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EN BANC

[G.R. No. 138471. October 10, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL PRUNA *y* RAMIREZ or ERMAN PRUNA *y* RAMIREZ,** *accused-appellant.*

SYNOPSIS

Accused-appellant was charged with sexually violating Lizette Arabelle Gonzales, a 3-year-old minor, on January 3, 1995. Appellant denied the charge against him and interposed the defense of alibi. The trial court, however, gave credence to the testimony of the complainant and rejected appellant's defense. It convicted appellant of rape in its qualified form and sentenced him to death.

Hence, this automatic review.

Among others, appellant assailed the competency of Lizette to testify by reason of her tender age.

The Supreme Court held that the question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath. Since many of the witness' manners cannot be photographed into the record, the findings of the trial judge will not be disturbed or reversed unless from what is preserved it is clear that such finding was erroneous. In this case, appellant questioned the competency of Lizette as a witness solely on the ground of her age. However, the Court found that he failed to discharge the burden of showing her mental immaturity. From her testimony, it can be gleaned that she had the capacity of observation, recollection, and communication and that she could discern the consequence of telling a lie. The Court, therefore, sustained the trial court in admitting her testimony and according it great weight. Indeed, a girl of such age as Lizette would not concoct a story of defloration; allow the examination of her private parts; and undergo the expense, trouble, inconvenience, and the trauma

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of a public trial unless she was in fact raped. Accordingly, the Court affirmed appellant's conviction but only for the crime of statutory rape punishable by *reclusion perpetua* for failure of the prosecution to establish with certainty that the complainant was below 7-years old at the time of the commission of the crime.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WITNESSES; PRESUMED COMPETENT.**— As a general rule, when a witness takes the witness stand, the law, on ground of public policy, presumes that he is competent. The court cannot reject the witness in the absence of proof of his incompetency. The burden is, therefore, upon the party objecting to the competency of a witness to establish the ground of incompetency.

2. **ID.; ID.; ID.; COMPETENCY OF CHILD-WITNESS; TEST OF COMPETENCY IS INTELLIGENCE, NOT AGE.**— Section 21 of Rule 130 of the Rules on Evidence enumerates the persons who are disqualified to be witnesses. Among those disqualified are "[c]hildren whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and relating them truthfully." No precise minimum age can be fixed at which children shall be excluded from testifying. The intelligence, not the age, of a young child is the test of the competency as a witness. It is settled that a child, regardless of age, can be a competent witness if he can perceive and, in perceiving, can make known his perception to others and that he is capable of relating truthfully the facts for which he is examined.

3. **ID.; ID.; ID.; ID.; FACTORS IN DETERMINING A CHILD'S COMPETENCY.**— In determining the competency of a child witness, the court must consider his capacity (a) at the time the fact to be testified to occurred such that he could receive correct impressions thereof; (b) to comprehend the obligation of an oath; and (c) to relate those facts truly to the court at the time he is offered as a witness. The examination should show that the child has some understanding of the punishment which may result from false swearing. The requisite appreciation of consequences is disclosed where the child states that he knows that it is wrong to tell a lie, and that he would be punished if

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he does so, or that he uses language which is equivalent to saying that he would be sent to hell for false swearing. A child can be disqualified only if it can be shown that his mental maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them truthfully.

4. **ID.; ID.; ID.; ID.; FINDING OF TRIAL JUDGE WILL NOT BE DISTURBED OR REVERSED UNLESS CLEARLY ERRONEOUS; CASE AT BAR.**— The question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath. Since many of the witness' manners cannot be photographed into the record, the finding of the trial judge will not be disturbed or reversed unless from what is preserved it is clear that such finding was erroneous. In this case, appellant questions the competency of LIZETTE as a witness solely on the ground of her age. He failed to discharge the burden of showing her mental immaturity. From the testimony, it can be gleaned that LIZETTE had the capacity of observation, recollection, and communication and that she could discern the consequence of telling a lie. We, therefore, sustain the trial court in admitting her testimony and according it great weight.

5. **ID.; ID.; CREDIBILITY OF WITNESSES; VICTIMS OF CRIMINAL VIOLENCE HAVE A LASTING IMPRESSION OF THE MANNER IN WHICH THE CRIME WAS COMMITTED AND THE IDENTITY OF THE PERSON RESPONSIBLE THEREFOR; CASE AT BAR.**— We are not persuaded by appellant's assertion that LIZETTE should not be allowed to testify two years after the alleged rape "when the interplay of frail memory combines with the imagination of earlier years." It must be noted that it is a most natural reaction for victims of criminal violence to have a lasting impression of the manner in which the crime was committed and the identity of the person responsible therefor.

6. **ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM WHO IS OF TENDER AGE IS CREDIBLE AND DESERVES FULL CREDIT ESPECIALLY ABSENT A MOTIVE TO TESTIFY FALSELY AGAINST ACCUSED.**— In a string of cases, we have said that the testimony of a rape victim who is of young

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or tender age is credible and deserves full credit, especially where no motive is attributed to the victim that would make her testify falsely against the accused. Indeed, a girl of such age as LIZETTE would not concoct a story of defloration; allow the examination of her private parts; and undergo the expense, trouble, inconvenience, and the trauma of a public trial unless she was in fact raped.

7. **ID.;ID.;ID.;TESTIMONY OF WITNESS NOT INDISPENSABLE; RAPE VICTIM'S TESTIMONY IF CREDIBLE, IS SUFFICIENT FOR CONVICTION; CASE AT BAR.** — Even assuming that the testimony of Jacqueline is hearsay, its non-admission would not save the day for the appellant. Such testimony is not indispensable, as it merely serves to corroborate LIZETTE's testimony that PRUNA laid her down in the grass and inserted his private organ into hers. As discussed earlier, LIZETTE's testimony, which was found to be credible by the trial court, is sufficient basis for conviction.

8. **ID.; ID.; ID.; VICTIM'S IMMEDIATE REVELATION OF THE INCIDENT AND THE IDENTITY OF HER DEFILER, EARMARKS OF THE TRUTH OF THE RAPE CHARGE.**— At any rate, Jacqueline's testimony is proof of the victim's conduct immediately after the rape. It shows that LIZETTE immediately revealed to her mother the rape incident and the identity of her defiler. Such conduct is one of the earmarks of the truth of the charge of rape.

9. **ID.; ID.; ID.; RAPE VICTIM IS NOT EXPECTED TO REMEMBER ALL THE UGLY DETAILS OF THE OUTRAGE COMMITTED AGAINST HER.**— When a girl or a woman says that she has been raped she says in effect all that is necessary to show that rape was truly committed. She is not expected to remember all the ugly details of the outrage committed against her. And when her testimony passes the test of credibility, the accused can be convicted on the basis thereof, for in most cases it is the only evidence that can be offered to establish his guilt.

