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[G.R. Nos. 140388-91. November 11, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERNESTO ALVAREZ @ "GADAY,"** *appellant.*

SYNOPSIS

The penalty of death was imposed upon appellant after the Regional Trial Court of Davao City found him guilty of the crime of rape committed against Lingilyn L. Lacno, then 11 years old. Hence, this automatic review where appellant insisted that his guilt was not proved beyond reasonable doubt.

In affirming the finding of the trial court that appellant was guilty of rape, the Supreme Court held that: (1) the victim could not have made a mistake in identifying the appellant as her rapist, as the latter lived in the neighborhood and was known to her for many years prior to the rape. In the face of his positive identification by the victim, appellant's self-serving denial and alibi cannot prevail; (2) appellant failed to prove that it was physically impossible for him to be at the *locus criminis* at the time of the incident; (3) the victim's odd behavior and minor lapses during trial do not *per se* destroy her credibility. Errorless recollection of a traumatic and agonizing incident cannot be expected of a witness when she is recounting details of an experience as humiliating and painful as rape; (4) the victim's inability to remember the birth year of her mother should not at all affect her credibility. It is not unnatural for children to be unaware of the exact birth year of their mother since what is usually given attention is only the birth date; (5) the imputation of ill-motive to the victim and her mother was only a last ditch effort to save the day for the appellant; (6) the absence of fresh lacerations does not preclude a finding of rape nor does the absence of spermatozoa negate the commission of rape because neither of the two is an indispensable element of the crime of rape. However, the penalty was modified by the Court. Since the Information failed to allege any qualifying circumstance, which would justify the imposition of the death penalty, the Court found the appellant guilty only of simple rape, punishable by *reclusion perpetua.*

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS WITH RESPECT THERETO ACCORDED THE HIGHEST RESPECT AND EVEN FINALITY.**— This Court is again tasked to review a case involving the death penalty. Corollarily, the court is once more confronted with the question of whom to believe — the victim or the appellant. The process of ferreting out the truth from the conflicting claims of witnesses becomes even more tedious in rape for it is usually only the accused and the complainant who can normally give decisive testimony in the case. It is precisely for this reason that, when the issue is the evaluation of the testimony of a witness or his credibility, this Court accords the highest respect and even finality to the findings of the trial court, absent any showing that it committed palpable mistake, misappreciation of facts or grave abuse of discretion. It is the court *a quo* which has the unique advantage of observing first-hand the facial expressions, gestures and the tone of voice of a witness while testifying. This case is no exception, hence the Court finds no cogent reason to depart from the rule.

2. **ID.; ID.; ID.; ERRORLESS RECOLLECTION OF A TRAUMATIC AND AGONIZING INCIDENT CANNOT BE EXPECTED OF A WITNESS WHEN SHE IS RECOUNTING DETAILS OF AN EXPERIENCE AS HUMILIATING AND PAINFUL AS RAPE.**— Surely then, we cannot expect a halfwit barrio girl whose chastity was defiled to become instantly smart just because she was recounting her harrowing experience. Lingilyn's odd behavior and minor lapses during trial should not *per se* destroy her credibility. Errorless recollection of a traumatic and agonizing incident cannot be expected of a witness when she is recounting details of an experience as humiliating and painful as rape. We have held that a rapist should not expect the hapless object of his lechery to have the memory of an elephant and the cold precision of a mathematician.

3. **ID.; ID.; ID.; ACCUSED MAY BE CONVICTED ON THE BASIS OF RAPE VICTIM'S TESTIMONY IF CREDIBLE.**— What is truly decisive in this case is that she was able to identify appellant as her rapist. When a victim of rape says that she has

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been violated, she says in effect all that is necessary to show that rape has been committed against her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.

4. **ID.; ID.; ID.; NOT AFFECTED BY INABILITY OF RAPE VICTIM TO REMEMBER THE EXACT BIRTH YEAR OF HER MOTHER.**— The victim's inability to remember the birth year of her mother should not at all affect her credibility. It is not unnatural for children to be unaware of the exact birth year of their mother since what is usually given attention is only the birth date. In fact, even children who are supposedly more learned cannot readily recall their respective parent's exact birth year. Furthermore, the fact that the victim was able to remember the dates of the alleged rape incidents in 1994 and 1995 was not at all improbable. It was well within the realm of possibility that the acts of rape were so revolting and shocking that the memory of those terrible incidents continued to haunt the victim long after.

