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[G.R. Nos. 140439-40. June 18, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELIX HERMOSA,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty of incestuous rape and sentenced to two death penalties. Hence, this appeal.

The defense of bare denial proffered by appellant cannot outweigh the positive and consistent testimony of complainant. The prosecution, with testimonial and medical evidence, effectively discharged its burden of proving appellant's guilt beyond reasonable doubt. Nevertheless, appellant can only be convicted of two counts of simple rape, each of which merits the penalty of *reclusion perpetua*. Although the informations alleged that complainant was "his (appellant's) 10-year-old daughter," this qualifying circumstance of minority to warrant the death penalty was not sufficiently proven.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, UPHELD.**— Well established is the rule that the credibility of the offended party's testimony is determinative of the outcome of rape cases for the reason that when an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof. In the prosecution of rape cases, the offended party is, more often than not, the only one available to prove directly the commission of rape. In the present case, the defense of bare denial proffered by appellant cannot outweigh the positive and consistent testimony of complainant. The prosecution with testimonial and medical evidence effectively discharged its burden of proving appellant's guilt beyond reasonable doubt. By itself alone, Jennifer's testimony suffices to support appellant's conviction.

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2. **CRIMINAL LAW; QUALIFIED RAPE; DEATH PENALTY; WHEN PROPER.**— Appellant is charged with incest-rape, a heinous crime defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic act No. 7659. It reads in part: ART. 335. *When and how rape is committed.* 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 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. To warrant the imposition of the death penalty, two circumstances must be present: (1) the minority of the victim; and (2) her relationship with the offender. Both must not only be properly alleged in the complaint or information but must also be established during the trial.

3. **ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY; NOT SUFFICIENTLY ESTABLISHED.** – In the present case, although the informations allege that complainant Jennifer was "his (appellant's) 10-year–old daughter," her minority was not sufficiently proven. This Court notes that, although there is an allegation of Jennifer's age in the complaint, the prosecution did not present independent and competent proof of her minority. Aside from complainant's declaration of her age during her testimony, the prosecution failed to adequately establish her age. This is a vital element of the offense, one that spells the difference between life and death of the accused. Nor would judicial notice of her minority suffice. Under Section 3 of Rule 129 of the Revised Rules of Court, it is provided that as to any matters such as age, a hearing is required before courts can take judicial notice of such fact. Although it appears from the record that a Joint Affidavit of Two Disinterested Persons attesting to the date of Jennifer's birth was executed by two neighbors, the affiants were not presented in court to attest to the facts contained in the affidavit. Lastly, the same affidavit was not offered in evidence by the prosecution at all.

4. **ID.; SIMPLE RAPE; PROPER PENALTY AND CIVIL DAMAGES.**— Appellant can be convicted of two counts of simple rape, each of which merits the penalty of *reclusion perpetua.* With regard to the amount of damages for each count of rape, the ₱50,000 awarded as civil indemnity is in consonance

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with current jurisprudence. In addition, moral damages in the amount of ₱50,000 is likewise proper without need of proof. On account of the filial relationship between the complainant and the appellant an additional award of ₱25,000 as exemplary damages is also in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

On automatic review is the decision[1] dated July 16, 1999, of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 42, in Criminal Cases Nos. P-5750 and P-5751. Appellant Felix Hermosa was meted two death penalties for incest-rape.

The separate informations against him, both dated May 12, 1998, alleged as follows:

Criminal Case No. P-5750:

That on or about the night of the 10th day of March 1998, in Bgy. Anilao, municipality of Bongabong, province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, did then and there wilfully and feloniously have carnal knowledge of one JENNIFER LABAY HERMOSA, his 10-year old daughter living in the same house, by means of force and threats to kill, to the irreparable damage of the Offended Party.

CONTRARY TO ART. 335.

AS AMENDED BY R.A. 7659.

Criminal Case No. P-5751:

That on or about the night of the 11th day of March 1998, in Bgy. Anilao, municipality of Bongabong, province of Oriental Mindoro,

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[1] *Rollo*, pp. 20-25.

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Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, did then and there wilfully and feloniously have carnal knowledge of one JENNIFER LABAY HERMOSA, his 10-year old daughter living in the same house, by means of force and threats to kill, to the irreparable damage of the Offended Party.

CONTRARY TO ART. 335.

AS AMENDED BY R.A. 7659.[2]

On arraignment appellant, assisted by counsel, entered a plea of not guilty. Thereafter, joint trial commenced.

Four witnesses were presented by the prosecution, namely, DR. RONALDO F. FETALVERO,[3] JUDY C. MEYONADA,[4] complainant JENNIFER HERMOSA,[5] and rebuttal witness FLORA V. SIENA.[6] The prosecution's version of the case is summarized as follows:

Complainant Jennifer Hermosa testified that she was 10 years old, and that appellant, Felix Hermosa, is her father.[7] At the time the alleged rapes occurred, she was then living in her father's house together with her older sister, Geraldine, and brother, Bejay.[8] Their mother had already left them and was living with another man.

