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paragraph 2[a] of the Revised Penal Code, and sentencing her to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to fourteen (14) years of *reclusion temporal*, as maximum, and to indemnify the complainant in the amount of ₱87,000.00. With costs.

SO ORDERED.

Davide, Jr., C.J., Vitug and *Carpio, JJ.*, concur.

Azcuna, J., on official leave.

EN BANC

[G.R. No. 145407. September 11, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONITO HEREVESE,** *accused-appellant.*

SYNOPSIS

Accused-appellant was convicted of qualified rape by the Regional Trial Court of Davao City and was sentenced to suffer to supreme penalty of death. On automatic review, appellant faulted the trial court for giving credence to the witnesses for the prosecution, particularly private complainant and her parents, despite ill motives on their part. Appellant also claimed that the testimonies of the victim's parents were biased.

The Supreme Court affirmed appellant's conviction, but modified the penalty of death imposed by the trial court. According to the Court, it is not enough for the information to merely allege that appellant is the "uncle" of the victim even if the prosecution was able to prove the matter during trial. It is still necessary to allege that such relationship was "within the third civil degree," so that in the absence of said allegation, appellant can only be held liable for simple rape and sentenced

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to suffer the penalty of *reclusion perpetua.* The Court also held that the credibility of the prosecution witnesses is not affected by the unfounded claim of evil motives. Appellant failed to establish any plausible motive for complainant to accuse him of rape other than the alleged animosity between him and complainant's parents. That the complainant's parents would subject their daughter to the ordeal of a public trial just to exact vengeance on appellant, allegedly for gaining the favor of his mother-in-law, is too far-fetched to inspire belief. On the contrary, the Court was convinced that the complainant's parents filed the complaint to seek justice for the abominable act committed by appellant against the person and honor of their daughter. The Court further held that given the close kinship of the parties, the alleged bias on the part of the complainant's parents is but natural and understandable and does not disqualify them from being witnesses. The weight and value of their testimonies are reckoned in the light of parental instinct to protect their young. The parents' testimonies are merely corroborative and not indispensable for appellant's conviction.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY UNFOUNDED CLAIM OF EVIL MOTIVES; IT GOES BEYOND LOGIC AND NORMAL HUMAN EXPERIENCE FOR A NIECE TO PROSECUTE HER OWN UNCLE, RISKING THE IRE OF REPRISAL OF OTHER RELATIVES AND EXPOSING HER AND HER FAMILY TO A GREATER SHAME, IF SHE WERE NOT GUIDED BY THE SEARCH FOR TRUTH AND MOTIVATED BY A QUEST FOR JUSTICE.**— Appellant failed to establish any plausible motive for Cecille to accuse him of rape other than the alleged animosity between him and Cecille's parents. That the Estardos would subject their daughter to the ordeal of a public trial just to exact vengeance on appellant, allegedly for gaining the favor of his mother-in-law, is too far-fetched to inspire belief. On the contrary, we are convinced that the Estardos filed the complaint to seek justice for the abominable act committed by appellant against the person and honor of their daughter. No rape victim and her family would publicly disclose the rape incident, and thus sully their honor

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and reputation in the community, unless it is true. This Court has had occasion to rule that the unfounded claim of evil motives on the part of the victim would not destroy the credibility reposed upon her by the trial court because a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a niece against her uncle. It goes beyond logic and normal human experience for a niece to prosecute her own uncle, risking the ire or reprisal of other relatives and exposing her and her family to a greater shame, if she were not guided by the search for truth and motivated by a quest for justice.

2. **ID.; ID.; ID.; BIASED TESTIMONIES OF PARENTS ARE NATURAL AND UNDERSTANDABLE AND DOES NOT DISQUALIFY THEM FROM BEING WITNESSES.**— Appellant claims that the testimonies of the victim's parents are biased. However, given the close kinship of the parties, such bias is but natural and understandable. It does not disqualify parents from being witnesses. The weight and value of their testimonies are reckoned in the light of parental instinct to protect their young. The parents' testimonies are merely corroborative and not indispensable for appellant's conviction. The testimony of the victim alone, if credible, is sufficient to convict the accused of the crime. Moreover a disinterested witness, *Purok* Chairman Joselito Batulan, confirmed the Estardos' testimonies that appellant was in the *locus criminis* on September 17, 1999, the day of the alleged offense.