5. **ID.; ID.; ID.; NO MOTHER WOULD DRAW HER YOUNG DAUGHTER INTO A RAPE TRIAL, WITH ALL ITS *CONCOMITANT EMBARASSMENT AND SCANDAL* IF SHE WERE NOT MOTIVATED SOLELY BY A DESIRE TO HAVE THE CULPRIT APPREHENDED AND PUNISHED; CASE AT BAR.**— The contention of the appellant that the victim had an ill motive to falsely testify against him (she allegedly admitted during trial that she was angry with the appellant) must also fail. We find the imputed motive to be unworthy of belief. While the victim during trial admitted that she was indeed angry at appellant, the reason for such outrage was clearly stated during her direct and cross-examinations. It was due to the fact that he had raped her. Nowhere in the records does it appear nor was it ever admitted that the victim or her mother was angry over his cohabitation with his live-in partner, the victim's grandmother. In fact, the cohabitation between appellant and the victim's grandmother had been going on for several years prior to the rape incidents with all the members of the family tolerating the relationship. This fact could be gleaned from the declarations made by appellant and his live-in partner, the victim's grandmother, admitting that both of them enjoyed a good relationship with the family and they did not know of any ill motive which could have impelled

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the victim to testify falsely against him. It is therefore clear to us that appellant's imputation of ill-motive to the victim and her mother was only a last ditch effort to save the day for him. Furthermore, it is highly inconceivable to this Court how a young barrio girl who was never alleged nor proven to have loose morals could concoct a story of defloration, suffer the embarrassment of recounting the rape in a public trial and open herself to pernicious gossip and speculation regarding her and her family, just to be able to express her disapproval of her grandmother's cohabitation with a man. Moreover, we also believe that no mother would draw her young daughter into a rape trial, with all its concomitant embarrassment and public scandal, if she were not motivated solely by a desire to have the culprit apprehended and punished.

6. **ID.; ID.; DEFENSES OF ALIBI AND DENIAL; CANNOT PREVAIL OVER ACCUSED'S POSITIVE IDENTIFICATION BY THE VICTIM.**— The victim could not have made a mistake in identifying the appellant as her rapist, as the latter lived in her neighborhood and was known to her for many years prior to the rape. In the face of his positive identification by the victim, appellant's self-serving denial and alibi cannot prevail.

7. **ID.; ID.; ID.; CONSIDERED SELF-SERVING AND DESERVING OF NO EVIDENTIARY VALUE UNLESS BUTTRESSED BY STRONG EVIDENCE OF INNOCENCE.**— Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. To be believed, these weak defenses must be buttressed by strong evidence of innocence, otherwise they are considered self-serving and deserving of no evidentiary value.

8. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST PROVE PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE OR ITS IMMEDIATE VICINITY AT THE APPROXIMATE TIME OF ITS COMMISSION; CASE AT BAR.**— Moreover, for the defense of alibi to prosper, appellant must prove not only that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the crime scene or its immediate vicinity at the approximate time of its commission. The records of the case are replete with testimonies of witnesses from both sides,

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establishing the fact that the house of the victim was not far from the house of the appellant, that is, only about 100 meters away. In fact, even the grandmother of the victim, the live-in partner of appellant and a defense witness, testified in court that their house was not far from that of the victim and that, due to this proximity, she was able to hear the shouting therefrom that particular night. Prescinding from the above, we conclude that, due to the proximity of the two houses to each other, it was not physically impossible for the appellant to be at the *locus criminis* at the time of the incident.

9. **CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF SPERMATOZOA.**— This Court is not oblivious of the fact that there was an old healed laceration found in her organ during the medical examination, despite the fact that she was examined just one day after her alleged rape. In the past, we have ruled that the absence of fresh lacerations does not preclude a finding of rape nor does the absence of spermatozoa negate the commission of rape because neither of the two is an indispensable element of the crime of rape.

10. **ID.; ID.; DEATH PENALTY LAW; QUALIFYING CIRCUMSTANCE MUST BE SPECIFICALLY ALLEGED IN THE INFORMATION TO WARRANT IMPOSITION OF DEATH PENALTY.**— In the case at bar, it is apparent that the Information in Criminal Case No. 39,053-97, failed to allege any of the attendant circumstance enumerated in Section 11 of RA 7659, also known as the Death Penalty Law, which would justify the imposition of the death penalty on appellant. In a long line of cases, this Court has consistently ruled that in cases involving the imposition of the death penalty, the information must specifically allege the qualifying circumstance which will qualify the penalty to death. It is an oft-repeated rule that qualifying circumstances which increase the penalty by degree rather than the mere period of the penalty must be properly pleaded in the information, consistent with the constitutional right of the accused to be informed of the charges against him. Failure to do so would be a denial of his basic constitutional right and consequently be a denial of due process. One who is charged with simple rape cannot therefore be convicted of rape in its qualified form.

