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It may not be amiss to reiterate that rules of procedure are mere tools designed to facilitate the attainment of justice; thus, their strict and rigid application that would tend to frustrate rather than promote substantial justice are well to be avoided.[4] Indeed, the Rules of Civil Procedure on forum shopping are not always applied with inflexibility.[5]

WHEREFORE, the challenged resolutions, dated 18 April 2000 and 10 October 2000, of the Regional Trial Court of Baguio City, Branch 51, are *SET ASIDE*. Civil Case No. 4587-R is hereby ordered *REINSTATED*. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), concur.

Ynares-Santiago and Carpio, JJ., abroad on official business.

Sandoval-Gutierrez, (Special Member, per Special Order no. 269), concur.

EN BANC

[G.R. Nos. 131475–76. October 14, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELO CALISO,** *accused-appellant.*

SYNOPSIS

A judgment of conviction for two counts of rape was rendered by the Regional Trial Court against appellant for

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[4] *Ace Navigation Co., Inc. vs. Court of Appeals,* 338 SCRA 70.

[5] *Barroso vs. Ampig, Jr.*, 328 SCRA 530.

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sexually assaulting his daughter Joyce C. Caliso. Appellant was sentenced to *reclusion perpetua* for the rape committed sometime in July 1993, and death penalty for the rape committed on February 15, 1994.

Hence, this automatic review.

Appellant assailed the credibility of complainant. He alleged that private complainant testified that he raped her in September 1993, but she later claimed that it took place in July 1993. He also bewailed complainant's unreasonable delay in reporting the rape incidents.

From the evidence on record, the Supreme Court was fully convinced that appellant raped his daughter. The fact that the complainant appeared unsure as to the exact date of the first rape cannot discredit her whole testimony. It was not unusual for a girl of tender age who was subjected to an incestuous atrocity to forget the date when the traumatic incident occurred. In any case, the precise date when complainant was sexually abused is not an essential element of the crime of rape. It also bears stressing that the victim's long silence and inaction are not always construed as indications of false accusation. Joyce testified that appellant threatened to kill her and her siblings if she reported his sexual assaults against her. Being the father, appellant exercises moral ascendancy over Joyce. This, undoubtedly, intimidated her into silence. Her delay in reporting the rape was thus understandable and did not affect her credibility. The Court, therefore, affirmed the decision of the trial court as to the guilt of the appellant. It, however, reduced the death penalty imposed to *reclusion perpetua*. While the information sufficiently alleged that appellant is the father of the victim, however, it did not specify the latter's age at the time the crime was committed. Such fatal omission bars the imposition of the death penalty.

SYLLABUS

1. CRIMINAL LAW; RAPE; HOW COMMITTED.— Article 335 of the Revised Penal Code provides that a person commits

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rape by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented.

2. **ID.; ID.; PRECISE DATE THE VICTIM WAS SEXUALLY ABUSED IS NOT AN ESSENTIAL ELEMENT THEREOF.**— The fact that Joyce appeared unsure as to the exact date of the first rape cannot discredit her whole testimony. It is not unusual for a girl of tender age who was subjected to an incestuous atrocity to forget the date when the traumatic incident occurred. In any case, the precise date when complainant was sexually abused is not an essential element of the crime of rape. The gravamen of the offense is carnal knowledge of a woman under any of the circumstances enumerated in Article 335 of the Revised Penal Code, not the date of the commission of the crime.

3. **ID.; ID.; PENALTY; *RECLUSION PERPETUA.***— As to the rape committed in *July of 1993*, subject of Criminal Case No. 716, we affirm the trial court's imposition of the penalty of *reclusion perpetua*, considering that Article 335 of the Revised Penal Code prescribes the penalty of *reclusion perpetua* in simple rape.