3. **ID.; ID.; DEFENSE OF ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.**— For his part, appellant could only offer, by way of defense, a bare denial of the charge against him as well as an alibi that he was in his own house the entire day of the incident. This defense is inherently weak. Alibi is viewed with disfavor by the courts due to the facility with which it can be concocted. It cannot prevail over the positive identification of the accused by the prosecution witness. Quite telling is the failure of appellant's own daughter to corroborate his own testimony on this point. On cross-examination, she admitted that she could not remember what day it was because it was too long ago. In sum, the Court is convinced that the prosecution has established appellant's guilt for the rape of private complainant beyond reasonable doubt.

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4. CRIMINAL LAW; QUALIFIED RAPE; DEATH PENALTY WAS ERRONEOSLY IMPOSED IN CASE AT BAR; IT IS NOT ENOUGH FOR THE INFORMATION TO MERELY ALLEGE THAT APPELLANT IS THE "UNCLE OF THE VICTIM" EVEN IF THE PROSECUTION IS ABLE TO PROVE THE MATTER DURING TRIAL; IT IS STILL NECESSARY TO ALLEGE THAT SUCH RELATIONSHIP WAS WITHIN THE THIRD DEGREE OF CONSANGUINITY.— Considering that the offense of rape was committed by appellant on September 17, 1999, the governing provision of law on the matter is found in Article 266-B of Republic Act No. 8353, which took effect October 22, 1997. Under said Article, the death penalty shall be imposed 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. Jurisprudence interpreting said provision is well-settled that if the offender is merely a relative, not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim, the information must allege that he is a relative by consanguinity or affinity, as the case may be, "within the third civil degree." Thus, it is not enough for the information to merely allege that appellant is the "uncle" of the victim even if the prosecution is able to prove this matter during trial. It is still necessary to allege that such relationship was "within the third civil degree," so that in the absence of said allegation, appellant can only be held liable for simple rape and sentenced to suffer the penalty of *reclusion perpetua*. Thus, in this case, we find that the death penalty was erroneously imposed and should be reduced accordingly.

APPEARANCES OF COUNSEL

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

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DECISION

QUISUMBING, *J.*:

Before us for automatic review is the decision[1] of the Regional Trial Court (RTC) of Davao City, Branch 17, in Criminal Case No. 43,948-99, convicting appellant Leonito Herevese of the crime of rape, sentencing him to death, and to pay private complainant the amount of ₱50,000.00 as moral damages, and ₱75,000.00 as civil indemnity.

Appellant was indicted under the following information:

That on or about September 17, 1999, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the abovementioned accused, with grave abuse of authority and by means of threat and intimidation willfully, unlawfully and feloniously had sexual intercourse with his niece by affinity, CECILLE T. ESTARDO, who is under eighteen (18) years old, against the latter's will.

CONTRARY TO LAW.[2]

He pleaded not guilty to the charge upon arraignment, and trial on the merits followed.

The prosecution presented in evidence the testimonies and documentary exhibits identified by the victim herself, Cecille[3] T. Estardo; her parents, Ambrosio and Patricia Estardo; Dr. Danilo P. Ledesma, the examining Medico-Legal Officer; and PO3 Arnel Masauding of the Philippine National Police (PNP).

Briefly, the facts in this case summarized by the Solicitor General are as follows:

Private complainant and herein appellant are no strangers to each other. Appellant Leonito Herevese is married to Imelda Estardo, complainant's aunt. Imelda is the younger sister of Patricia Estardo, complainant's mother. Since appellant had

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[1] *Rollo*, pp. 14-40.

[2] *Id.* at 7.

[3] "Cecil" or "Cecile" in some parts of the record.