11. **ID.; ID.; ID.; IMPOSITION OF DEATH PENALTY NOT PROPER WHEN OFFENDER IS THE COMMON-LAW**

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SPOUSE OF THE VICTIM'S GRANDPARENT.— It should be stressed that under RA 7659, the crime of rape is qualified if committed under any of the following attendant circumstances: 1. when the victim is *under eighteen (18) years of age and* the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the *common-law spouse of the parent of the victim.* x x x. While the decision did not explain why it imposed the death penalty on appellant, it may be opined that the trial court erroneously imposed the death penalty because the victim was a minor and appellant was the live-in partner of the victim's grandmother. The court *a quo* must have been under the impression that the aforementioned situation was still within the scope of the abovementioned circumstance. The trial court misapplied the pertinent provision of the law, specifically Section 11(1) of RA 7659, because what is contemplated by the law is the common-law spouse of the victim's *parent.* In the case at bar, appellant was not the common-law spouse of the victim's parent but of her *grandparent.*

12. **ID.; ID.; ID.; IMPOSITION OF DEATH PENALTY UNWARRANTED WHERE INFORMATIONS FAILED TO ALLEGE ANY QUALIFYING CIRCUMSTANCE.**— This Court holds that the trial court did not err in finding appellant Ernesto Alvarez guilty beyond reasonable doubt of rape. However, the penalty imposed must be modified. Since the Informations, as earlier mentioned, failed to allege any qualifying circumstance which would justify the imposition of the death penalty, appellant must be held guilty only of simple, not qualified, rape. Consequently, the correct penalty imposable on him is *reclusion perpetua.*

13. **CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY; MORAL DAMAGES; AUTOMATICALLY GRANTED IN RAPE CASES WITHOUT NEED OF PLEADING OR PROOF OTHER THAN THE COMMISSION OF THE CRIME.**— Consistent with prevailing jurisprudence on simple rape, the amount of ₱50,000 as civil indemnity was correctly awarded by the trial court. However, in addition to the civil indemnity, the court *a quo* should have granted moral damages too. Conformably with existing jurisprudence, moral damages are automatically granted in rape cases without need of pleading or proof other than the commission of the crime, because it

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is assumed that a rape victim actually suffered moral injuries entitling her to such an award.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CORONA, *J.*:

For automatic review before this Court is the July 28, 1999 *Decision*[1] *of the Regional Trial Court, Branch 15 of Davao* City, finding appellant Ernesto Alvarez *y* Sola *alias* "Gaday" guilty of the crime of rape, imposing upon him the penalty of death and ordering him to pay the offended party ₱50,000 as civil indemnity.

Appellant was charged with four counts of rape allegedly committed on January 9, 1994 (docketed as Criminal Case No. 39,051), February 17, 1995 (as Criminal Case No. 39,054), June 8, 1995 (as Criminal Case No. 39,052) and June 18, 1997 (as Criminal Case No. 39,053). The Informations against herein accused-appellant, which were similarly worded (except the dates), read as follows:

That on or about June 18, 1997 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with Lingilyn L. Lacno, 11 years of age against her will.[2]

Contrary to law.

On July 18, 1997, appellant, during his arraignment, pleaded not guilty to the four charges against him. Trial thereafter ensued.

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[1] Penned by Judge Jesus V. Quitain; *Rollo*, pp. 69-83.

[2] Information dated June 20, 1997. Records, p. 1.

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Appellant Ernesto Alvarez was the live-in partner of Esquila Lim, the grandmother of Lingilyn Lacno, the rape victim herein. Appellant and the latter's grandmother started living together in 1983.

Lingilyn Lacno, the rape victim, testified that, on the night of June 18, 1997, at about 8:00 p.m., she together with her two younger siblings were asleep in their house located on top of a hill at Colosas, Paquibato District, Davao City. Their mother, Virginia Lacno, the daughter of appellant's live-in partner, left them at around 6:00 p.m. to purchase sugar and coffee.[3]

As the victim lay on the floor sleeping beside her siblings Kevin and Genelle, she was suddenly awakened when someone mounted her and covered her mouth with a handkerchief. When she opened her eyes, she was surprised to see that it was herein appellant Ernesto Alvarez, the live-in partner of her grandmother, who was on top of her.