4. **ID.; ID.; SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; FAILURE TO ALLEGE IN THE INFORMATION THE VICTIM'S AGE AT TIME OF COMMISSION OF THE CRIME BARS THE IMPOSITION OF DEATH PENALTY; CASE AT BAR.**— We note that the rape committed on *February 15, 1994* in Criminal Case No. 717 occurred after Republic Act No. 7659 took effect on December 31, 1993. The trial court imposed the death penalty on appellant pursuant to its amendatory provisions in relation to Article 335 of the Revised Penal Code, pertinent portions of which read: x x x. Under the above provisions, the concurrence of the victim's *minority* and her *relationship* with the offender constitutes a special qualifying circumstance which increases the penalty to one degree resulting in the imposition of the death penalty. It is essential, though, that such special qualifying circumstance be properly alleged in the information and duly proved during the trial. In the instant case, while the information sufficiently alleges that appellant

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is the father of the victim, however, it does not specify the latter's age at the time the crime was committed. Such fatal omission bars the imposition of the death penalty. Thus, appellant cannot be convicted of qualified rape. Otherwise, he would be deprived of his constitutional right to be properly informed of the nature and cause of the accusation against him since the information merely charges him with simple rape. Fundamental is the rule that every element of the crime charged be alleged in the information in order to enable the accused to properly prepare his defense. Consequently, the penalty meted to appellant by the trial court in Criminal Case No. 717 should be reduced to *reclusion perpetua.*

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; LONE TESTIMONY OF WITNESS IS SUFFICIENT TO CONVICT, IF CREDIBLE.**— By its very nature, rape is normally committed away from public view and without witnesses around save the perpetrator and the victim themselves. Thus, the lone testimony of a rape victim, by itself, is sufficient to warrant a judgment of conviction if found to be credible. A person accused of a crime may be convicted, not on the number of witnesses against him, but on the credibility of even one witness who is able to prove his guilt beyond a shadow of doubt.

6. **ID.; ID.; ID.; VICTIM'S LONG SILENCE AND INACTION NOT ALWAYS CONSTRUED AS INDICATIONS OF FALSE ACCUSATION.**— Appellant also bewails Joyce's unreasonable delay in reporting the rape incidents, claiming that it took her seven (7) long months after the first sexual assault before seeking help from the authorities. It bears stressing that the victim's long silence and inaction are not always construed as indications of false accusation. Joyce testified that appellant threatened to kill her and her siblings if she reported his sexual assaults against her. Being the father, appellant exercises moral ascendancy over Joyce. This, undoubtedly, intimidated her into silence. Her delay in reporting the rape is thus understandable and does not affect her credibility.

7. **ID.; ID.; ID.; A TEEN-AGED DAUGHTER WOULD NOT ACCUSE HER OWN FATHER OF INCESTUOUS RAPE HAD SHE REALLY NOT BEEN AGGRIEVED.**— Appellant further attempts to discredit Joyce's testimony by imputing

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ill motive on her part in charging him with rape. He claims that she hated him for refusing to sell their house and lot in order that they could put up a business. This contention is utterly baseless and ridiculous. Francisca Caliso, appellant's own wife, debunked his claim, saying that such situation can never happen simply because he has actually no land to sell. Moreover, it is unthinkable that Joyce could conjure a rape scenario against her very own father just because he refused to sell the house and lot. At her very tender age, she does not have the capacity to charge him falsely and undergo the humiliation of a public trial, an embarrassing medical examination and undue exposure of dishonor to herself and her family. A teen-aged daughter would not accuse her own father of such an unspeakable crime as incestuous rape had she really not been aggrieved.

8. **ID.; ID.; ID.; WHEN A WOMAN DECLARES SHE HAS BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO MEAN THAT SHE HAS BEEN RAPED; CASE AT BAR.**— Considering her tender years, innocence and shyness, Joyce evidently had difficulty describing appellant's sexual organ and how she was actually raped. Nevertheless, she repeatedly declared that her father "took her womanhood." She testified that her father "moved" inside her body and described his sexual penetration as "push and pull" which she experienced "many times." She felt pain inside her vagina and that her father "kept on moving" while on top of her. Then she noticed fresh blood in her private part as she was changing her panty after the first rape incident. Joyce's testimony was supported by the medical findings of Dr. Evelyn Cortes-Retana that she had healed lacerations on her hymen and that there was "ease" when two (2) fingers were inserted through her private organ. It must be stressed that a young girl's revelation that she was raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity by her own father, cannot be easily dismissed as a mere concoction. Indeed, when a woman declares that she has been raped, she says in effect all that is necessary to mean that she has been raped, and where her testimony passes the test of credibility the accused can be convicted on the basis thereof. This long-standing rule applies with more vigor when the culprit is a close relative of the victim, as in this case.