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no permanent job, and his house being only two hundred (200) meters away from complainant's house, he used to frequent the Estardos' residence where he ate, watched television, and sometimes played basketball in their basketball court.[4] This good relationship, however, between the appellant and complainant's family was virtually cut short on September 17, 1999.[5]

At about 10:00 a.m. of that day, complainant was washing dishes at her house in Communal, Tibungco, Davao City. With her were her mother Patricia, her aunt Imelda, and the appellant.[6] As Patricia was then bound for the market to sell dried fish, she requested appellant, who was jobless at that time, to watch over 16-year-old Cecille, who was not feeling well at the time.[7]

After Patricia left, appellant lost no time. He went inside Cecille's room at the second level of the house.[8] He covered her mouth, "mashed" her nipple, and made her lie down by pressing her shoulder.[9] With Cecille already lying down, he removed his clothes and, while naked, went on top of her and began caressing her private parts.[10] To prevent her from moving and escaping, he held her by the neck and right knee.[11] He then "inserted" his organ into her vagina and succeeded in copulating with her.[12]

After satiating his lust, he threatened Cecille with harm if she told anyone about the rape.[13] Despite her fear, Cecille

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[4] TSN, 31 January 2000, pp. 14, 16.

[5] *Id.* at 13-14; TSN, 31 July 2000, p. 18.

[6] TSN, 27 March 2000, pp. 4-5.

[7] *Id.* at 6.

[8] *Id.* at 7.

[9] *Ibid.*

[10] *Id.* at 8.

[11] *Id.* at 7, 9.

[12] *Id.* at 14.

[13] *Id.* at 15.

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nonetheless divulged the rape to Imelda, her aunt and appellant's wife, who in turn reported the matter to Cecille's parents.[14]

On September 20, 1999, accompanied by her parents, Cecille was medically examined by Dr. Danilo P. Ledesma.[15] The medical examination revealed an old healed deep laceration.[16] The gentleman doctor explained that the absence of spermatozoa was explained by the fact that the vaginal examination was conducted three (3) days after the alleged rape incident.[17]

After the medical examination, Cecille and her parents reported the incident to the police. PO3 Arnel Masauding, of the Tibungco Police Precinct, recorded the complaint of Cecille Estardo in the police blotter and, thereafter, invited appellant for questioning.[18]

The prosecution presented a carbon copy of the birth certificate[19] of the victim to prove that at the time of the rape incident the victim was only sixteen (16) years old, having been born on April 1, 1983.[20] Patricia Estardo, Cecille's mother, testified as to the authenticity of the birth certificate presented in court.[21]

Evidence for the defense consisted of the testimony of the appellant and that of his eleven-year old daughter, Aireen Herevese.

The appellant testified that in the morning of the alleged rape incident, he stayed in his house the entire day.[22] His daughter,

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[14] TSN, 31 January 2000, p. 17.

[15] Records, p. 28.

[16] TSN, 31 January 2000, p. 5.

[17] *Id.* at 5-6.

[18] *Id.* at 19-23.

[19] Records, p. 29.

[20] *Ibid.* See also TSN, 31 January 2000, p. 10.

[21] TSN, 31 January 2000, p. 9.

[22] TSN, 23 June 2000, p. 4.

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Aireen, corroborated appellant's claim that he was in their house on September 17, 1999.[23] Aireen, however, admitted that she could no longer recall what day it was because it was too long ago.[24]

Appellant further testified that the case filed against him was in retaliation for: (a) getting Ambrosio's job as a mango sprayer for an employer named Mr. Yulo; (b) squealing to Patricia that he saw Ambrosio caress the private parts of one Crisanta Medico the night appellant and Ambrosio stayed in Crisanta's house in Tagum, for which reason Ambrosio was confronted by his wife; and (c) jealousy, because their mother-in-law always stayed at the Hereveses whenever she visited Patricia and Imelda.[25]

In rebuttal, Ambrosio Estardo, Cecille's father, denied that appellant worked for Mr. Yulo as mango sprayer.[26] He also denied having molested Crisanta Medico.[27] He further testified that he and his wife had never been jealous of appellant over his mother-in-law's choice of abode whenever she came for a visit.[28]

To rebut appellant's testimony that he was inside his own house the entire day of September 17, 1999, the prosecution presented Joselito Batulan, the *Purok* Chairman and cousin of the appellant's wife as well as the victim's mother. Batulan testified that on his way to the *purok* office, he passed by the Estardos and spotted appellant in the Estardos' house, sitting on a bench.[29] Batulan recalled that he even greeted appellant when he saw him.[30]

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[23] TSN, 31 July 2000, p. 3.