At that time, appellant was armed with a bolo. He ordered the victim to remove her shorts and, with the use of the bolo, cut her panty. He mashed the victim's breasts, removed his pants and forcibly inserted his penis into vagina. The victim felt excruciating pain.[4]

After the sexual intercourse with the victim, appellant put on his pants and threatened to kill Lingilyn and her relatives should she reveal the rape to anyone.[5]

At around 9:30 p.m., Virginia Lacno, the victim's mother arrived home. Upon her return, she noticed that the door of their house was open and that the rope which bound the bamboo door to the door jamb had been cut. She curiously approached her daughter to ask why the door was open. It was at that juncture that her daughter burst into tears and confided that

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[3] TSN, December 22, 1997, p. 75.

[4] TSN, September 30, 1997, p. 44.

[5] TSN, September 30, 1997, p. 14.

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she has been raped earlier that night and that it was appellant who raped her. [6]

Upon learning of her daughter's plight, the victim's mother went to Modesto Cassanova, an uncle of Lingilyn and told him about the rape. They sought the help of a *barangay kagawad* and complained to the authorities. That same night, appellant was arrested by the police in his house which was about 100 meters away from the victim's.

The following day, the victim submitted herself to a medical examination and was examined by a certain Dr. Danilo Ledesma, a physician based in Davao City. The examination revealed a four-month-old hymenal laceration.[7] During his direct examination, the doctor declared that such laceration could have been caused by an insertion of a hard object. He further disclosed that the victim, during her physical examination, told him that it was appellant Alvarez, the live-in partner of her grandmother, who raped her a day before her examination and that she had been repeatedly raped by him from January 1997 to June 18, 1997.[8]

On the other hand, appellant proffered the defenses of denial and alibi. During his trial, he denied raping the victim and claimed that, on the night of June 18, 1997, at around 6:00 p.m., Virginia Lacno, the victim's mother and daughter of his live-in partner, arrived in their house and had a drinking spree with them. He also alleged that Virginia got drunk that night after drinking a gallon of coconut wine, locally known as *tuba*, and left their house rather late at around 9:00 p.m.[9]

On cross-examination, appellant claimed that he and the victim's mother (Virginia) were not in good terms and that she hated him because of his cohabitation with the latter's mother. He

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[6] TSN, December 22, 1997, p. 70 and p. 84.

[7] TSN, August 26, 1997, p. 3.

[8] TSN, August 26, 1997, pp. 2-3.

[9] TSN, August 18, 1998, p. 96.

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also declared that a day before the alleged rape incident, Virginia quarreled with her mother, his live-in partner.[10]

The defense also presented Esquila Lim, the live-in partner of appellant and grandmother of the victim to corroborate appellant's claim that the victim's mother had a drinking session with them that fateful night until 9:00 p.m.[11] She testified that Virginia's house where the alleged rape incident happened was near their house (about 100 meters away), thus she knew what transpired that night. To prove her point, she testified that on that particular night, she heard her granddaughter's screams from their house and that she responded by going there. While in the victim's residence, she allegedly heard her daughter Virginia asking Lingilyn who the rapist was and, although the victim mentioned the name of her live-in partner, she did not believe her. [12] She further claimed that she and appellant had a good relationship with all the members of her family and that she was not convinced that it was appellant who raped the victim. This was because, at the time of the alleged rape, the three of them were together drinking coconut wine. [13]

The trial court was not convinced. On July 28, 1999, it rendered the assailed judgment:

> Wherefore, the guilt of the accused having been proven beyond reasonable doubt, in Criminal Case No. 39,053-97 Ernesto Alvarez is hereby sentenced to death. He shall indemnify Lingilyn Lacno the sum of Fifty Thousand Pesos.
>
> He is acquitted in Criminal Case No. 39,051-97, Criminal Case No. 39,052-97 and Criminal Case No. 39,054-97 because there is no evidence as to how the alleged crimes were committed.
>
> SO ORDERED.[14]

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[10] TSN, January 12, 1999, pp. 116-117.

[11] TSN, August 18, 1998, p. 102.

[12] TSN, August 18, 1998, p. 97.

[13] TSN, August 18, 1998, pp. 98-99.