In tears, Jennifer testified that on March 10, 1998, while she and her siblings were sleeping side by side, she woke up to find appellant undressing himself. Then appellant proceeded to remove her shorts and panty. Appellant placed himself on top of complainant and inserted his penis inside her vagina.

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[2] *Id.* at 8 and 10.

[3] TSN, 29 September 1998, pp. 2-7.

[4] TSN, 26 October 1998, pp. 2-7.

[5] *Id.* at 7-20.

[6] TSN, 16 March 1999, pp. 2-7.

[7] *Supra*, note 5 at 7.

[8] Referred to as "PJ" Hermosa in other parts of the records.

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Appellant engaged in a pumping motion, and despite Jennifer's plea for him to stop as it was painful ("*masakit*"), he continued until his lust was satisfied. All these happened while her brother and sister were asleep. After the rape, appellant warned her not to tell about the incident to anybody, or else he would kill her.

Appellant repeated the sexual molestation on Jennifer the following evening. Again Jennifer protested that it was now very painful ("*masakit na masakit*"), but like the previous night, her pleas went unheeded.

Jennifer revealed these incidents to her teacher, Mrs. Mariquet Gregorio. She said that Mrs. Gregorio accompanied her to the *barangay* captain of Anilao. The matter was referred to the Department of Social Welfare and Development (DSWD). Social Welfare Officer Judy C. Meyonada, who handled Jennifer's case, testified that Mrs. Gregorio brought the abused child to the DSWD offices. After she underwent a medical examination by Dr. Ronaldo F. Fetalvero, she executed a sworn statement.

Dr. Fetalvero testified that on March 30, 1998, he conducted the medical examination of complainant upon the request of Senior Police Officer Dan Mallorca. The following is shown in Dr. Fetalvero's Medico-Legal Report:[9]

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora slightly to moderately gaping. Healed laceration on the labia minora, 9 o'clock position. Fourchete tense. Vestibule pinkish. Hymen lacerated with rounded, non-coaptible borders with retraction of edges. Vaginal walls and rugosities cannot be reached by examining finger.

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REMARKS:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.

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[9] Records, p. 8.

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2. Hymen lacerated with rounded, non-coaptible borders with retraction of edges. Hymenal orifice admits tube 1.0 cm in diameter.

The findings were affirmed by Dr. Fetalvero in his testimony before the court. He stated that the hymenal lacerations could have been caused by a hard object, such as a penis, entering the vaginal canal. However, since Jennifer had a thin, hypersensitive hymen, it was likewise possible that the same lacerations could have been the result of a fall from a tree, a ride on a bicycle, or the insertion of the child's finger in the vagina while washing.[10]

For the defense, the following witnesses were presented: GERALDINE HERMOSA,[11] EVA QUALING,[12] IMELDA GUAVE,[13] and appellant FELIX HERMOSA.[14]

Appellant denied the rape charges against him. He stated that on the date and time in question, his daughter Jennifer was living in the house of Mrs. Gregorio, and not in his house as alleged.

According to appellant, he and his wife separated in 1988. Custody of the three children was given to their grandparents since appellant was then working in Manila. Father and children were reunited in 1992, and they resided in Anilao, Bongabong, Oriental Mindoro. However, appellant again left for Manila, bringing with him only his two older children. The youngest, Jennifer, was left to the care of a certain *Manang* Pasing. Jennifer later transferred from one place to another, including Calapan, Oriental Mindoro. Her older sister, Geraldine, only saw her again in 1997 while Jennifer was residing with another aunt in Gloria, Oriental Mindoro. According to appellant, Jennifer had told her sister that while she was in Calapan, she was raped on

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[10] TSN, 29 September 1998, pp. 6-7.

[11] TSN, 1 December 1998, pp. 2-25.

[12] TSN, 12 January 1999, pp. 2-6.

[13] *Id.* at 7-11.

[14] TSN, 9 February 1999, pp. 2-11.

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three different occasions by three different men.[15] This was the reason she left Calapan and moved to her aunt's place in Gloria.

Appellant states that the following reasons could have motivated Jennifer to accuse him of raping her:

1. Complainant had been brainwashed by somebody into accusing him of rape. Appellant points to an altercation between him and Mrs. Gregorio, with whom Jennifer was staying. He adds that since Jennifer was under the influence of Mrs. Gregorio, it was not unlikely that the latter told Jennifer to single him out as having committed the alleged rapes.