10. **ID.; ID.; ID.; MOTIVE; A MOTHER WOULD NOT SUBJECT HER CHILD TO HUMILIATION, DISGRACE AND EVEN STIGMA ATTENDANT TO A PROSECUTION FOR RAPE UNLESS SHE IS MOTIVATED BY THE DESIRE TO BRING TO JUSTICE THE PERSON RESPONSIBLE FOR HER CHILD'S DEFILEMENT.**— The defense, through Carlito,

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attempted to impute motive to Jacqueline in filing against PRUNA the charge of rape. According to him, LIZETTE's grandparents, the Sulits, wanted to buy the place of the PRUNA family, but the latter refused. Aside from the fact that such testimony was not corroborated, said motive, if at all, is too flimsy to be even considered. No mother in her right mind would use her offspring as an engine of malice. She would not subject her child to the humiliation, disgrace, and even the stigma attendant to a prosecution for rape unless she is motivated by the desire to bring to justice the person responsible for her child's defilement.

11. **ID.; ID.; HEARSAY EVIDENCE RULE; TESTIMONY OF PERSON WHO TESTIFIES TO FACTS LEARNED FROM THIRD PERSON NOT SWORN AS A WITNESS TO THOSE FACTS IS INADMISSIBLE.**— Contrary to appellant's contention, Jacqueline's testimony that LIZETTE told her that appellant laid her in the grassy area and inserted his penis into her vagina is not covered by the hearsay evidence rule, which finds application when the declarant does not testify. This rule, as enunciated under Section 36, Rule 130 of the Rules on Evidence, provides that a witness can testify only to those facts which he knows of his personal knowledge except as otherwise provided in the Rules of Court. The term "hearsay" as used in the law on evidence, signifies evidence which is not founded upon the personal knowledge of the witness from whom it is elicited and which consequently does not depend wholly for its credibility and weight upon the confidence which the court may have in him; its value, if any, is measured by the credit to be given to some third person not sworn as a witness to that fact, and consequently not subject to cross-examination. If one therefore testifies to facts which he learned from a third person not sworn as a witness to those facts, his testimony is inadmissible as hearsay evidence.

12. **ID.; ID.; ID;REASON FOR EXCLUSION;RULE NOT APPLICABLE WHERE THE PERSON TO WHOM THE STATEMENTS ARE ATTRIBUTED TESTIFIED IN COURT; CASE AT BAR.**— The reason for the exclusion of hearsay evidence is that the party against whom the hearsay testimony is presented is deprived of the right or opportunity to cross-examine the person to whom the statements are attributed. Moreover, the court is without opportunity to test the credibility of hearsay statements by observing the demeanor of the person

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who made them. In the instant case, the declarant (LIZETTE) herself was sworn as a witness to the fact testified to by Jacqueline. The appellant even cross-examined her (LIZETTE). Moreover, the trial court had the opportunity to observe her manner of testifying. Hence, Jacqueline's testimony on the incident related to her by her daughter cannot be disregarded as hearsay evidence.

13. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST PROVE THAT HE WAS IN ANOTHER PLACE DURING THE COMMISSION OF THE CRIME AND IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE; CASE AT BAR.**— The trial court correctly disregarded the defense of alibi raised by the accused. We have consistently held that for alibi to prosper, it must be proved that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the crime scene. Just like denial, alibi is an inherently weak defense; and unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim. We have also held that when alibi is established only by the accused, his relatives, or close friends, the same should be treated with strictest scrutiny. Carlito, who was admittedly a close friend of appellant's parents, corroborated PRUNA's testimony that he (PRUNA) was in his house during the time that LIZETTE was raped. It is, however, an established fact that the place where the rape occurred was just a few meters away from the house of PRUNA. Thus, there was no physical impossibility for PRUNA to be in the grassy area to consummate the crime of rape.

14. **CRIMINAL LAW; RAPE; PRESENCE OF SPERM CELLS IN THE VAGINAL CANAL AND URINE OF THE VICTIM STRENGTHENS THE VICTIM'S CLAIM OF RAPE; CASE AT BAR.**— By and large, the medical evidence lends credence to LIZETTE's testimony that PRUNA inserted his penis into her vagina. The Medico-Legal Report shows that there was hyperemia or reddening of the vaginal opening of LIZETTE. As opined by Dr. Quiroz, who was presented as an expert witness, hyperemia can be caused by the insertion of a hard object like penis and finger. The presence of sperm cells in the vaginal canal and urine of LIZETTE is also a mute testimony of the sexual contact that further strengthens LIZETTE's claim of rape.

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15. **ID; STATUTORY RAPE; FINDING OF RAPE NOT PRECLUDED BY ABSENCE OF FRESH LACERATIONS ESPECIALLY WHEN THE VICTIM IS OF TENDER AGE.**— This Court is not oblivious of the finding that no laceration was found in LIZETTE's organ despite the fact that she was examined immediately after she was raped. We have already ruled, however, that the absence of fresh lacerations does not preclude the finding of rape, especially when the victim is of tender age. Well-settled is the rule that rape is consummated by the slightest penile penetration of the labia or pudendum of the female.

16. **ID.; ID.; MINORITY OF THE VICTIM; FAILURE TO ESTABLISH THE VICTIM'S AGE BARS CONVICTION FOR RAPE IN ITS QUALIFIED FORM.**— Article 335, seventh paragraph, no. 4, of the Revised Penal Code, as amended by Republic Act No. 7659, provides that the death penalty shall be imposed if the crime of rape is committed against a "child below seven (7) years old." We have held that in such a case the minority of the victim must be proved with equal certainty and clearness as the crime itself. The failure to sufficiently establish the victim's age is fatal and consequently bars conviction for rape in its qualified form.

17. **ID.; ID.; ID.; APPRECIATION OF THE VICTIM'S AGE EITHER AS AN ELEMENT OF THE CRIME OR AS A QUALIFYING CIRCUMSTANCE; GUIDELINES.**— In order to remove any confusion . . ., We hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: a. If the victim

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is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him. The trial court should always make a categorical finding as to the age of the victim.

18. **ID.; ID.; ID.; BURDEN OF PROVING THE VICTIM'S AGE LIES ON THE PROSECUTION; LACK OF OBJECTION ON THE PART OF THE DEFENSE AS TO VICTIM'S AGE DOES NOT EXCUSE THE PROSECUTION FROM DISCHARGING ITS BURDEN; IMPOSITION OF DEATH PENALTY, NOT PROPER IN CASE AT BAR.**— For PRUNA to be convicted of rape in its qualified form and meted the supreme penalty of death, it must be established with certainty that LIZETTE was below 7 years old at the time of the commission of the crime. It must be stressed that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offenses aptly subject to the most exacting rules of procedure and evidence. In view of the uncertainty of LIZETTE's exact age, corroborative evidence such as her birth certificate, baptismal certificate or any other authentic document should be introduced in evidence in order that the qualifying circumstance of "below seven (7) years old" is appreciated against the appellant. The lack of objection on the part of the defense as to her age did not excuse the prosecution from discharging its burden. That the defense invoked LIZETTE's tender age for purposes of questioning her competency to testify is not necessarily an admission that she was below 7 years of age when PRUNA raped her on 3 January 1995. Such being the case, PRUNA cannot be convicted of qualified rape, and hence the death penalty cannot be imposed on him.