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9. ID.; ID.; DENIAL; INTRINSICALLY WEAK DEFENSE SPECIALLY WHEN NOT BUTTRESSED BY STRONG EXCULPATORY EVIDENCE.— The trial court was correct in giving full credence to Joyce's testimony. Testifying in a candid and spontaneous manner, she convincingly related to the trial court how her father raped her. Despite a lengthy cross-examination, she remained firm and steadfast in positively identifying him as the person who raped her, not just once but twice. Upon the other hand, appellant's defense merely consists of bare denial, an intrinsically weak defense, specially because it was not buttressed by strong exculpatory evidence. In view of Joyce's convincing testimony that she was raped sometime in July 1993 and on February 15, 1994, as well as her positive identification of her father as the culprit, his unsubstantiated defense of denial must fail.

10. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; MANDATORY UPON FINDING OF FACT OF RAPE.— Regarding damages, we note that the trial court, in both Criminal Case Nos. 716 and 717, awarded moral damages of ₱50,000.00 and exemplary damages of ₱25,000.00 in each case in favor of the victim, but omitted to grant civil indemnity. Civil indemnity is mandatory upon the finding of the fact of rape and is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of its sound discretion. In the present case, the offended party is entitled to the amount of ₱50,000.00 as civil indemnity in each case, in accordance with current jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For twice raping his teen-aged daughter, Marcelo Caliso, appellant, was sentenced to suffer the penalties of death in Criminal Case No. 717 and *reclusion perpetua* in Criminal Case

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No. 716 by the Regional Trial Court (RTC), Branch 46, Larena, Siquijor in a joint Decision dated September 10, 1997.

Hence this automatic review.

On September 13, 1994, two separate informations were filed with the said RTC charging Marcelo Caliso with rape, committed as follows:

Criminal Case No. 716

"That on or about the second week of July 1993 at 12:00 o'clock noon, at barangay Campalasanan, Municipality of Lazi, Siquijor, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there by means of deceit, force, violence and intimidation, willfully, unlawfully and feloniously succeeded in having carnal knowledge with Joyce C. Caliso, his daughter, against her will."[1]

Criminal Case No. 717

"That on or about the 15th day of February 1994 at 12:00 o'clock noon, at barangay Campalasanan, Municipality of Lazi, Siquijor, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there by means of deceit, force, violence and intimidation, willfully, unlawfully and feloniously succeeded in having carnal knowledge with Joyce C. Caliso, his daughter, against her will."[2]

Upon arraignment, appellant Caliso pleaded not guilty to the crimes charged.[3] Thereafter, joint trial ensued.

The evidence adduced by the prosecution shows that Joyce C. Caliso, born on January 19, 1979, is the third child of Francisca Catian Caliso and appellant Marcelo Caliso. Joyce lives with her parents and her siblings Aileen, Sherwin, Renee and Marcelo, Jr. in a one-storey house in Capalasanan, Lazi, Siquijor. They

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[1] RTC Record, Criminal Case No. 716, p. 2.

[2] *Ibid.*

[3] Certificates of Arraignment, RTC Record in Criminal Case No. 716, p. 18; RTC Record in Criminal Case No. 717, p. 11.

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sleep in the living room.[4] Appellant works on a farm half a kilometer away from their house.

Sometime in the second week of July 1993, appellant and Joyce, then 14 years old, were alone in their house. Her mother, Francisca, and sister Aileen were in Manila. Her brothers Sherwin and Renee went fishing, while Marcelo Jr., her youngest brother, was playing outside the house. At around 11:00 o'clock in the morning, Joyce, clad in a t-shirt and a skirt, was in the kitchen. Suddenly, appellant took a *bolo* and a *garote* from the kitchen, seized Joyce and pulled her to the living room where he aimed the *bolo* at her abdomen and ordered her not to shout. He pushed her to the floor and pulled her skirt. Frightened, she cried as he took off her panty and placed himself on top of her. He placed the *garote* on the floor beside him and then removed his shorts. At this moment, she described how she was ravished by appellant: "I felt something was inside my vagina, and my father kept on moving."[5] "It was painful below"[6] as "he took my womanhood."[7]

Afterwards, appellant stood and warned Joyce not to tell anybody what transpired, otherwise, he will kill her. She retrieved her underwear and continued crying. While walking towards the little storage room to change her underwear, she noticed fresh blood in her private part. When her brother Sherwin arrived in the afternoon, she refrained from mentioning anything about the incident.[8]

Subsequently, appellant ravished her again several times but she could no longer recall the exact dates.[9]

On February 15, 1994, at around 12:00 o'clock noon, appellant instructed her to accompany him to the well in order to fetch

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[4] TSN, October 24, 1995, pp. 5-11.