2. Complainant was venting her wrath upon him for the rapes she had previously suffered while she was in Calapan.

Appellant contends that he could not have committed the rapes in the family dwelling as alleged since complainant had been living with Mrs. Gregorio since January 1998, or months prior to the alleged dates of commission. This was corroborated by the other defense witnesses.[16]

After trial, the RTC rendered its judgment as follows:

ACCORDINGLY, accused *FELIX HERMOSA* is hereby found *GUILTY* beyond reasonable doubt, as principal, of the heinous crime of *RAPE, (2 counts)* defined and penalized under Art. 335 of the Revised Penal Code, as amended by R.A. 7659, and is hereby sentenced to *TWO (2) DEATH* penalties.

Additionally, accused is ordered to indemnify Jennifer Hermosa the amount of ₱50,000.00 for each count and to pay the cost.

Let the complete record of this case, together with the transcript of the stenographic notes be forwarded to the Honorable Supreme Court for automatic review pursuant to Sec. 10, Rule 122 of the Revised Rules of Court.

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[15] The fact is admitted by Jennifer in her own testimony. See TSN, 26 October 1998, p. 14.

[16] Geraldine Hermosa, Eva Qualing, and Imelda Guave.

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SO ORDERED.[17]

In his Brief appellant states, as lone assigned error, that:

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED AGAINST HIM DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[18]

At issue is the credibility of complainant's testimony. Appellant contends that his conviction is based principally on complainant's incredible version of her ordeal in his hands. Yet, it is admitted by the complainant that three men, other than appellant, were the ones who previously raped her. Complainant's sister, Geraldine, in a tearful testimony corroborated his denial.

Well established is the rule that the credibility of the offended party's testimony is determinative of the outcome of rape cases for the reason that when an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[19]

The ten-year-old victim, Jennifer, identified appellant, her own father, as her rapist not once but twice. She positively testified that the rapes occurred while she was staying in her father's house.

Appellant denies the charges stating that the rapes could not have happened as Jennifer lived not with him in his house, but with Mrs. Gregorio where she was a stay-in helper of her teacher. In his Brief, his counsel asks rhetorically: "If the accused was really capable of raping his own flesh and blood, why didn't

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[17] *Rollo*, p. 47.

[18] *Id.* at 46.

[19] *People v. Alcartado*, G.R. Nos. 132379-82, 29 July 2000, 334 SCRA 701, 713-714.

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he rape Geraldine when it was the latter who lived and resided with him for a long time?"[20]

We find appellant's contention to be without merit. As pointed out by the Office of the Solicitor General (OSG), "the alleged fact that the victim did not live with her father during the time of the commission of the crime does not provide a blanket defense to shield the latter from the probability of having committed the act."[21] Granting *arguendo* that Jennifer was indeed already in the employ of her teacher, this does not negate the fact that on those two occasions when she claims to have been raped by her father, she in fact stayed at appellant's house.

Appellant also contends that Jennifer's allegations of rape was a ploy for revenge instigated by Mrs. Gregorio, with whom appellant had an altercation. No elaboration is made by appellant, however, on the nature and extent of the animosity between him and Mrs. Gregorio. The charges against appellant involve a heinous offense, and a minor disagreement, even if true, does not justify dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake. In giving weight and credence to complainant's testimony, the trial court stated,[22]

> A ten years (*sic*) old girl would not falsely impute the offense of rape against her very own father. It is hardly probable that she will, and can much less fabricate matters and thereby undergo the travails of a public trial, exposing herself to humiliation and embarrassment by unrevealing (*sic*) nasty matters against her virginity, by lodging against the accused so grave and serious charge, if not true. (*PP vs. Caluba*, GR. # 38619, Feb.'86);
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> Complaint (*sic*) reported the incident to her teacher who brought the matter to the Brgy. Authorities and DSWD and lost no time in reporting the incident to the police authorities. Complainant subjected herself to medical examination, and finally lodged a criminal complaint against the accused. The compelling call of duty and mournful cry for justice, cannot tolerate any delay in reporting the incident to

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[20] *Rollo*, p. 53.

[21] *Id.* at 81.

[22] *Id.* at 24.

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the proper authorities. Her act is a clear manifestation of her intent to pursue her morbid cry for the injustice committed against her, at the opportune time. Not only that these acts demonstrate courage of the highest order; they also enhance the complainant's credibility.

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The young complainant was made aware that the penalty of death may be imposed upon her father as a consequence of her allegations. Yet, she vehemently manifested her desire to continue with his prosecution. The trial court observed,[23]

During the trial, the Court reminded Jennifer that in the event of conviction, her father might be sentenced to death, and despite the warning given by the Court, the daughter was adamant and refused to be merciful. There is no doubt in the mind of the Court that accused had raped his very own daughter. A mere denial would not extricate the accused from these predicament charges (*sic*).[24]

The insinuation of appellant that the filing of the charges was not of Jennifer's own volition but the product of a vengeful teacher does not square, in our view, with human nature and experience. The alleged squabble between Mrs. Gregorio and the appellant appears too flimsy a reason for complainant and her witness to take pains in concocting an accusation where complainant's honor and appellant's life would be at stake.