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19. **ID.; ID.; CARNAL KNOWLEDGE OF WOMAN UNDER 12 YEARS OLD PUNISHABLE BY *RECLUSION PERPETUA*, NOT DEATH; CASE AT BAR.**— However, conformably with no. 3(b) of the guidelines, the testimony of LIZETTE's mother that she was 3 years old at the time of the commission of the crime is sufficient for purposes of holding PRUNA liable for statutory rape, or rape of a girl below 12 years of age. Under the second paragraph of Article 335, as amended by R.A. No. 7659, in relation to no. 3 of the first paragraph thereof, having carnal knowledge of a woman under 12 years of age is punishable by *reclusion perpetua*. Thus, the penalty to be imposed on PRUNA should be *reclusion perpetua*, and not death penalty.

20. **CIVIL LAW; CIVIL INDEMNITY; MORAL DAMAGES AWARDED WITHOUT NEED OF PLEADING OR PROOF.**— As regards the civil liability of PRUNA, the indemnity in the amount of ₱50,000 awarded by the trial court is not sufficient. In accordance with recent jurisprudence, LIZETTE should also be awarded moral damages in the amount of ₱50,000 without need of pleading or proof because the mental, physical and psychological trauma suffered by her is too obvious.

APPEARANCES OF COUNSEL

The Solictor General for plaintiff-appellee.
Eliodoro Baluyot for accused-appellant.

D E C I S I O N

DAVIDE, JR., *C.J.*:

A rosebud that had been snuffed out of its fragrance long before it could even blossom into a flower. Such is the case of Lizette Arabelle Gonzales (hereafter LIZETTE), who had been defiled at a very tender age. She was at the time voiding her body waste at their neighbor's backyard, but that did not deter herein appellant from imposing his lechery on her. Indeed, lust is no respecter of time and place.[1]

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[1] *People v. Alitagtag,* 309 SCRA 325, 337 1999]; *People v. Torio*, 318 SCRA 345, 353 [1999].

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On 27 January 1995, an information[2] for rape was filed against accused-appellant Manuel Pruna *y* Ramirez or Erman Pruna *y* Ramirez (hereafter PRUNA), the accusatory portion of which reads:

> That on or about January 3, 1995 at Sitio Tabing-ilog, Brgy. Panilao, Pilar, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused thru force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party, Lizette Arabelle Gonzales, a 3-year-old minor girl, against the will and consent of the latter, to her damage and prejudice.

Upon motion of PRUNA's counsel, the Public Attorney's Office (PAO), the Information was amended changing the name of the accused from Manuel Pruna *y* Ramirez to Erman Pruna *y* Ramirez, which was the name reflected in his birth certificate.[3] However, when he testified in court, he stated that his name was Manuel Pruna; and in the minutes of the court proceedings, he signed the name Manuel Pruna.

On 27 November 1995, upon the Motion to Put the Accused Under Psychiatric or Mental Examination[4] filed by PRUNA's counsel on the ground that he could not secure from PRUNA a coherent answer to even simple questions, the trial court ordered that the accused be brought to the National Mental Hospital in Mandaluyong City for psychiatric or mental examination.[5] Accordingly, the trial was suspended, and PRUNA was sent to the National Center for Mental Health (NCMH), Mandaluyong City.

On 28 June 1996, the trial court received a telegram[6] from the NCMH stating that PRUNA was in "fair condition." The

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[2] Original Records (OR), 1-2.

[3] OR ,17.

[4] *Id.*, 48-49.

[5] *Id.*, 89.

[6] *Id.*, 106.

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NCMH later submitted to the trial court a report[7] on the psychiatric evaluation of PRUNA with a recommendation to put him back to jail for the resumption of court proceedings. The report also stated that PRUNA narrated that while he and his friends were under the bridge sniffing rugby and drinking alcohol, they saw a 3-year-old girl defecating in the river bank; that they called her; and, upon the order of his friends he placed her on his lap and attempted to caress her sensitive parts. Said report was not, however, offered in evidence by the prosecution or the defense.

The prosecution presented five witnesses, whose testimonies can be summed up as follows:

Jacqueline Gonzales, the mother of LIZETTE, testified that on 3 January 1995, at 9:30 a.m., she was fetching water from the artesian well located ten meters away from her house, while LIZETTE was defecating at the back of the house of their neighbor Gloria Tolentino. Jacqueline then carried her pail of water and went back to her house. Since LIZETTE was not home yet, Jacqueline headed toward the place where the former was moving her bowel. She looked for LIZETTE but did not find her. It was when Jacqueline was already returning to her house that she saw LIZETTE from behind — red-faced, crying, and appeared to be very frightened. When asked where she came from, LIZETTE answered that she was brought by a certain "Boy" to the grassy area at the back of Gloria's house where she was sexually molested (or "*kinantot*" in the Tagalog dialect). LIZETTE then pulled her mother and led her to the house of PRUNA, which was about eight meters away from their house. PRUNA, the only one known in their community as "Boy," was not there. Jacqueline forthwith requested her mother-in-law to report the matter to the police, while Jacqueline and LIZETTE went to the Bataan Provincial Hospital.[8]

Jacqueline further declared that at the time of the alleged rape, LIZETTE was 3 years old, but at the time Jacqueline

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[7] *Id.*, 115-118.

[8] TSN, 17 October 1995, 4-7, 11; TSN, 22 November 1996, 3-8.

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testified on 17 October 1995, LIZETTE was 4 years old. LIZETTE's last birthday was on 19 April 1995.[9]

LIZETTE testified that she knew PRUNA whom he called "Boy." She pointed to him inside the courtroom. According to her, PRUNA laid her down in a grassy area and inserted his penis into her vagina. When the presiding judge asked her whether she knew that it is a sin to tell a lie, she answered in the affirmative.[10]

Dr. Emelita Quiroz, an obstetrician and gynecologist at the Bataan Provincial Hospital, testified that on 3 January 1995, she conducted a complete physical examination on LIZETTE and took wet smear specimen from her vaginal wall through scraping. The specimen was sent to the laboratory for analysis by a medical technologist. Further, she requested a urinalysis for LIZETTE.[11] The Medico-Legal Report[12] prepared by Dr. Quiroz reveals the following findings:

> Essentially normal PE-Findings
> Infantile areola & nipples
> Flat breasts (-) hematoma
> (-) pubic hair
> Labia minora and majora –well coaptated
> Hymenal ring intact (+) hyperemia (-) laceration
> (Vaginal Opening)
>
> LABORATORY RESULT:
> WET SMEAR: KOH - Negative for T-Vaginalis
> - NSS- Negative for fungi
>
> SPERM ANALYSIS - POSITIVE for sperm cells
> Gram staining-few, epithelial cells seen, no other microorganism
>
> URINALYSIS: RBC-3-7-/hpf epithelial cells –few.
> WBC-0-2

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[9] TSN, 17 October 1995, 4-5.

[10] TSN, 20 November 1996, 3-4.

[11] TSN, 24 September 1996, 4-5.

[12] Exhibit "B", OR, 241.