[24] *Id.* at 10.

[25] TSN, 23 June 2000, p. 3.

[26] TSN, 31 July 2000, p. 17.

[27] *Id.* at 15-17.

[28] *Id.* at 15.

[29] *Id.* at 23-24.

[30] *Id.* at 24.

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On August 16, 2000, the trial court promulgated its decision finding appellant guilty beyond reasonable doubt of rape and sentencing him as follows:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove beyond reasonable doubt the guilt of accused of the offense charged, accused Leonito Herevese, is sentence[d] to suffer the extreme penalty of death, through lethal injection under Rep. Act 8493, in the manner as provided for by law.

Pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil liability, above-accused, is furthermore ordered, to pay the complainant, Cecille Estardo, the amount of ₱50,000.00 by way of moral damages and another amount of ₱75,000.00 by way of civil indemnity in accordance with the case of *PP vs. Cinen Prodis*, 293 SCRA 441 (1998) and *PP vs. Liberato Mendiola a.k.a. Renato*, G.R. No. 129056, promulgated on February 21, 2000; *PP vs. Bonifacio Torejos y Pañares alias Boning*, G.R. No. 132217, promulgated on February 18, 2000; *People of the Philippines vs. Henry Logarto y Petilla and Ernesto Cordero y Maristela* (A) Booster G.R. Nos. 118828 and 119371 promulgated on Feb. 29, 2000.

As a result of the judgment in this case, the Branch Clerk of Court, is ordered to immediately elevate the entire records of this case together with all transcript of stenographic notes, with the Hon. Supreme Court, Manila, for automatic review of this judgment, pursuant to Art. 47, par. 2 of Rep. Act 7659.

SO ORDERED.[31]

Before us, appellant ascribes the following errors committed by the trial court, *viz*:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDULOUS TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME

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[31] *Rollo*, p. 40.

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CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

III

THE COURT *A QUO* GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO PROVE WITH CERTAINTY THE SPECIAL QUALIFYING CIRCUMSTANCES ALLEGED IN THE INFORMATION.[32]

For resolution, in our view, are two issues: (1) whether the prosecution has proven the guilt of appellant beyond reasonable doubt, and (2) whether the imposition of the death penalty on appellant is proper.

Pertinent to the *first issue*, appellant faults the trial court for giving credence to the testimony of the witnesses for the prosecution, particularly private complainant and her parents, despite ill motives on their part.

For the State, the Office of the Solicitor General agrees with the findings of the trial court as to appellant's guilt for the rape of Cecille Estardo.[33]

The gravamen of rape is carnal knowledge of a woman against her will.[34] That appellant had an unconsented intercourse with private complainant was clearly shown by the following excerpts of the victim's testimony:

Q: You mean, your uncle went inside your room?
A: Yes, your Honor.

Q: And what did he do there?
A: He had me lie down. He removed my short pants as well as my panty and kissed my face.

Q: While doing this to you, you did not shout?
A: No, because he covered my mouth at that time.

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[32] *Id.* at 53-54.

[33] *Id.* at 111-112.

[34] *People v. Anggit*, G.R. No. 133582, 27 September 2002, p. 11; *People v. Portugal*, G.R. No. 143030, 12 March 2002, p. 7.

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Q: Did you not st[an]d up and get out of the room?
A: Because he held me during that time.

Q: Now, you said last time, that your uncle put himself on top of you, right?
A: Yes, your Honor.

Q: When he put himself on top of you, what was his appearance? What happened to his clothes?
A: He was wearing short pants.

Q: And when he put himself on top of you, he was still wearing his short pants?
A: He already removed the short pants.

x x x x x x x x x

Q: He did not removed (*sic*) your panty?
A: He removed my panty.

Q: What did he do when he removed your panty?
A: He placed himself on top of me.

