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[G.R. No. 135241. January 22, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PLACIDO LUNA *y* DELOS REYES,** *accused-appellant.*

SYNOPSIS

Accused-appellant was convicted of rape by the Regional Trial Court of Zamboanga City and was sentenced to suffer the supreme penalty of death. On automatic review, appellant contended that private complainant's testimony is improbable for being marked with inconsistencies. Appellant stressed that the contradictions and inconsistencies in the testimony of private complainant constitute proof that she was prevaricating and rendered her entire testimony barren of probative weight.

The Supreme Court affirmed appellant's conviction but modified the penalty imposed by the trial court by reducing it to *reclusion perpetua.* According to the Court, private complainant was barely ten years old and a Grade III pupil when she testified before the trial court, but despite the grueling, intensive and incisive cross-examination by counsel of appellant, she remained intractable and consistent as she unfolded to the court, with tears cascading from her eyes, how she was ravished by appellant after hiding her panty and applying cooking oil on his penis to facilitate its entry into her vagina. She even demonstrated to the court how appellant consummated his lecherous and diabolical acts on her. The Court, however, ruled that the trial court erred in imposing the death penalty. The relationship by affinity of private complainant to appellant was not alleged in the Information as required by Section 9, Rule 110 of the Revised Rules on Criminal Procedure. Since the relationship of appellant and private complainant was not alleged in the Information, the same shall not be considered in upgrading the crime to rape in its qualified form; otherwise, appellant will be deprived of his right to be informed of the nature of the charge against him.

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SYLLABUS

1. **CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.**— In reviewing rape cases, this Court is guided by three well entrenched principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused though innocent to disprove; (2) in view of the intrinsic nature of the crime of rape, where only two persons are usually involved, the testimony of the private complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the accused.

2. **ID.; ID.; ABSENCE OF SPERMATOZOA DOES NOT DISPROVE RAPE; LACERATIONS WHETHER HEALED OR FRESH ARE THE BEST PHYSICAL EVIDENCE OF FORCIBLE DEFLORATION.**— The absence of spermatozoa in the sex organ of private complainant on December 15, 1995 does not disprove rape. It could be that before private complainant was examined by the doctor on December 15, 1995, she washed her sex organ or urinated thus accounting for the absence of any spermatozoa in her sex organ. Neither does the absence of fresh lacerations in the hymen of private complainant disprove rape. On the other hand, we held that lacerations whether healed or fresh are the best physical evidence of forcible defloration. The barefaced fact that the penis of accused-appellant in full erection was 9.0 centimeters long and the circumference of its shaft was 9.05 centimeters and the circumference of its glans was 11.0 centimeters do not preclude rape.

3. **ID.; ID.; TRIAL COURT ERRED IN IMPOSING DEATH PENALTY; RELATIONSHIP BY AFFINITY OF PRIVATE COMPLAINANT TO APPELLANT NOT ALLEGED IN THE INFORMATION AS REQUIRED BY SECTION 9, RULE 110 OF THE REVISED RULES OF CRIMINAL PROCEDURE.**— While we agree with accused-appellant that the trial court erred in imposing the death penalty, however, it is for a reason other than those relied upon by him. The concurrence of the minority of private complainant and her relationship, whether by consanguinity or by affinity, with accused-appellant envisaged by law is a special qualifying circumstance warranting the imposition of the death penalty. Accused-appellant is not the parent, step-parent or ascendant

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of private complainant. However, he is related to private complainant by affinity within third civil degree. The evidence on record shows that Arcelia, the grandmother of private complainant is legally married to accused-appellant. However, the relationship by affinity of private complainant to accused-appellant was not alleged in the Information as required by Section 9, Rule 110 of the Revised Rules on Criminal Procedure. The aforesaid rule has been applied retroactively because it is favorable to the accused. Since the relationship of accused-appellant and private complainant was not alleged in the Information, the same shall not be considered in upgrading the crime to rape in its qualified form; otherwise, accused-appellant will be deprived of his right to be informed of the nature of the charge against him. In fine, accused-appellant is guilty only of statutory rape defined in Article 335 of the Revised Penal Code, as amended, punishable by *reclusion perpetua*. The penalty imposed by the trial court should be modified accordingly.

4. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF TRIAL COURTS ARE ACCORDED GREAT RESPECT BY APPELLATE COURTS.— Trial courts have the unique advantage of observing and monitoring at close range the attitude, conduct and deportment of the witnesses, as they narrate their testimonies before said court. The legal aphorism is that the findings of the trial courts, their calibration of the testimonies of witnesses and their assessment of the probative weight of the evidence of the parties and the conclusions of the trial court culled from said findings are accorded by the appellate court great respect, if not conclusive effect, unless the trial court ignored, misunderstood, misinterpreted or misconstrued cogent facts and circumstances which, if considered, would alter the outcome of the case, In this case, the trial court found Shermalou and her testimony to be credible and entitled to probative weight:

5. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES MUST BE CONSIDERED AND CALIBRATED IN ITS ENTIRETY INCLUSIVE AND NOT BY TRUNCATED OR ISOLATED PASSAGES THEREOF.— The Court has painstakingly examined the evidence on record, and is convinced that the aforesaid findings of the trial court are buttressed by said evidence, and its conclusions anchored on said findings are

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precise and logical and in conformity with ordinary human experience. It is established jurisprudence that testimony must be considered and calibrated in its entirety inclusive and not by truncated or isolated passages thereof. Due consideration must be accorded to all the questions propounded to the witness and her answers thereto. The whole impression or effect of what had been said or done must be considered and not individual words or phrases alone.

6. **ID.; ID.; ID.; MINOR CONTRADICTIONS OR INCONSISTENCIES ARE INDICATIVE OF AN UNREHEARSED TESTIMONY AND SERVE TO STRENGTHEN AND ENHANCE CREDIBILITY.**— The private complainant was barely ten years old and a Grade III pupil when she testified before the trial court. It is true that her testimony as to where precisely her brother Erwin, Jr. was or where she was when accused-appellant ordered Erwin, Jr. to fetch water after defecating was incongruent. However, the inconsistencies and contradictions in the testimony of private complainant pertained only to trivial, collateral and peripheral matters and not to the particulars of the crime and hence, did not denigrate her credibility and the verisimilitude of her testimony. Such minor contradictions or inconsistencies are even indicative of an unrehearsed testimony and serve to strengthen and enhance her credibility. Despite the grueling, intensive and incisive cross-examination by counsel of accused-appellant, not to mention the clarificatory questions by the trial court, private complainant remained intractable and consistent as she unfolded to the court, with tears cascading from her eyes, how she was ravished by accused-appellant after hiding her panty and applying cooking oil on his penis to facilitate its entry into her vagina. She even demonstrated to the court how accused-appellant consummated his lecherous and diabolical acts on her.

7. **ID.; ID.; ID.; TESTIMONY OF RAPE VICTIMS WHO ARE YOUNG AND IMMATURE DESERVES FULL CREDENCE AND FULL PROBATIVE WEIGHT.**— Jurisprudence holds that the testimony of rape victims who are young and immature deserves full credence and full probative weight. In this case, accused-appellant even unabashedly admitted that private complainant had no ill or devious motive for charging him with rape. Accused-appellant was no less the step-grandfather of private complainant. She charged accused-appellant with rape and testified on her heartrending ordeal only to quench her thirst for justice. Indeed,

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no woman, especially one of tender age, would concoct a story of defloration, allow the examination of her private parts, and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by an innate desire to have the culprit apprehended and punished for his dastardly acts.

8. **ID.; ID.; NO LAW OR RULE REQUIRING THE PROSECUTION TO PRESENT CORROBORATIVE EVIDENCE; TESTIMONY OF RAPE VICTIM WHEN CREDIBLE AND TRUSTWORTHY IS SUFFICIENT TO CONVICT.**— The prosecution cannot be faulted nor its cause debilitated merely because it did not present Erwin, Jr. as a witness to corroborate the testimonies of private complainant and their mother Isabel. There is no law or rule requiring the prosecution to present corroborative evidence. The testimony of private complainant when credible and trustworthy is sufficient to convict the accused-appellant. The prosecution need not present any corroborative evidence as it would be a surplusage.

9. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER CATEGORICAL AND POSITIVE IDENTIFICATION.**— Alibi as a defense in criminal prosecution is inherently weak because it is easy to concoct and difficult to disprove. It is a common and standard defense resorted to by one who is accused, and usually, relatives and close friends are utilized by him to corroborate said defense. Alibi cannot prevail over the categorical and positive identification by the victim of the accused-appellant as the culprit. The accused-appellant is burdened to prove with clear and convincing evidence that at the time of the commission of the offense charged, he was in a place other than the *situs criminis* or immediate vicinity thereof such that it was physically impossible for him to have committed the crime charged. In the case at bar, private complainant categorically and unabashedly identified and pointed to accused-appellant, her own step-grandfather, as her rapist. Morever, from the house of accused-appellant to the city hall and from the city hall to Don Gregorio Evangelista Memorial School in Sta. Catalina, the travel time was only about an hour. Accused-appellant arrived in the Office of the Public Attorney and signed a petition thereat at 9:45 a.m. Since accused-appellant raped private complainant at 7:00 a.m. and left his house and proceeded to the Office of the Public Attorney, accused-appellant arrived in said office well before 9:00 a.m.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Segundo G. Sotto, Jr. and *Cesar M. Cariño* for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