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Although not stated in the Medico-Legal Report of Dr. Quiroz, the urinalysis report[13] includes a positive finding for "sperm cells." Dr. Quiroz explained that the presence of sperm cells in the vaginal canal signified that sexual intercourse and ejaculation had occurred on the person of the patient. There was no laceration; but there was hyperemia, which means reddening of the tissue around the vaginal opening. Among the causes of hyperemia is the insertion of a hard object like penis and finger.[14]

Teresita Magtagnob, the medical technologist who conducted the laboratory examinations and prepared the corresponding reports,[15] testified that sperm cells were found in the wet smear specimen and urine taken from LIZETTE.[16]

SPO2 Romeo D. Bunsoy, a member of the Philippine National Police assigned at the Pilar Municipal Station, testified that on 3 January 1995 the parent of the minor rape victim filed a complaint against PRUNA. He referred the matter to the desk officer to have it blottered. Upon his advise, the minor was brought to the hospital for examination. When they returned from the hospital, he took their statements. Later, he conducted an ocular inspection and investigation at the alleged place of the incident and caused the place to be photographed, which showed that the grasses were flattened. He inquired from the people in the neighborhood, and one of them answered that he saw the minor being brought by PRUNA to the place where the minor was found. When PRUNA was brought to their station by four *barangay tanods* of Panilao, Pilar, Bataan, SPO2 Bunsoy tried to converse with him, but the former did not give any reply.[17]

On the part of the defense, Carlito Bondoc and PRUNA took the witness stand.

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[13] Exhibit "B-3", OR, 240.

[14] TSN, 24 September 1996, 8-13.

[15] Exhibits "B-2" and "B-3", OR, 239-240.

[16] TSN, 22 October 1996, 3-4.

[17] TSN, 29 October 1997, 3-7.

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Carlito testified that on 3 January 1995, he fetched water at the public artesian well together with Jacqueline. After having drawn water from the well, Jacqueline called her daughter, who was then defecating on the road near the river; and they both went home. After a while, the parents of LIZETTE shouted that their daughter was raped, and then they proceeded to the house of PRUNA and accused him of having raped the child. Carlito asserted that PRUNA could not have raped LIZETTE because he (PRUNA) was in his house from the time that LIZETTE was moving her bowel up to the time that her mother went to the house of PRUNA. Carlito knew that PRUNA was at home because the former was also in the latter's house to have coffee. Carlito and the Sulit family thereafter brought PRUNA to the *barangay* hall. Since the *barangay* captain was not around, they brought PRUNA to the municipal building to prove that he was innocent.[18]

PRUNA denied having raped LIZETTE. He claimed that in the morning of 3 January 1995, he was in his house preparing coffee for Carlito. After Carlito left, several men arrived and boxed him for reasons not known to him. Carlito and the latter's friend then brought him to the *barangay* hall. There, LIZETTE's father boxed him. He was thereafter brought to the Pilar Municipal Jail. There, the mother of the child threw at him the lid cover of a kettle. He was also asked by the police to take off his clothes and lie flat; then he was mauled. Thereafter, he was told to put his feet between the grills, and he was made to masturbate. Worse, his testes were burned with cigarette butts. Every night, he was asked to kneel on a chair and was hit with a 2"x 2" piece of wood.[19]

After trial, PRUNA was convicted by the trial court of the crime of rape in its qualified form and sentenced to suffer the supreme penalty of death and to indemnify the victim in the sum of ₱50,000, plus costs.[20] Hence, this automatic review.

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[18] TSN, 21 July 1998, 2-4; 1 September 1998, 2-3.

[19] TSN, 3 November 1998, 2-4.

[20] *Rollo*, 20-36. OR, 320-336. Per Judge Benjamin T. Vianzon.

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In his Appellant's Brief,[21] PRUNA attributed to the trial court the following errors:

I

... IN RELYING ON THE TESTIMONY OF JACQUELINE S. GONZALES, THE MOTHER OF THE CHILD, THAT THE LATTER WAS THREE (3) YEARS OLD WHEN THE ALLEGED RAPE OCCURRED WHEN THE BEST EVIDENCE THEREFOR IS THE BIRTH CERTIFICATE OF THE CHILD.

II

... IN RELYING ON THE HEARSAY TESTIMONY OF JACQUELINE S. GONZALES AS TO THE ALLEGED RAPE OF HER CHILD.

III

... IN ADMITTING AND RELYING ON THE TESTIMONY OF COMPLAINANT[ ] CHILD WHO WAS ONLY THREE (3) YEARS OLD WHEN THE ALLEGED RAPE OCCURRED EVEN AS SHE WAS ONLY FIVE (5) YEARS OLD WHEN SHE TESTIFIED.

IV

... IN CONVICTING THE ACCUSED ON DUBIOUS EVIDENCE.

The Office of the Solicitor General (hereafter OSG) seeks the affirmation of the trial court's decision with the modification that an additional award of ₱50,000 as moral damages be granted in favor of the offended party.

As culled from the arguments of the parties, the issues to be resolved in this case are as follows:

(1) Whether LIZETTE was a competent and credible witness considering that she was allegedly only 3 years old when the alleged rape occurred and 5 years old when she testified;

(2) Whether Jacqueline's testimony as to the declarations of LIZETTE is hearsay;

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[21] *Rollo*, 57-66.

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(3) Whether the failure of the prosecution to present Gloria Tolentino as a witness is fatal;

(4) Whether appellant's guilt has been proved beyond reasonable doubt;

(5) Whether the qualifying circumstance of minority has been duly proved as to justify the imposition of the death penalty.

We shall resolve these issues in *seriatim*.

I. LIZETTE's Competency and Credibility as a Witness

Appellant disputes the competency of LIZETTE to testify by reason of her tender age. When LIZETTE was called to testify, his counsel interposed a vigorous objection to the admission of her testimony because of her tender age. The trial court noted the objection and allowed her to testify; thus:

DIRECT EXAMINATION BY
PROS. LUMABAS:

Q Do you know Manuel Pruna?

A Yes, sir.

Q How do you call Manuel Pruna?

A Boy, sir.

Q Where is he?

A There, sir. (Witness pointing to a person wearing blue T-shirt, who when asked, gave his name as Manuel Pruna)

. . . . . .

PROS. LUMABAS:

What did Manuel Pruna or Boy do to you?

A "*Inihiga niya ako*" and inserted his penis to my vagina, sir.

Q And in what place did he do this to you?

A In the grassy area, sir.

Q After he inserted his penis to your vagina, what happened next?

ATTY. BALUYOT:

The witness for quite sometime could not answer the question.

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PROS. LUMABAS:
I think that will be all for the witness.[22]

After which, the defense counsel manifested that he would not cross-examine her and that he intended to file a motion for her disqualification as a witness.[23] The court then proceeded to ask her a few questions, thus:

COURT :

Q Do you know what will happen to a child if she is not telling the truth?
A "*Sa lupa.*"

Q Do you know that it is a sin to tell a lie?
A Yes, sir.

Q The witness is excused considering the manifestation of Atty. Baluyot that he will be filing a written motion for the striking out of the testimony of the witness considering her tender age.[24]

No such motion is extant on the records. At the next hearing, the defense counsel cross-examined LIZETTE, as follows:

ATTY. BALUYOT:
Q On January 3, 1995, in the morning where were you?
A I was in the grassy area, sir.

Q In that grassy area there were other children with you playing?
A None, sir.

Q You were then removing [*sic*] your bowel, is it not?
A Yes, sir.

