petitioner failed to establish the three other elements of libel, namely: it must be defamatory; it must be malicious; and it must be given publicity. Petitioner's letter was clearly a private communication made in the performance of her duty as the treasurer of Philinterlife informing the depository banks of the