Q: Precisely, when he was already on top of you, naked and he removed your panty, what did he do after that?
A: He mashed my nipple and kissed my face.

Q: That is all what he did?
A: Yes, your Honor.

Q: He did not have sexual intercourse with you?

x x x x x x x x x

A: He had carnal knowledge [of] me.

COURT:

Q: Do you know what is sexual intercourse?
A: Yes, your Honor.

Q: When he put himself on top of you, what did your uncle do with his male organ?
A: He had his organ inserted.

Q: Was his penis went (*sic*) inside your vagina?
A: Yes, your Honor.[35]

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[35] TSN, 27 March 2000, pp. 12-14.

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She further testified that her fear of appellant prevented her from repelling his sexual assault.[36]

Well established in our jurisprudence is the doctrine that the evaluation by the trial court of credibility of the witness and his or her testimony is accorded the highest respect, considering that the trial judge has observed the demeanor of the witness, unlike appellate courts who pass judgment based on the cold pages of the written records. Unless it is shown that the trial court has ignored or failed to take into account circumstances that are significant, weighty, and could lead to a different result, the trial judge's findings ought to be given full faith and credence.

Appellant failed to establish any plausible motive for Cecille to accuse him of rape other than the alleged animosity between him and Cecille's parents. That the Estardos would subject their daughter to the ordeal of a public trial just to exact vengeance on appellant, allegedly for gaining the favor of his mother-in-law, is too far-fetched to inspire belief. On the contrary, we are convinced that the Estardos filed the complaint to seek justice for the abominable act committed by appellant against the person and honor of their daughter.[37] No rape victim and her family would publicly disclose the rape incident, and thus sully their honor and reputation in the community, unless it is true. This Court has had occasion to rule that the unfounded claim of evil motives on the part of the victim would not destroy the credibility reposed upon her by the trial court because a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her,[38] as in the case of a niece against her uncle. It goes beyond logic and normal human experience for a niece to prosecute her own uncle, risking the ire or reprisal of other relatives and exposing her and her family

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[36] *Id.* at 15.

[37] See *People v. Antolin*, G.R. No. 133880, 12 April 2000, 330 SCRA 656, 667.

[38] *People v. Carullo*, G.R. Nos. 129289-90, 29 July 1999, 311 SCRA 680, 690.

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to a greater shame, if she were not guided by the search for truth and motivated by a quest for justice.

Complainant's testimony finds evidentiary support from the medico-legal findings of Dr. Danilo P. Ledesma.[39] Upon the court's questioning, the doctor testified that Cecille's vaginal walls were lax possibly due to sexual contact.[40] Further, the hymenal orifice of Cecille's vagina was open at the time of the examination and easily admitted a tube 2.75 in diameter,[41] again indicative of sexual contact.

Appellant claims that the testimonies of the victim's parents are biased. However, given the close kinship of the parties, such bias is but natural and understandable. It does not disqualify parents from being witnesses. The weight and value of their testimonies are reckoned in the light of parental instinct to protect their young. The parents' testimonies are merely corroborative and not indispensable for appellant's conviction. The testimony of the victim alone, if credible, is sufficient to convict the accused of the crime.[42] Moreover a disinterested witness, *Purok* Chairman Joselito Batulan, confirmed the Estardos' testimonies that appellant was in the *locus criminis* on September 17, 1999, the day of the alleged offense.[43]

For his part, appellant could only offer, by way of defense, a bare denial of the charge against him as well as an alibi that he was in his own house the entire day of the incident. This defense is inherently weak. Alibi is viewed with disfavor by the courts due to the facility with which it can be concocted. It cannot prevail over the positive identification of the accused by the prosecution witness. Quite telling is the failure of appellant's own daughter to corroborate his own testimony on

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[39] Records, p. 28.

[40] TSN, 31 January 2000, p. 7.

[41] *Supra*, note 39.

[42] *People v. Ferrer*, G.R. No. 142662, 14 August 2001, 362 SCRA 778, 788.

[43] TSN, 31 July 2000, pp. 23-24.

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this point. On cross-examination, she admitted that she could not remember what day it was because it was too long ago.[44]

In sum, the Court is convinced that the prosecution has established appellant's guilt for the rape of private complainant beyond reasonable doubt.