Q Then while removing your bowel you saw your mother pass[ ] by, is it not?
A Yes, sir.

Q She was then carrying a pail to fetch some water, is it not?
A Yes, sir.

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[22] TSN, 20 November 1996, 3.

[23] *Id.*, 4.

[24] *Id.*, 4.

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Q The water from where she will fetch is [*sic*]... a few meter[s] away from you, is it not?
A Near, sir.

. . . . . .

ATTY. BALUYOT:
Q Considering that the grassy place where you were then discharging your bowel is beside a street?
A Yes, sir.

Q And you saw your mother bringing a pail of water towards your house after her pumping from the well, is it not?
A Yes, sir.

Q When she passed by she likewise saw you, is it not?
A Yes, sir.

Q Then how far were you from your house when you were discharging your bowel? Please demonstrate the distance?
A Up to that door, sir.

Q From that position you were at the grass you could see your house, is it not?
A Yes, sir.

Q Could you tell the Honorable Court how long did it take you to discharge your bowel?

. . . . . .

A For a short period of time, sir.
(*Sandali lang po.*)[25]

As a general rule, when a witness takes the witness stand, the law, on ground of public policy, presumes that he is competent. The court cannot reject the witness in the absence of proof of his incompetency. The burden is, therefore, upon the party objecting to the competency of a witness to establish the ground of incompetency.[26]

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[25] TSN, 14 April 1997, 2-5.

[26] VII VICENTE J. FRANCISCO, Part I, 234 (1997 Ed.) (hereafter VII FRANCISCO), citing Wharton's *Criminal Evidence*, Section 1152 (11th Ed.)

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Section 21 of Rule 130 of the Rules on Evidence enumerates the persons who are disqualified to be witnesses. Among those disqualified are "[c]hildren whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and relating them truthfully."

No precise minimum age can be fixed at which children shall be excluded from testifying. The intelligence, not the age, of a young child is the test of the competency as a witness.[27] It is settled that a child, regardless of age, can be a competent witness if he can perceive and, in perceiving, can make known his perception to others and that he is capable of relating truthfully the facts for which he is examined.[28]

In determining the competency of a child witness, the court must consider his capacity (a) at the time the fact to be testified to occurred such that he could receive correct impressions thereof; (b) to comprehend the obligation of an oath; and (c) to relate those facts truly to the court at the time he is offered as a witness.[29] The examination should show that the child has some understanding of the punishment which may result from false swearing. The requisite appreciation of consequences is disclosed where the child states that he knows that it is wrong to tell a lie, and that he would be punished if he does so, or that he uses language which is equivalent to saying that he would be sent to hell for false swearing.[30] A child can be disqualified only if it can be shown that his mental maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them truthfully.[31]

The question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the

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[27] VII VICENTE J. FRANCISCO 242, citing 58 *A*M. JUR. 97.

[28] *People v. Librando*, 335 SCRA 232, 244 [2000].

[29] 2 FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM* 608 (2001 Ed.). See also VII FRANCISCO 243, citing *Wheeler v. U.S.*, 159 U.S. 523.

[30] VII FRANCISCO 243, citing 3 *Jones on Evidence* 1296-1298.

[31] *People v. Virtucio*, 326 SCRA 198, 205 [2000].

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trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath.[32] Since many of the witness' manners cannot be photographed into the record, the finding of the trial judge will not be disturbed or reversed unless from what is preserved it is clear that such finding was erroneous.[33]

In this case, appellant questions the competency of LIZETTE as a witness solely on the ground of her age. He failed to discharge the burden of showing her mental immaturity. From the above-quoted testimony, it can be gleaned that LIZETTE had the capacity of observation, recollection, and communication[34] and that she could discern the consequence of telling a lie. We, therefore, sustain the trial court in admitting her testimony and according it great weight.

We are not persuaded by appellant's assertion that LIZETTE should not be allowed to testify two years after the alleged rape "when the interplay of frail memory combines with the imagination of earlier years." It must be noted that it is a most natural reaction for victims of criminal violence to have a lasting impression of the manner in which the crime was committed and the identity of the person responsible therefor.[35]

In a string of cases, we have said that the testimony of a rape victim who is of young or tender age is credible and deserves full credit,[36] especially where no motive is attributed to the

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[32] *People v. De la Cruz,* G.R. No. 135022, 11 July 2002. See also People v. De la Cruz, 276 SCRA 352,357 [1997]; *People v. Operaña,* 343 SCRA 43, 63[2000].

[33] *People v. De la Cruz,* G.R. No. 135022, 11 July 2002.

[34] See *People v. Librando, supra* note 28.

[35] *People v. Mendiola* , 337 SCRA 418, 432 [2000], citing *People v. Cajanan,* 245 SCRA 66, 77 [1995].

[36] *People v. Padayawon,* 351 SCRA 643, 652 [2001]. See also *People v. Balgos,* 323 SCRA 372, 386 [2000] and *People v. Brigildo,* 323 SCRA 631, 645 [2000].

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victim that would make her testify falsely against the accused.[37] Indeed, a girl of such age as LIZETTE would not concoct a story of defloration; allow the examination of her private parts; and undergo the expense, trouble, inconvenience, and the trauma of a public trial unless she was in fact raped.[38]

II. The Alleged Hearsay Testimony of Jacqueline Gonzales

Contrary to appellant's contention, Jacqueline's testimony that LIZETTE told her that appellant laid her in the grassy area and inserted his penis into her vagina is not covered by the hearsay evidence rule, which finds application when the declarant does not testify. This rule, as enunciated under Section 36, Rule 130 of the Rules on Evidence, provides that a witness can testify only to those facts which he knows of his personal knowledge except as otherwise provided in the Rules of Court.

The term "hearsay" as used in the law on evidence, signifies evidence which is not founded upon the personal knowledge of the witness from whom it is elicited and which consequently does not depend wholly for its credibility and weight upon the confidence which the court may have in him; its value, if any, is measured by the credit to be given to some third person not sworn as a witness to that fact, and consequently not subject to cross-examination.[39] If one therefore testifies to facts which he learned from a third person not sworn as a witness to those facts, his testimony is inadmissible as hearsay evidence.[40]

The reason for the exclusion of hearsay evidence is that the party against whom the hearsay testimony is presented is deprived of the right or opportunity to cross-examine the person to whom the statements are attributed.[41] Moreover, the court is without

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[37] *People v. Pailanco,* 322 SCRA 790, 802 [2000].

[38] *People v. Tanail,* 323 SCRA 667, 676 [2000]; *People v. De la Cruz, supra* note 33.

[39] VII FRANCISCO 513, citing *Underhill Evidence* 68.

[40] *Id.*

[41] 2 REGALADO 638-639, citing *People v. Ola,* 152 SCRA 1, 11 [1987].

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opportunity to test the credibility of hearsay statements by observing the demeanor of the person who made them.[42]

In the instant case, the declarant (LIZETTE) herself was sworn as a witness to the fact testified to by Jacqueline. The appellant even cross-examined her (LIZETTE). Moreover, the trial court had the opportunity to observe her manner of testifying. Hence, Jacqueline's testimony on the incident related to her by her daughter cannot be disregarded as hearsay evidence.