[5] TSN, December 6, 1995, p. 3.

[6] TSN, October 24, 1995, pp. 25-26.

[7] *Ibid.*, p. 24.

[8] TSN, December 6, 1995, pp. 3-6.

[9] *Ibid.*, p. 7.

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water. On their way, they passed by a hut in the farm. Suddenly, he pulled her inside the hut. She tried to resist but he threatened to kill her. Thereupon, he forcibly pushed her to the floor, causing her to fall on her back. She helplessly watched him as he unsheathed a *bolo* from his waist. Then he aimed it at her stomach and removed her skirt and panty. He then took off his shorts and brief with one hand, while pointing the *bolo* at her with the other hand. Next, he placed himself on top of her, making push and pull movements. She kept on crying.[10] After satisfying himself, appellant warned her not to tell her brothers and sisters.

Minutes later, Joyce fetched water from the well, while appellant remained inside the hut. Then she proceeded directly to their house and told her mother Francisca, sister Aileen and brother Sherwin about her harrowing experience. Her mother wept and said nothing. Incidentally, Aileen disclosed that she had also been molested by her father.[11]

On February 20, 1994, at around 5:00 o'clock in the afternoon, Joyce, Aileen and Sherwin fled from their house as their father was tending the farm. They went to the residence of their mother's sister, Lourdes Catian Lomongo, in Poblacion, Maria, Siquijor and informed her about appellant's sexual offenses. She advised them to institute rape charges against him, which Joyce did.[12]

Joyce submitted herself for physical examination by Dr. Evelyn Cortes-Retana of the Siquijor Provincial Hospital. The doctor revealed that Joyce had "healed lacerations of the hymen at 6:00 o'clock position" and that there was "ease" when two (2) fingers were inserted through her vagina.[13]

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[10] TSN, December 6, 1995, pp. 6-12.

[11] *Ibid.*, pp. 12-16.

[12] TSN, December 6, 1995, pp. 17-20. Exhibit "D", RTC Record in Criminal Case No. 716, p. 4.

[13] TSN, September 6, 1996, pp. 9-11; Physical Injuries Report, Exhibit "C", RTC Record, Criminal Case No. 716, p. 7.

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The defense, on the other hand, presented the lone testimony of appellant. He denied raping his daughter Joyce. He recounted several incidents portraying her as a liar and a girl of ill temperament and loose morals, thus:[14]

1. In April, 1993, Joyce asked permission from her parents to attend a dance party at Cangaya, Lazi, Siquijor. Her parents consented. She returned home past 10:00 o'clock in the evening, telling her mother that there is a man following her and that he loves her.

2. On May 11, 1993, Joyce again went to a dance party at Cangaya, Lazi and returned home at around 11:30 in the morning of the next day. Instead of scolding her, appellant merely expressed relief that she passed the night at Boyong. Appellant was apprehensive she might encounter drunk people on her way home.

3. On May 24, 1993, Joyce attended another dance party with her father's consent. She came home at dawn of the next day. She told him that she actually arrived early in the morning but had lost her way because she had to go back and forth looking for her handkerchief. He told her to go to sleep, assuring her that he will search for the handkerchief himself. And so he did. Along the way, he noticed a white cloth on the grass and took it. To his surprise, it was Joyce's panty with her name on it. Upon his instruction, his wife confronted Joyce about that underwear, and the latter cried. When he confronted her, she merely said that "he need not worry because she is already big" and that "he cannot interfere with whomever she loves." In the afternoon of that day, he went inside their hut in the farm to rest. Suddenly, he felt someone about to strike him with a hammer. He woke up in time to parry Joyce's blow, losing his two teeth in the process and breaking a third one. Although he was angry, he did not punish Joyce as it was not his nature to do so.

4. On July 12, 1993, Joyce's younger sister Renee said that she does not want to be like her older sister who attends fiestas

[14] TSN, March 4, 1997, pp. 6-15.

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and dances, does not come home early and leaves her panty along the road. Angered by such remark, Joyce tried to strike Renee with a knife. Appellant was able to parry Joyce's thrust, but he was hit on his knee.

5. On February 11, 1994, Joyce's youngest brother Marcelo, Jr. spilled a plate of rootcrop. Joyce became furious and immediately struck him with a knife. Again, appellant was able to parry the blow with his foot but he sustained an injury on his lower leg.