[14] Penned by Judge Jesus V. Quitain, Regional Trial Court, Branch 15, Davao City.

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Hence, this automatic review before us.

In his Brief,[15] appellant assigns the following errors, to wit:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED OF RAPE IN CRIMINAL CASE NO. 39,053-97 DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

EVEN ASSUMING THAT ACCUSED IS TRULY GUILTY OF THE CRIME OF RAPE, NONETHELESS, THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH.

Before this Court, appellant Ernesto Alvarez argues that the victim's accusation of rape should not be received with precipitate credulity. He insists that, in the case at bar, the record is replete with a lot of loose ends which put in serious doubt the charge of rape against him. He assails the victim's general demeanor while testifying, lamenting that it was strikingly noticeable that the victim, while testifying in court, appeared unaffected and even smiled several times.[16]

Appellant also capitalizes on the victim's incapacity to remember dates. He asserts that it was intriguing how the complainant could readily recall the dates in 1994 and 1995, when she was allegedly abused by the appellant, yet remember with difficulty her birthday or birth year of her mother. Moreover, he asserts that it was very suspicious that Lingilyn, his alleged rape victim, kept silent or refused to answer many questions that were asked of her and was unable to give details of how she was raped, thus giving a hint of a concocted story.

Appellant Ernesto Alvarez also points out that the result of the medical examination conducted on the victim a day after the alleged rape incident belied her claim that she was raped on

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[15] Appellant's Brief, *Rollo*, p. 58.

[16] Appellant's Brief, *Rollo*, p. 63.

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June 18, 1997, since the medical report indicated that the laceration in her hymen was about four months old. [17] Moreover, the report noted the absence of spermatozoa which further negated the victim's allegation of rape.

Appellant also posits the view that the alleged rape victim had a motive to testify falsely against him. The victim and her mother Virginia, the daughter of appellant's live-in partner, were both angry at him due to his cohabitation with the grandmother.[18]

In sum, appellant insists that the prosecution failed to discharge its burden of proving rape since the evidence as presented clearly showed the charges were mere fabrications.

This Court is again tasked to review a case involving the death penalty. Corollarily, the court is once more confronted with the question of whom to believe — the victim or the appellant. The process of ferreting out the truth from the conflicting claims of witnesses becomes even more tedious in rape for it is usually only the accused and the complainant who can normally give decisive testimony in the case.[19]

It is precisely for this reason that, when the issue is the evaluation of the testimony of a witness or his credibility, this Court accords the highest respect and even finality to the findings of the trial court, absent any showing that it committed palpable mistake, misappreciation of facts or grave abuse of discretion. It is the court *a quo* which has the unique advantage of observing first-hand the facial expressions, gestures and the tone of voice of a witness while testifying. This case is no exception, hence the Court finds no cogent reason to depart from the rule.

The trial court gave credence to the testimony of the minor victim rather than that of the appellant. The defenses of denial

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[17] Medical Report, Records. p. 5.

[18] *Rollo*, p. 64.

[19] *People vs. Samson Bartolome y Espiritu*, G.R. No. 138365, April 16, 2002.

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and alibi were disregarded since the perpetrator was positively identified by the victim herself.

We agree with the trial court.

The victim could not have made a mistake in identifying the appellant as her rapist, as the latter lived in her neighborhood and was known to her for many years prior to the rape. In the face of his positive identification by the victim, appellant's self-serving denial and alibi cannot prevail.

Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. To be believed, these weak defenses must be buttressed by strong evidence of innocence, otherwise they are considered self-serving and deserving of no evidentiary value. Moreover, for the defense of alibi to prosper, appellant must prove not only that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the crime scene or its immediate vicinity at the approximate time of its commission.

The records of the case are replete with testimonies of witnesses from both sides, establishing the fact that the house of the victim was not far from the house of the appellant, that is, only about 100 meters away. [20] In fact, even the grandmother of the victim, the live-in partner of appellant and a defense witness, testified in court that their house was not far from that of the victim and *that, due to this proximity, she was able to hear the shouting* therefrom that particular night.[21]

Prescinding from the above, we conclude that, due to the proximity of the two houses to each other, it was not physically impossible for the appellant to be at the *locus criminis* at the time of the incident.

Appellant insists that the testimony of the victim should not be given probative value as it failed to recount the details of the

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[20] TSN, January 21, 1998, p. 91, dated August 18, 1998, p. 103, dated January 12, 1999, p. 108.