Even assuming that the aforementioned testimony of Jacqueline is hearsay, its non-admission would not save the day for the appellant. Such testimony is not indispensable, as it merely serves to corroborate LIZETTE's testimony that PRUNA laid her down in the grass and inserted his private organ into hers. As discussed earlier, LIZETTE's testimony, which was found to be credible by the trial court, is sufficient basis for conviction.

At any rate, Jacqueline's testimony is proof of the victim's conduct immediately after the rape. It shows that LIZETTE immediately revealed to her mother the rape incident and the identity of her defiler. As will be discussed later, such conduct is one of the earmarks of the truth of the charge of rape.

III. Non-Presentation of Gloria Tolentino as a Witness

Appellant harps on the prosecution's failure to put on the witness stand Gloria Tolentino, who was listed as a witness and executed an affidavit on 4 January 1995 that she saw the appellant carrying and bringing LIZETTE to a grassy area at the back of her house.

It is undisputed that at the time the case was called for trial, Gloria had already moved out of her residence in Panilao, Pilar, Bataan, and could not be found anymore. In any event, as opined by the OSG, her intended testimony could be dispensed with, as it would only be corroborative of LIZETTE's testimony that Pruna brought her to a grassy area.

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[42] VII FRANCISCO 518, citing 20 AM. JUR. 400-401.

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IV. Sufficiency of the Prosecution's Evidence Against Appellant

When LIZETTE was put in the witness stand, she unhesitatingly identified PRUNA, their neighbor, as the one who defiled her. A rape victim can easily identify her assailant especially if he is known to her because during the rape, she is physically close to her assailant that enables her to have a good look at the latter's physical features.[43]

LIZETTE testified that on 3 January 1995 PRUNA, whom she called Boy, laid her in a grassy area and inserted his penis into her genitalia. When a girl or a woman says that she has been raped she says in effect all that is necessary to show that rape was truly committed.[44] She is not expected to remember all the ugly details of the outrage committed against her.[45] And when her testimony passes the test of credibility, the accused can be convicted on the basis thereof, for in most cases it is the only evidence that can be offered to establish his guilt.[46]

Likewise, LIZETTE's mother testified that right after the incident LIZETTE disclosed what happened to her and readily identified PRUNA as the culprit. She even led her mother to the house of PRUNA.[47] Thereafter, the two went to the police authorities to report the incident, and then to the hospital for LIZETTE's medical examination.

By and large, the medical evidence lends credence to LIZETTE's testimony that PRUNA inserted his penis into her

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[43] *People v. Tipay*, 329 SCRA 52, 71 [2000], citing *People v. Castañeda*, 252 SCRA 247 [1996].

[44] *People v. Fernandez*, 351 SCRA 80, 89 [2001]. See also *People v. Rafales*, 323 SCRA 13, 26 [2000]; *People v. Cabingas*, 329 SCRA 21, 31 [2000]; *People v. Mendiola*, *supra* note 35, at 426.

[45] *People v. Pailanco*, *supra* note 37, at 801; *People v. Torreja*, G.R. No. 132339, 4 February 2002.

[46] *People v. Dela Concha*, G. R. No. 140205, 3 September 2002. *See* also *People v. Tagaylo*, 345 SCRA 284, 293 [2000]; *People v. Fernandez*, *supra* note 44.

[47] TSN, 17 October 1995, 6.

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vagina. The Medico-Legal Report shows that there was hyperemia or reddening of the vaginal opening of LIZETTE. As opined by Dr. Quiroz, who was presented as an expert witness, hyperemia can be caused by the insertion of a hard object like penis and finger.[48] The presence of sperm cells in the vaginal canal and urine of LIZETTE is also a mute testimony of the sexual contact that further strengthens LIZETTE's claim of rape.

This Court is not oblivious of the finding that no laceration was found in LIZETTE's organ despite the fact that she was examined immediately after she was raped. We have already ruled, however, that the absence of fresh lacerations does not preclude the finding of rape,[49] especially when the victim is of tender age.[50] Well- settled is the rule that rape is consummated by the slightest penile penetration of the labia or pudendum of the female.[51] The presence of hyperemia in LIZETTE's vaginal opening and the existence of sperm cells in her vaginal canal and urine are clear indications that PRUNA's organ indeed touched the labia or pudendum of LIZETTE.

In a nutshell, the following overwhelmingly establish the truth of the charge of rape: (a) the spontaneity of the identification by LIZETTE of PRUNA as the rapist; (b) her immediate revelation to her mother of the dastard act committed against her; (c) her act of leading her mother to appellant's house right after the incident; (d) the prompt filing of the complaint before the authorities; (e) LIZETTE's submission to medical examination; (f) the hyperemia in her private part; and (g) the presence of sperm cells in her vaginal canal and urine.

The trial court correctly disregarded the defense of alibi raised by the accused. We have consistently held that for alibi to prosper,

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[48] TSN, 24 September 1996, 13.

[49] *People v. Geraban*, G.R. No. 137048, 24 May 2001. See also *People v. Bation,* 305 SCRA 253, 268 [1999] and *People v. Ayo*, 305 SCRA 543, 557-558 [1999].

[50] *People v. Ayo, supra.*

[51] *People v. Rafales, supra* note 44, at 27. See also *People v. Bation, supra* note 49, at 269.

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it must be proved that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the crime scene. Just like denial, alibi is an inherently weak defense; and unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim.[52] We have also held that when alibi is established only by the accused, his relatives, or close friends, the same should be treated with strictest scrutiny.[53]

Carlito, who was admittedly a close friend of appellant's parents, corroborated PRUNA's testimony that he (PRUNA) was in his house during the time that LIZETTE was raped. It is, however, an established fact that the place where the rape occurred was just a few meters away from the house of PRUNA. Thus, there was no physical impossibility for PRUNA to be in the grassy area to consummate the crime of rape.

The defense, through Carlito, attempted to impute motive to Jacqueline in filing against PRUNA the charge of rape. According to him, LIZETTE's grandparents, the Sulits, wanted to buy the place of the PRUNA family, but the latter refused.[54] Aside from the fact that such testimony was not corroborated, said motive, if at all, is too flimsy to be even considered. No mother in her right mind would use her offspring as an engine of malice. She would not subject her child to the humiliation, disgrace, and even the stigma attendant to a prosecution for rape unless she is motivated by the desire to bring to justice the person responsible for her child's defilement.[55]

V. Sufficiency of Evidence of LIZETTE's Minority and Propriety of the Imposition of the Death Penalty

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[52] *People v. Amaguin*, 229 SCRA 166, 175 [1994]; *People v. Quinao*, 269 SCRA 495, 507-508 [1997]; *People v. Pontilar, Jr.* 275 SCRA 338, 351 [1997]; and *People v. Pili*, 289 SCRA 118, 140 [1998].

[53] *People v. Rebato*, G. R. No. 139552, 24 May 2001.

[54] TSN, 1 September 1995, 8.

[55] *People v. Geraban, supra* note 49.

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The commission of the crime of rape by PRUNA having been duly established by the prosecution, we now come to the question of the penalty to be meted upon him.