Appellant further testified that he "cannot afford to take a bath with his own blood."[15] He surmised that Joyce filed the rape charges against him because he refused to grant her request to sell their house and lot so the family could engage in business. He rejected her request because the tax declaration of the property is not in his name and that he cannot sell the property without the consent of his brothers and sisters.[16]

Francisca Caliso, Joyce's mother, refuted appellant's testimony, describing his story as pure lie. The truth is her husband often maltreated her and their children. He always carries a *bolo* wherever he goes. Contrary to his claim that Joyce hit him with a hammer causing his teeth to fall, Francisca declared that he actually had bad teeth which he himself pulled. She also stressed that Joyce loves her younger brother Junior so much that she will never harm him as claimed by appellant. Moreover, in controverting her husband's testimony that Joyce filed the rape charges because of his refusal to sell the house and lot, Francisca declared that he does not own any property.[17]

On September 10, 1997, the trial court rendered judgment,[18] the dispositive portion of which reads:

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[15] TSN, March 4, 1997, p. 15.

[16] *Ibid.*, pp. 15-17.

[17] TSN, June 17, 1997, pp. 4-8.

[18] Judgment penned by Judge Suceso A. Arcamo, *Rollo*, pp. 27-43.

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"WHEREFORE, finding the accused MARCELO CALISO guilty beyond reasonable doubt of two (2) counts of Rape, he is hereby sentenced to suffer the following penalties:

a) *Reclusion perpetua* or imprisonment for a minimum period of Thirty (30) Years in Criminal Case No. 716;

b) *Death penalty* in Criminal Case No. 717 as mandated under Section 11 of Republic Act No. 7659; and

c) To indemnify the offended party, Joyce Caliso, the amount of Fifty Thousand Pesos (₱50,000.00) in each case or One Hundred Thousand Pesos (₱100,000.00) in all by way of moral damages, and the amount of Twenty Five Thousand Pesos (₱25,000.00) in each case or a total of Fifty Thousand Pesos (₱50,000.00) by way of exemplary damages but without subsidiary imprisonment in case of insolvency.

"The Clerk of Court is hereby directed to transmit the complete records of these cases to the Honorable Supreme Court within fifteen (15) days from today for automatic review, the same being a capital offense.

"SO ORDERED."

Appellant Marcelo Caliso ascribes to the court below this lone error:

"THE TRIAL COURT MANIFESTLY ERRED IN CONVICTING ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[19]

Article 335 of the Revised Penal Code provides that a person commits rape by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented.

By its very nature, rape is normally committed away from public view and without witnesses around save the perpetrator

[19] Appellant's Brief, *Rollo*, p. 55.

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and the victim themselves.[20] Thus, the lone testimony of a rape victim, by itself, is sufficient to warrant a judgment of conviction if found to be credible.[21] A person accused of a crime may be convicted, not on the number of witnesses against him, but on the credibility of even one witness who is able to prove his guilt beyond a shadow of doubt.[22]

In the present case, appellant contends that Joyce's testimony is not credible. While she testified that he raped her in September 1993, she later claimed that it took place in July 1993.

The fact that Joyce appeared unsure as to the exact date of the first rape cannot discredit her whole testimony. It is not unusual for a girl of tender age who was subjected to an incestuous atrocity to forget the date when the traumatic incident occurred. In any case, the precise date when complainant was sexually abused is not an essential element of the crime of rape.[23] The gravamen of the offense is carnal knowledge of a woman under any of the circumstances enumerated in Article 335 of the Revised Penal Code, not the date of the commission of the crime.[24]

Appellant also bewails Joyce's unreasonable delay in reporting the rape incidents, claiming that it took her seven (7) long months after the first sexual assault before seeking help from the authorities. It bears stressing that the victim's long silence and inaction are not always construed as indications of false accusation.[25] Joyce testified that appellant threatened to kill her and her siblings if she reported his sexual assaults against her. Being the father, appellant exercises moral ascendancy over Joyce. This, undoubtedly, intimidated her into silence. Her delay in reporting the rape is thus understandable and does not affect her credibility.[26]

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[20] *People vs. Pontilar*, 275 SCRA 338, 351(1997); *People vs. Pecayo, Sr.*, 348 SCRA 95, 107 (2000).