[21] TSN, August 18, 1998, p. 97.

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alleged rape and that her general demeanor while testifying should be taken against her. Her actuations were allegedly not reflective of a teenage girl forcibly stripped of her honor.

Appellant's argument has no merit.

We have carefully gone over the records and find no reason to disturb the trial court's finding that it was appellant who raped Lingilyn. The observation of the Solicitor General was very enlightening:

> Lingilyn's demeanor during the trial of the case may have seemed strange as she was observed to be "unaffected" and occasionally "smiling" during the moments she was being made to describe how appellant had raped her. She was likewise observed to have a difficult time describing the details of the alleged rape and remembering her date of birth, the year her mother was born and the correct ages of her younger brothers. *However, Lingilyn's odd behavior and memory during the trial should not be taken against her, nor render her testimony incredible.*
>
> It must be pointed out that Lingilyn, despite the fact that she was fifteen years of age, *had the mental capacity of a feeble-minded child.* The public prosecutor did not present any psychologist or psychiatrist to confirm this observation but it is very clear from the records that Lingilyn, though she was not legally declared a mental retardate, *came across as a halfwit and as someone slightly mentally impaired.* The record reads:
>
> xxx xxx xxx
>
> Q. *How old were you when you became grade 1?*
> A. *10 years old.*
>
> Q. And since grade 1 you continuously studied without stopping until this year?
> A. Yes, sir.
>
> Q. So you are now 15 years old?
> A. Yes, sir.
>
> Q. So you are not telling the truth when you said you are only grade 3 because from 10 years old you started grade I continuously up to now you should be grade 4?
> A. *I failed.*
>
> (Italics Ours).

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Surely then, we cannot expect a halfwit barrio girl whose chastity was defiled to become instantly smart just because she was recounting her harrowing experience. Lingilyn's odd behavior and minor lapses during trial should not *per se* destroy her credibility. Errorless recollection of a traumatic and agonizing incident cannot be expected of a witness when she is recounting details of an experience as humiliating and painful as rape.[22] We have held that a rapist should not expect the hapless object of his lechery to have the memory of an elephant and the cold precision of a mathematician.[23]

What is truly decisive in this case is that she was able to identify appellant as her rapist. When a victim of rape says that she has been violated, she says in effect all that is necessary to show that rape has been committed against her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[24]

The victim testified in a direct and categorical manner. She recounted before the trial court the details of her terrifying experience on the night of June 18, 1997. On direct examination she testified:[25]

xxx xxx xxx

Q. Then what happened?
A. *He threatened me with a bolo.*

Q. You said awhile ago that you were sleeping?
A. Yes, sir.

Q. How were you awakened?
A. He covered my mouth?

Q. What else did he do to you?
A. *Then he raped me.*

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[22] *People vs. Bayona*, 327 SCRA 190 [2000].

[23] *People vs. Danio Regala*, G.R. No. 140995, August 30, 2001.

[24] *People vs. Dedace*, 328 SCRA 679 [2000].

[25] TSN dated September 30, 1997, pp. 11-17.

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Q. Did you not struggle, did you not resist?

ATTY. ALONZO:

Leading, Your Honor. Objection.

COURT:

Sustained.

PROS. VILLAFUERTE:

Q. Why did you allow him to molest you?
A. *I resisted but I was not able to get away from him.*

Q. Why did you know that it was the accused, Ernesto Alvarez, who was the culprit?
A. He is the person I saw.

Q. Did you not shout for help?
A. I tried to shout but he covered my mouth.

Q. *Your mouth was covered by what?*
A. Towel.

Q. Who covered your mouth with a towel?
A. *Ernesto Alvarez.*

Q. Is he in court today?
A. There.

xxx xxx xxx

Q. When his penis was already inside your vagina, what did he do?
A. He immediately threatened me not to talk about it.

Q. What else did he do?
A. That's all.

(Italic ours)

Moreover, the victim's truthfulness even on cross-examination was evident:

ATTY. ALONZO:

Q. You did not remove the handkerchief placed on your mouth when your hands were not tied?
A. I cannot because he held it.

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Q. How about when he took off your short at the same time cut off your panty you mean to say you did not anymore move?
A. I moved.

Q. Can you move your hands at the time?
A. I cannot move my hands because he pinned it down with his hands.

Q. At the time he removed... you said at the same time he removed your panty you mean to say he did the pinning and removing of your panty at the same time?
A. Yes, sir.