Article 335, seventh paragraph, no. 4, of the Revised Penal Code, as amended by Republic Act No. 7659, provides that the death penalty shall be imposed if the crime of rape is committed against a "child below seven (7) years old." We have held that in such a case the minority of the victim must be proved with equal certainty and clearness as the crime itself. The failure to sufficiently establish the victim's age is fatal and consequently bars conviction for rape in its qualified form.[56]

A person's age is best proved by the birth certificate. But is the presentation of the victim's birth certificate a *sine qua non* requirement to prove her age for the appreciation of minority either as an element of the crime or as a qualifying circumstance? Recent jurisprudence has conflicting pronouncements.

In the following cases, no birth certificate was presented and this Court ruled that the age of the victim was not duly proved by the prosecution:

1. In *People v. Vargas*,[57] the testimonies of the victim and her aunt that the former was 10 years old at the time of the rape were not considered proof of her age for being hearsay. This Court also observed that the victim could easily be mistaken for a child below 12 years of age, and hence it was not correct to judge the victim's age by her appearance. We held: "The difference of two or three years in age may not always be readily apparent by mere physical manifestations or appearance."

2. In *People v. Javier*,[58] the victim was alleged to be 16 years old, and the accused did not contest her age. Ratiocinating that in this age of modernism, there is hardly any difference between a 16-year-old girl and an 18-year-old one insofar as

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[56] *People v. Javier*, 311 SCRA 122, 141 [1999].

[57] 257 SCRA 603 [1996].

[58] *Supra* note 56.

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physical features and attributes are concerned, this Court held that an independent proof of the actual age of a rape victim is vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in R.A. No. 7659.

3. In *People v. Brigildo*,[59] aside from the failure of the prosecution to present the offended party's birth certificate or other equally acceptable official document concerning her age, the testimonies on record were not clear as to her exact age. The victim declared that she was 11 years old when she testified in court a year after the incident, while her mother claimed that she was around 15 years old at the time of the commission of the crime. The informations even alleged a different age. Hence, this Court refused to appreciate the qualifying circumstance of minority because of the uncertainty regarding her age.

4. In *People v. Tipay*,[60] the offended party was alleged in the information to be under 16 years of age. No "independent" evidence was presented to prove it. This Court recognized that the minority of a victim who may be below the age of 10 is quite manifest and may be taken judicial notice of by the court. But when the victim is between the crucial years of 15 and 17 where minority may seem to be dubitable due to one's physical appearance, the prosecution should prove the fact of minority with certainty. The lack of objection on the part of the accused concerning the victim's age does not excuse the prosecution from discharging its burden.

5. In *People v. Cula*,[61] the victim was alleged in the complaint to be 16 years old when the rape was committed, but no evidence at all was presented to prove her age. We held that the failure of the accused to deny such allegation cannot make up for the failure of the prosecution to prove with certainty the victim's minority. Because of the lacuna in the prosecution's evidence, coupled with the trial court's failure to make a categorical finding

[59] *Supra* note 36.

[60] 329 SCRA 52 [2000].

[61] 329 SCRA 101 [2000].

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of minority of the victim, we declined to consider the qualifying circumstance of minority.

6. In *People v. Veloso*,[62] the victim was alleged to be 9 years of age when she was raped. Citing *People v. Vargas*,[63] this Court refused to consider the testimonies of the victim and her father as sufficient proof of her age.

7. In *People v. Pecayo*,[64] the victim simply stated during the beginning of her direct examination that she was 14 years old and that she was born on 13 January 1983. We held that the victim's casual testimony as to her age is not enough, and that the lack of denial on the part of the accused does not excuse the prosecution from proving her age through competent evidence such as a duly certified certificate of live birth, baptismal certificate, or some other authentic document showing her age.

8. In *People v. Tundag*,[65] the victim testified that she was 13 years of age when she was raped, but she did not know exactly when she was born. Unable to secure a copy of her birth certificate, the prosecution moved that judicial notice be taken of the fact that she was below 18 years old at the time of the rape. Despite the admission by the defense of such fact, this Court held that the age of the victim is not a matter of judicial notice, whether mandatory or discretionary. Under Section 3, Rule 129 of the Rules on Evidence, a hearing is required before such fact can be taken judicial notice of by courts.

9. In *People v. Geraban*,[66] the victim's testimony was categorical in declaring that she was 15, but her mother's testimony regarding her age was not clear. We thus declared that the prosecution failed to discharge the burden of proving minority.

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[62] 330 SCRA 602 [2000]

[63] *Supra* note 57.

[64] 348 SCRA 95 [2000].

[65] 342 SCRA 704 [2000].

[66] *Supra* note 49.

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10. In *People v. Liban*[67] and *People v. Llandelar,*[68] the only evidence adduced to prove the minority of the victims was the victims' bare testimony that they were 10 and 16 years old, respectively. This Court held that while the declaration of a victim as to her age, being an exception to the hearsay proscription, would be admissible under the rule on pedigree, the question on the relative weight that may be accorded to it is another matter. The prosecution should present the victim's birth certificate or, in lieu thereof, any other documentary evidence, like a baptismal certificate, school records, and documents of similar nature, or credible testimonial evidence that can help establish the age of the victim. Neither the obvious minority of the victim nor the absence any contrary assertion from the defense can exonerate the prosecution from its burden. Judicial notice of the issue of age without the requisite hearing under Section 3 of Rule 129 of the Rules on Evidence would not be sufficient compliance with the law.

11. In *People v. Alvarado,*[69] the victim testified that she was 14 years old at the time of the rape, and this was confirmed by the accused, who was victim's father. The victim's mother, however, testified as to her date of birth which showed that she was 13 years of age at the time of the commission of the crime. For this doubt as to the victim's age, the accused was held guilty of simple rape only and meted the penalty of reclusion *perpetua,* and not death penalty.

On the other hand, in the following cases, we ruled that the age of the rape victim was sufficiently established despite the failure of the prosecution to present the birth certificate of the offended party to prove her age:

1. In *People v. Rafales,*[70] the testimony of the victim and her mother that the former was only 10 years old when she

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[67] 345 SCRA 453 [2000].

[68] G.R. Nos. 123138-39, 8 November 2001.

[69] G.R. No. 145730, 19 March 2002.

[70] *Supra* note 44.

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was raped, which was not denied by the accused, was deemed sufficient to prove her age for the purpose of determining whether the accused could be held guilty of statutory rape, which is carnal knowledge of a woman below 12 years of age.

2. In *People v. De la Cruz*,[71] the testimony of the mother alone that her two daughters were both 14 years old at the time of the rape incidents was deemed sufficient because there was no reason to doubt the testimony of the mother, who had personal knowledge of the ages of her children. Moreover, said testimony was never challenged by the accused and stood unrebutted by any other evidence.

3. In *People v. Bali-balita*,[72] the victim's testimony as to her age, which was corroborated by her half-sister, was deemed sufficient. We noted that the victim testified in court four months after the rape, and hence it was not difficult for the trial court to take judicial notice that she was under 18 years of age.

4. In *People v. Velasco*,[73] the minority of the victim was deemed established by (a) the complainant herself, who was held to be competent to testify on her age, as it constituted family tradition; (b) the open admission of the accused that the victim was a 12-year-old minor; and (c) the categorical finding of the trial court that she was "a minor of a little over twelve years."