[21] *People vs. Rivera*, G.R. No. 139180, July 31, 2001.

[22] *People vs. Toquero*, 339 SCRA 69, 75 (2000).

[23] *People vs. Ocampo*, 206 SCRA 223, 232 (1992).

[24] *People vs. Barbosa*, G. R. No. 126899, August 2, 2001.

[25] *People vs. Alimon*, 257 SCRA 658, 674 (1996).

[26] *People vs. Traya*, 332 SCRA 449, 506 (2000).

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Appellant further attempts to discredit Joyce's testimony by imputing ill motive on her part in charging him with rape. He claims that she hated him for refusing to sell their house and lot in order that they could put up a business. This contention is utterly baseless and ridiculous. Francisca Caliso, appellant's own wife, debunked his claim, saying that such situation can never happen simply because he has actually no land to sell. Moreover, it is unthinkable that Joyce could conjure a rape scenario against her very own father just because he refused to sell the house and lot. At her very tender age, she does not have the capacity to charge him falsely and undergo the humiliation of a public trial, an embarrassing medical examination and undue exposure of dishonor to herself and her family. A teen-aged daughter would not accuse her own father of such an unspeakable crime as incestuous rape had she really not been aggrieved.[27]

As to the rape committed in July of 1993, appellant contends that the prosecution failed to prove carnal knowledge, asserting that Joyce could not describe that "something moving inside her vagina" when he was allegedly on top of her. He contends it could be a finger, not a male private organ. Thus, he could only be liable for acts of lasciviousness instead of rape.

Appellant's argument is absurd. Considering her tender years, innocence and shyness, Joyce evidently had difficulty describing appellant's sexual organ and how she was actually raped. Nevertheless, she repeatedly declared that her father "took her womanhood."[28] She testified that her father "moved" inside her body and described his sexual penetration as "push and pull" which she experienced "many times."[29] She felt pain inside her vagina and that her father "kept on moving" while on top of her.[30] Then she noticed fresh blood in her private part as she was changing her panty after the first rape incident.[31] Joyce's

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[27] *People vs. Nardo*, 353 SCRA 339, 353 (2001).

[28] TSN, October 24, 1995, pp. 21-22; TSN, December 6, 1995, p. 11.

[29] TSN, February 29, 1996, p. 14.

[30] TSN, December 6, 1995, p. 3.

[31] *Ibid.*, p. 5.

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testimony was supported by the medical findings of Dr. Evelyn Cortes-Retana that she had healed lacerations on her hymen and that there was "ease" when two (2) fingers were inserted through her private organ.[32] It must be stressed that a young girl's revelation that she was raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity by her own father, cannot be easily dismissed as a mere concoction.[33] Indeed, when a woman declares that she has been raped, she says in effect all that is necessary to mean that she has been raped, and where her testimony passes the test of credibility the accused can be convicted on the basis thereof.[34] This long-standing rule applies with more vigor when the culprit is a close relative of the victim,[35] as in this case.

As to the sexual assault on Joyce committed on February 15, 1994, she described the manner in which her father intimidated her into submitting to his lustful desires. Threatening Joyce with death, appellant succeeded in having sexual intercourse with her. She helplessly cried and endured the ordeal of her father's evil acts as he "(took) her womanhood."

The trial court was correct in giving full credence to Joyce's testimony. Testifying in a candid and spontaneous manner, she convincingly related to the trial court how her father raped her. Despite a lengthy cross-examination, she remained firm and steadfast in positively identifying him as the person who raped her, not just once but twice.

Upon the other hand, appellant's defense merely consists of bare denial, an intrinsically weak defense, specially because it was not buttressed by strong exculpatory evidence.[36] In view

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[32] Physical Injuries Report, Exhibit "C", RTC Record, Criminal Case No. 716, p. 7.

[33] *People vs. Antipona*, 274 SCRA 328, 335 (1997).

[34] *People vs. Perez*, 270 SCRA 526, 533 (1997).

[35] *People vs. Burce*, 269 SCRA 293, 311 (1997).

[36] *People vs. Rivera*, G. R. No. 139180, July 31, 2001.

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of Joyce's convincing testimony that she was raped sometime in July 1993 and on February 15, 1994, as well as her positive identification of her father as the culprit, his unsubstantiated defense of denial must fail.

Verily, from the evidence on record, we are fully convinced that appellant Marcelo Caliso raped his daughter Joyce as charged in Criminal Case Nos. 716 and 717.