Q. Then how did he remove your panty while your hands were pinned down by his hands, he used his feet?
A. No, sir.

Q. At the same time he already mounted you?
A. He had his pants on.

Q. You mean to say after removing your short and taking off your panty by using the bolo he stood up and took off his pants, is that correct?
A. Yes, sir.

Q. And then after that he put the bolo beside and mounted you?
A. Yes, sir.

Q. Did you see the person who mounted you?
A. Yes, sir.

Q. How did you feel, did you see his penis?
A. Yes, sir.

xxx xxx xxx

Q. After that did you hold his penis and put it in your vagina?
A. *No, sir. He was the one who forced it inside.*

Q. He did not have a hard time inserting it because it was already wet at the time?
A. *He forced it inside.*

xxx xxx xxx

Q. So you felt that his penis went inside you?
A. Yes, sir.

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Q. And you felt excited also?
A. No, sir.

Q. How about he?
A. (Silence).

Q. Now you said after inserting, you said you felt your vagina was penetrated by the penis of the accused, is that all you felt?
A. *I felt pain.*

The victim's inability to remember the birth year of her mother should not at all affect her credibility.[26] It is not unnatural for children to be unaware of the exact birth year of their mother since what is usually given attention is only the birth date. In fact, even children who are supposedly more learned cannot readily recall their respective parent's exact birth year. Furthermore, the fact that the victim was able to remember the dates of the alleged rape incidents in 1994 and 1995 was not at all improbable. It was well within the realm of possibility that the acts of rape were so revolting and shocking that the memory of those terrible incidents continued to haunt the victim long after.

The contention of the appellant that the victim had an ill motive to falsely testify against him (she allegedly admitted during trial that she was angry with the appellant) must also fail.

We find the imputed motive to be unworthy of belief. While the victim during trial admitted that she was indeed angry at appellant, the reason for such outrage was clearly stated during her direct and cross-examinations. It was due to the fact that he had raped her. Nowhere in the records does it appear nor was it ever admitted that the victim or her mother was angry over his cohabitation with his live-in partner, the victim's grandmother. In fact, the cohabitation between appellant and the victim's grandmother had been going on for several years prior to the rape incidents with all the members of the family

[26] *People vs. Babera*, 332 SCRA 257.

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tolerating the relationship. This fact could be gleaned from the declarations made by appellant and his live-in partner, the victim's grandmother, admitting that both of them enjoyed a good relationship with the family and they did not know of any ill-motive which could have impelled the victim to testify falsely against him.[27]

It is therefore clear to us that appellant's imputation of ill-motive to the victim and her mother was only a last ditch effort to save the day for him. Furthermore, it is highly inconceivable to this Court how a young barrio girl who was never alleged nor proven to have loose morals could concoct a story of defloration, suffer the embarrassment of recounting the rape in a public trial and open herself to pernicious gossip and speculation regarding her and her family, just to be able to express her disapproval of her grandmother's cohabitation with a man. Moreover, we also believe that no mother would draw her young daughter into a rape trial, with all its concomitant embarrassment and public scandal, if she were not motivated solely by a desire to have the culprit apprehended and punished.

This Court is not oblivious of the fact that there was an old healed laceration found in her organ during the medical examination, despite the fact that she was examined just one day after her alleged rape. In the past, we have ruled that the absence of fresh lacerations does not preclude a finding of rape[28] nor does the absence of spermatozoa negate the commission of rape because neither of the two is an indispensable element of the crime of rape.[29]

All told, this Court is convinced that the prosecution was able to prove the guilt of appellant beyond reasonable doubt and that the trial court was correct in finding him guilty of rape. Nonetheless, we do not agree with the penalty imposed upon him.

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[27] TSN, August 18, 1998, pp. 98-102; TSN, January 12, 1999, p. 115.

[28] *People vs. Pruna*, G.R. No. 138471, October 10, 2002.

[29] *People vs. Pablito Lundam*, G.R. No. 116437, March 3, 1997.

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Appellant in his Brief contends that the court *a quo* erred when it imposed upon him the supreme penalty of death as the information failed to allege any qualifying circumstance, which if duly proven, would justify the imposition of the death penalty.[30]

We find merit in appellant's argument.

The trial court erred in imposing the death penalty on appellant. It is to be noted that the decision of the trial court failed to explain why it imposed the death penalty on him.