5. In *People v. Remudo*,[74] the trial court appreciated the qualifying circumstance of minority on the strength of (a) the offended party's testimony as to the date of her birth, which showed that she was 13 years old at the time of the rape, and (b) the admission of said date of birth by the accused who was the victim's brother.

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[71] 338 SCRA 582 [2000].

[72] 340 SCRA 450 [2000].

[73] 353 SCRA 138 [2001].

[74] G.R. No. 127905, 31 August 2001.

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6. In *People v. LLanita*[75] the only evidence presented by the prosecution to establish that the victim was below 7 years old at the time of the alleged rape was the victim's own testimony. Although hearsay because she could not have personal knowledge of the date of her birth but could only acquire knowledge thereof from her parents or relatives, said testimony was held admissible for being an assertion of family tradition regarding pedigree. Her testimony and the accused's admission that she was 5 years old during the commission of the crime were held sufficient to establish her age.

7. In *People v. Agustin,*[76] the victim's testimony that she was 14 years old at the time of the rape incidents, coupled with the express admission of her age by the accused who was her father, sufficiently proved her minority.

8. In *People v. Esuela,*[77] the testimony of the victim's mother that the victim was 13 years of age at the time of the rape was held sufficient to establish minority for the reason that as a mother she was in the best position to know when she delivered her child. Also considered were the victim's own testimony regarding her age, as well as the observation of the trial court that she could not have been more than 18 years old when she testified.

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school

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[75] G.R. No. 134101, 5 September 2001.

[76] G.R. Nos. 135524-25, 24 September 2001.

[77] G.R. Nos. 138720-21, 19 March 2002.

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records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.[78]

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

In the present case, no birth certificate or any similar authentic document, such as a baptismal certificate of LIZETTE, was presented to prove her age. In imposing the death penalty, the trial court ratiocinated in this wise:

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[78] *People v. Velasco*, *supra* note 73, at 157 [2001]; *People v. Remudo*, *supra* note 74; *People v. Llanita*, *supra* note 75; *People v. Agustin*, *supra* note 76.

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In the instant case, the victim, Lizette Arabelle Gonzales, was a 3-year-old minor girl as alleged in the information and the defense did not contest her age and as a matter of fact was questioning her qualification to testify because of her tender age when she testified two (2) years later in Court. The victim's Medico-Legal Certificate date[d] January 3, 1995 ... established the fact that at the time of the commission of the rape on January 3, 1995, the child was only 3 years old.[79]

It thus appears that the trial court's finding that LIZETTE was 3 years old when she was raped was based on the Medico-Legal Report prepared by Dr. Quiroz, as well as on the fact that the defense did not contest her age and even questioned her qualification to testify because of her tender age.

However, the Medico-Legal Report relied upon by the trial court does not in any way prove the age of LIZETTE, for there is nothing therein which even mentions her age. Only testimonial evidence was presented to establish LIZETTE's age. Her mother, Jacqueline, testified on 17 October 1995 as follows:

Q. Now, on January 3, 1995 at about 9:30 in the morning, do you still recall where you were?
A. Yes, sir.

Q. Where were you at that particular date and time?
A. I was fetching water from an artesian well beside the house of my neighbor, sir.

. . . . . .

Q. Where was this daughter of yours then when you were fetching water?
A. My daughter was discharging her bowel who was then at the back of the house of our neighbor, sir.

Q. How old is your daughter Lizette Arabelle Gonzales?
A. Three years old, sir.

Q. At the time that she was discharging her bowel, how old [was] she?
A. Three years old, sir. She is four years old now.

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[79] Decision of the Trial Court, 16-17.

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Q. When was her last birthday?
A. April 19, 1995, sir.[80]

Likewise, LIZETTE testified on 20 November 1996, or almost two years after the incident, that she was 5 years old.[81] However, when the defense counsel asked her how old she was on 3 January 1995, or at the time of the rape, she replied that she was 5 years old. Upon further question as to the date she was born, she could not answer.[82]

For PRUNA to be convicted of rape in its qualified form and meted the supreme penalty of death, it must be established with certainty that LIZETTE was below 7 years old at the time of the commission of the crime. It must be stressed that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offenses aptly subject to the most exacting rules of procedure and evidence.[83]

In view of the uncertainty of LIZETTE's exact age, corroborative evidence such as her birth certificate, baptismal certificate or any other authentic document should be introduced in evidence[84] in order that the qualifying circumstance of "below seven (7) years old" is appreciated against the appellant. The lack of objection on the part of the defense as to her age did not excuse the prosecution from discharging its burden. That the defense invoked LIZETTE's tender age for purposes of questioning her competency to testify is not necessarily an admission that she was below 7 years of age when PRUNA raped her on 3 January 1995. Such being the case, PRUNA cannot be convicted of qualified rape, and hence the death penalty cannot be imposed on him.

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[80] TSN, 17 October 1995, 4-5.

[81] TSN, 20 November 1996, 2.

[82] TSN, 14 April 1997, 2.

[83] *People v. Liban, supra* note 66.

[84] *People v. Brigildo, supra* note 36; *People v. Geraban, supra* note 49; *People v. Alvarado, supra* note 69.

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However, conformably with no. 3(b) of the foregoing guidelines, the testimony of LIZETTE's mother that she was 3 years old at the time of the commission of the crime is sufficient for purposes of holding PRUNA liable for statutory rape, or rape of a girl below 12 years of age. Under the second paragraph of Article 335, as amended by R.A. No. 7659, in relation to no. 3 of the first paragraph thereof, having carnal knowledge of a woman under 12 years of age is punishable by *reclusion perpetua.* Thus, the penalty to be imposed on PRUNA should be *reclusion perpetua,* and not death penalty.

As regards the civil liability of PRUNA, the indemnity in the amount of ₱50,000 awarded by the trial court is not sufficient. In accordance with recent jurisprudence, LIZETTE should also be awarded moral damages in the amount of ₱50,000 without need of pleading or proof because the mental, physical and psychological trauma suffered by her is too obvious.[85]

WHEREFORE, the decision of the Regional Trial Court, Branch 1, Balanga, Bataan, in Criminal Case No. 6044 is hereby *AFFIRMED* with the modification that accused Manuel Pruna *y* Ramirez or Erman Pruna *y* Ramirez is held guilty beyond reasonable doubt of statutory rape, and not qualified rape, and is sentenced to suffer *reclusion perpetua* and to pay the victim Lizette Arabelle Gonzales the sum of ₱50,000 as moral damages in addition to the indemnity of ₱50,000.

Costs *de oficio.*

SO ORDERED.

Puno, Vitug, Panganiban, Sandoval-Gutierrez, Corona, Carpio-Morales, and *Callejo, Sr., JJ.,* concur.

Bellosillo, Mendoza, Quisumbing, Ynarez-Santiago, Carpio, and *Austria-Martinez, JJ.,* on official leave.

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[85] *People v. Ardon,* G.R. No. 137753-56, 16 March 2001; *People v. Arofo,* G.R. No. 139433, 11 April 2002.