As regards the penalty imposed by the trial court, the OSG submits that the trial court correctly appreciated the special qualifying circumstances of affinity between the parties and minority of the victim. The OSG agrees with the imposition by the trial court on the appellant of the death penalty.

Considering that the offense of rape was committed by appellant on September 17, 1999, the governing provision of law on the matter is found in Article 266-B of Republic Act No. 8353, which took effect October 22, 1997. Under said Article, the death penalty shall be imposed 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.[45] Jurisprudence interpreting said provision is well-settled that if the offender is merely a relative, not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim, the information must allege that he is a relative by consanguinity or affinity, as the case may be, "within the third civil degree."[46] Thus, it is not enough for the

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[44] *Id.* at 10.

[45] ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

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 aggravating/qualifying circumstances:

1. *When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.* (Italics supplied.)

[46] *People v. Villarama*, G.R. No. 139211, 12 February 2003, p. 21. *People v. Banihit*, G.R. No. 132045, 25 August 2000, 339 SCRA 86, 96, citing

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information to merely allege that appellant is the "uncle" of the victim even if the prosecution is able to prove this matter during trial. It is still necessary to allege that such relationship was "within the third civil degree," so that in the absence of said allegation, appellant can only be held liable for simple rape and sentenced to suffer the penalty of *reclusion perpetua*.[47] Thus, in this case, we find that the death penalty was erroneously imposed and should be reduced accordingly.

Concerning damages, this Court notes that the trial court awarded ₱50,000 as moral damages and ₱75,000 as civil indemnity. The award of indemnity must be reduced to ₱50,000 pursuant to prevailing jurisprudence. But, by way of public example and in order to protect young girls from sexual abuse or exploitation by their elders, exemplary damages in the amount of ₱25,000 should also be imposed against appellant.[48]

WHEREFORE, the decision of the Regional Trial Court of Davao City, Branch 17, in Criminal Case No. 43,948-99,

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People v. Ferolino, G.R. Nos. 131730-31, 5 April 2000, 329 SCRA 719, 735.

[47] Art. 266-A (1) of the Revised Penal Code as amended by Rep. Act 8353 in relation to Art. 266-B thereof. Thus —

ART. 266-A. *Rape; When and How Committed.* — Rape is committed —

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

a) *Through force, threat or intimidation*;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

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

x x x x x x x x x

ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. (Italics supplied.)

[48] *See People v. Cañete*, G.R. No. 142930, 28 March 2003, p. 19; *People v. Besmonte*, G.R. Nos. 137278-79, 17 February 2003, p. 19; *People v. Lopez*, G.R. No. 134774, 19 April 2002, p. 10.

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finding appellant LEONITO HEREVESE guilty of rape beyond reasonable doubt, is *AFFIRMED with MODIFICATION*. The penalty imposed on appellant is reduced to *reclusion perpetua*, and he is *ORDERED* to pay private complainant, CECILLE ESTARDO, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages. Costs *de officio*.

SO ORDERED.

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

Puno and Azcuna, JJ., are on official leave.

SECOND DIVISION

[G.R. No. 151081. September 11, 2003]

TOP RATE CONSTRUCTION & GENERAL SERVICES, INC., *petitioner, vs.* **PAXTON DEVELOPMENT CORPORATION AND BAIKAL REALTY CORPORATION,** *respondents.*

SYNOPSIS

Five (5) civil actions involving the ownership of Lots Nos. 5763 and 5765-New, situated in Salawag, Dasmariñas, Cavite, were jointly tried by RTC-Br. 21, Imus, Cavite. One of the complaints was filed by respondent Paxton Development Corporation against petitioner Top Rate Construction and General Services, Inc., and against respondent Baikal Realty Corporation and the Register of Deeds of Cavite, for declaration of nullity of the Torrens Title for Lots Nos. 5763-A and 5763-B as part and parcel of Lot No. 5763, with prayer for damages. Top Rate was represented by the Gana Law Office through Attys. Luis Ma. Gil L. Gana and/or Elmer E. Manlangit. The trial court