In the case at bar, it is apparent that the Information in Criminal Case No. 39,053-97, failed to allege any of the attendant circumstance enumerated in Section 11 of RA 7659, also known as the Death Penalty Law, which would justify the imposition of the death penalty on appellant.

In a long line of cases, this Court has consistently ruled that in cases involving the imposition of the death penalty, the information must specifically allege the qualifying circumstance which will qualify the penalty to death. [31]

It is an oft-repeated rule that qualifying circumstances which increase the penalty by degree rather than the mere period of the penalty must be properly pleaded in the information, consistent with the constitutional right of the accused to be informed of the charges against him.[32] Failure to do so would be a denial of his basic constitutional right and consequently be a denial of due process. One who is charged with simple rape cannot therefore be convicted of rape in its qualified form.

It should be stressed that under RA 7659, the crime of rape is qualified if committed under any of the following attendant circumstances:

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[30] Appellant's Brief, *Rollo* pp. 65-66.

[31] *People vs. Armando Tagud, Sr.*, G.R. No. 140733, January 30, 2002: *People vs. Pablo Santos*, G.R. Nos. 138308-10, September 26, 2001; *People vs. Cornelio Supnad*, G.R. Nos. 133791-94, August 8, 2001.

[32] *People vs. Antonio O. Esurena*, G R. No. 142727, January 23, 2002; *People vs. Abaño*, G.R. No. 142728, January 23, 2002.

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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.*

xxx xxx xxx

While the decision, as earlier mentioned, did not explain why it imposed the death penalty on appellant, it may be opined that the trial court erroneously imposed the death penalty because the victim was a minor and appellant was the live-in partner of the victim's grandmother. The court *a quo* must have been under the impression that the aforementioned situation was still within the scope of the abovementioned circumstance.

The trial court misapplied the pertinent provision of the law, specifically Section 11(1) of RA 7659, because what is contemplated by the law is the common-law spouse of the victim's *parent*. In the case at bar, appellant was not the common-law spouse of the victim's parent but of her *grandparent*.

One final observation. The informations filed erroneously indicated the victim's age as eleven years old while the birth certificate, as well as the testimonies of the mother and the victim herself revealed that she was already fifteen years old at the time of the commission of the rape.

While this Court is aware of the mistake committed by the prosecutor in failing to allege the true age of the victim at the time of the commission of the crime, suffice it to say that this fact had no bearing on the culpability of nor on the penalty imposed on appellant. The appellant was found guilty and the penalty imposed on him was meted not because of her minority but on account of his having had sexual intercourse with the victim against her will, both elements being constitutive of the crime of rape.

In sum, this Court holds that the trial court did not err in finding appellant Ernesto Alvarez guilty beyond reasonable doubt of rape. However, the penalty imposed must be modified. Since the Informations, as earlier mentioned, failed to allege any

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qualifying circumstance which would justify the imposition of the death penalty, appellant must be held guilty only of simple, not qualified, rape. Consequently, the correct penalty imposable on him is *reclusion perpetua.*

Coming now to the award of damages, we note that the trial court, while awarding civil indemnity, failed to grant moral damages. Hence, a modification is also called for.

Consistent with prevailing jurisprudence on simple rape, the amount of ₱50,000 as civil indemnity was correctly awarded by the trial court.[33] However, in addition to the civil indemnity, the court *a quo* should have granted moral damages too. Conformably with existing jurisprudence, moral damages are automatically granted in rape cases without need of pleading or proof other than the commission of the crime, because it is assumed that a rape victim actually suffered moral injuries entitling her to such an award.[34]

WHEREFORE, the judgment of the court *a quo* finding appellant Ernesto Alvarez *alias* Gaday, guilty of rape in Criminal Case No. 39,053-97 is *AFFIRMED* with *MODIFICATIONS*. Appellant is found guilty of simple rape and is sentenced to *reclusion perpetua* and to pay the victim ₱50,000 as civil indemnity. He is likewise ordered to pay the victim Lingilyn Lacno ₱50,000 as moral damages in addition to the civil indemnity imposed by the trial court.

SO ORDERED.

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

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[33] *People vs. Jaime Gonzales*, G.R. No. 140676, July 31, 2002; *People vs. Tagud, Sr.*, G.R. No. 140733, January 30, 2002.

[34] *People vs. Jaime Gonzales*, G.R. No. 140676, July 31, 2002; *People vs. Lor*, G.R. No. 133190, July 19, 2001; *People vs. Ugang*, G.R. No. 144036, May 7, 2002.