As to the rape committed in *July of 1993,* subject of Criminal Case No. 716, we affirm the trial court's imposition of the penalty of *reclusion perpetua*, considering that Article 335 of the Revised Penal Code prescribes the penalty of reclusion perpetua in simple rape.

We note that the rape committed on *February 15, 1994* in Criminal Case No. 717 occurred after Republic Act No. 7659 took effect on December 31, 1993.[37] The trial court imposed the death penalty on appellant pursuant to its amendatory provisions in relation to Article 335 of the Revised Penal Code, pertinent portions of which read:

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

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

x x x x x x x x x"

Under the above provisions, the concurrence of the victim's *minority* and her *relationship* with the offender constitutes a special qualifying circumstance which increases the penalty to one degree resulting in the imposition of the death penalty. It is essential, though, that such special qualifying circumstance

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[37] *People vs. Garcia*, 281 SCRA 463, 484 (1997), citing *People vs. Simon*, 234 SCRA 555 (1994).

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be properly alleged in the information and duly proved during the trial.[38]

In the instant case, while the information sufficiently alleges that appellant is the father of the victim, however, it does not specify the latter's age at the time the crime was committed. Such fatal omission bars the imposition of the death penalty.[39] Thus, appellant cannot be convicted of qualified rape. Otherwise, he would be deprived of his constitutional right to be properly informed of the nature and cause of the accusation against him since the information merely charges him with simple rape. Fundamental is the rule that every element of the crime charged be alleged in the information in order to enable the accused to properly prepare his defense.[40] Consequently, the penalty meted to appellant by the trial court in Criminal Case No. 717 should be reduced to *reclusion perpetua.*

Regarding damages, we note that the trial court, in both Criminal Case Nos. 716 and 717, awarded moral damages of ₱50,000.00 and exemplary damages of ₱25,000.00 in each case in favor of the victim, but omitted to grant civil indemnity. Civil indemnity is mandatory upon the finding of the fact of rape and is distinct from and should not be denominated as moral damages which are based on different *jural* foundations and assessed by the court in the exercise of its sound discretion.[41] In the present case, the offended party is entitled to the amount of ₱50,000.00 as civil indemnity in each case, in accordance with current jurisprudence.[42]

WHEREFORE, the assailed decision of the RTC, Branch 46, Larena, Siquijor in Criminal Case Nos. 716 and 717, finding

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[38] *People vs. Acala*, 307 SCRA 330, 359-360 (1999); *People vs. Cantos, Sr.*, 305 SCRA 786, 798-799 (1999).

[39] *People vs. Pailanco*, 322 SCRA 790, 804 (2000).

[40] *People vs. Calayca*, 301 SCRA 192, 210 (1999).

[41] *People vs. Nuñez*, 310 SCRA 168, 184 (1999); *People vs. Marabillas*, 303 SCRA 352, 360 (1999).

[42] *People vs. Tagun*, G. R. No. 137745, February 15, 2002; *People vs. Sandoval*, 348 SCRA 476, 491 (2000).

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appellant Marcelo Caliso guilty beyond reasonable doubt of two counts of rape, is *AFFIRMED* with *MODIFICATION* in the sense that appellant is liable for simple rape and is sentenced to suffer the penalty of *reclusion perpetua*, instead of death, in Criminal Case No. 717, and is ordered to pay private complainantJoyce Caliso, for each count of rape, the amount of ₱50,000.00 as civil indemnity. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Corona, Carpio-Morales, and *Callejo, Sr., JJ.,* concur.

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

Ynares-Santiago, J., on leave.

EN BANC

[G.R. No. 140066. October 14, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EFREN VILLENA, ARNALDO CLEMENTE, PO3 EDWIN TINIO (acquitted) and PETER DOE,** *accused-appellants.*

SYNOPSIS

Accused Efren Villena, Arnaldo Clemente, and PO3 Edwin Tinio were charged, arrested and subsequently found guilty of robbery with homicide committed on the 28th day of September, 1996 against spouses Herminio Orjalo, Sr. and Josefine Orjalo, and were sentenced to death. In convicting accused-appellants, the trial court gave full faith and credit to the testimonies of the prosecution witnesses Jocelyn Sinaypan and Teodorica Soriano, the spouses' housemaid and laundrywoman. Both witnesses were with the spouses Orjalo at the time of the