In the prosecution of rape cases, the offended party is, more often than not, the only one available to prove directly the commission of rape.[25] In the present case, the defense of bare denial proffered by appellant cannot outweigh the positive and consistent testimony of complainant. The prosecution with testimonial and medical evidence effectively discharged its burden of proving appellant's guilt beyond reasonable doubt.

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[23] *Ibid.*

[24] *Ibid.*

[25] *People v. Sapinoso*, G.R. No. 122540, 22 March 2000, 328 SCRA 649, 656.

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By itself alone, Jennifer's testimony suffices to support appellant's conviction.[26]

Thus, this Court finds no reason to reverse appellant's conviction. However, with regard to the penalty imposed, modifications are in order.

Appellant is charged with incest-rape, a heinous crime defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. It reads in part:

> ART. 335. *When and how rape is committed.* 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 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. (Italics supplied.)

To warrant the imposition of the death penalty, two circumstances must be present: (1) the minority of the victim; and (2) her relationship with the offender. Both must not only be properly alleged in the complaint or information but must also be established during the trial.[27]

In the present case, although the informations allege that complainant Jennifer was "his (appellant's) 10-year-old daughter," her minority was not sufficiently proven. This Court notes that, although there is an allegation of Jennifer's age in the complaint, the prosecution did not present independent and competent proof of her minority. In the case of *People v. Agravante*,[28] this Court ruled:

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[26] See *People v. Baniqued*, G.R. Nos. 130653 & 139384, 11 December 2001, p. 6.

[27] *Id.* at 24 citing *People v. Licanda*, G.R. No. 134084, 4 May 2000, 331 SCRA 357, 371.

[28] G.R. Nos. 137297 & 138547–48, 11 December 2001, pp. 15-16.

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. . . The testimonies of complainant concerning her age and that of her father, herein accused-appellant, concerning this matter are insufficient. In *People vs. Tundag*, [342 SCRA 704, (2000)] in which the complaints alleged that the victim was 13 years old at the time of the rapes, it was held that it was error for the trial court to take judicial notice of the victim's age even if the defense admitted the victim's minority. The Court emphasized that there must be independent proof, such as a birth certificate, of the age of the victim. . . .

Aside from complainant's declaration of her age during her testimony, the prosecution failed to adequately establish her age.[29] This is a vital element of the offense, one that spells the difference between life and death of the accused. Nor would judicial notice of her minority suffice. Under Section 3[30] of Rule 129 of the Revised Rules of Court, it is provided that as to any matters such as age, a hearing is required before courts can take judicial notice of such fact.[31] Although it appears from the record that a Joint Affidavit of Two Disinterested Persons attesting to the date of Jennifer's birth was executed by two neighbors, the affiants were not presented in court to attest to the facts contained in the affidavit. Lastly, the same affidavit was not offered in evidence by the prosecution at all.

Consequently, we are unable to agree with the trial court regarding the imposition of death penalty on appellant. He can only be convicted of two counts of simple rape, each of which merits the penalty of *reclusion perpetua*.[32]

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[29] See *People v. Gavino*, G.R. No. 142749, 18 March 2003, p. 12.

[30] SEC. 3. *Judicial notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

[31] *People v. Rivera*, G.R. No. 139180, 31 July 2001, 362 SCRA 153, 182.

[32] *People v. Mauro*, G.R. Nos. 140786-88, 14 March 2003, p. 22.

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With regard to the amount of damages for each count of rape, the ₱50,000 awarded as civil indemnity is in consonance with current jurisprudence.[33] In addition, moral damages in the amount of ₱50,000 is likewise proper without need of proof.[34] On account of the filial relationship between the complainant and the appellant an additional award of ₱25,000 as exemplary damages is also in order.[35]

WHEREFORE, the assailed decision of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 42, in Criminal Cases Nos. P-5750 and P-5751, is *AFFIRMED WITH MODIFICATION*. Appellant Felix Hermosa is found *GUILTY* of two counts of simple rape, and for each count of rape, he is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay the complainant ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages for each rape. Costs *de oficio*.

SO ORDERED.

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

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[33] *Supra*, note 23 at 25.

[34] *People v. Iluis*, G.R. No. 145995, 20 March 2003, pp. 17-18; *People v. Bacaling*, G.R. Nos. 133994-95, 14 March 2003, p. 11.

[35] *People v. Antonio*, G.R. No. 145726, 26 March 2003, pp. 20-21.