On automatic appeal is the Decision[1] dated July 24, 1998 of Branch 13 of the Regional Trial Court of Zamboanga City convicting accused-appellant Placido Luna *y* Delos Reyes of the crime of rape and meting on him the supreme penalty of death. The court likewise ordered accused-appellant to indemnify private complainant Shermalou Alberto *y* Carpio in the amount of Fifty Thousand (₱50,000.00) Pesos.

Culled from the testimonial and documentary evidence of the prosecution,[2] the facts of the case are as follows:

When the spouses Erwin Alberto, Sr. and Isabel Carpio-Alberto were married on July 26, 1986, they resided in the house of Arcelia, Erwin's mother and her second husband and Erwin's stepfather, Placido Luna in Talisayan, Zamboanga City.

Subsequently, Erwin and Isabel constructed their small house on a lot about 18 meters away from the house of Placido and Arcelia. However, Erwin and Isabel had no toilet in their house and used the toilet in the house of Placido to relieve themselves. Erwin's sister Joyce and her husband, Jesus Luna, who was also the brother of Placido, lived about eight meters away from the house of Erwin. On March 8, 1987, Shermalou, the first child of Erwin and Isabel, was born,[3] followed by Erwin, Jr.,

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[1] Penned by RTC Judge Carlito A. Eisma.

[2] The prosecution presented Dr. Rodolfo Valmoria, Shermalou C. Alberto, Isabel Alberto and SPO3 Eduardo Oya, Jr. as witnesses.

[3] Original Records of Crim. Case No. 3263(13593), Exhibit "C".

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Sherilyn and Sheryl Mae. By the time Shermalou was six years old, she was enrolled in Grade I. Placido started sexually abusing Shermalou but she concealed the same from her parents because accused-appellant threatened to kill her if she did. She complained to her mother that her organ was painful but Isabel, unaware of her daughter's plight, just told her daughter to wash her private part.

Isabel worked as a factory worker at Mar Fishing, earning about ₱5,000 to ₱6,000 a month. She also maintained a small store inside Mar Fishing where she sold viands to her fellow workers. Erwin, Sr., on the other hand, was a carpenter. His mother Arcelia was employed as a teacher at the Don Gregorio Evangelista Memorial School in Sta. Catalina while Placido busied himself as a laborer. While at work, the spouses Erwin and Isabel entrusted their children to Joyce Luna whom the children called Auntie Baby. Isabel instructed her children that if they had to answer the call of nature, they use the toilet in the house of their Lolo Placido and Lola Arcelia.

By 1995, Shermalou was already in Grade III. Erwin, Jr. had stopped schooling. On December 14, 1995, at about 4:30 a.m., Isabel, then on maternity leave (she was pregnant with their fourth child), and Erwin, Sr. went to the market to buy fish, vegetables and dry goods for their store. Their children Shermalou and Erwin, Jr. were still sleeping. When Shermalou woke up, she went to the house of Joyce for breakfast and to join the latter's children, Jesse Joy, Jennifer and Jessie, on their way to school. Upon reaching the school, Shermalou was told that her teacher was sick and that she can go home. On her way to their house, she met her aunt Joyce who told her that she (Joyce) was going to the store. Shermalou then proceeded to their house. At or about 7:00 a.m., Erwin, Jr. told his sister that he wanted to defecate. Shermalou and Erwin, Jr. went to the house of Placido so that Erwin, Jr. could use the toilet situated near the kitchen of said house. Upon reaching the house of Placido, Erwin, Jr. was ordered by Placido to fetch water from the well outside the house after defecating. While Erwin, Jr. was using the toilet, Placido told Shermalou to go inside the house as he will give her some food. Shermalou

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did as told. However, once inside the house, Placido who was wearing a pair of short pants but no underwear, pulled Shermalou toward the sala and pushed her to the bed.[4] Placido then removed her panty and hid it. He unzipped his short pants, pulled out his penis, got cooking oil from the divider and applied it to his erect penis to facilitate its entry into her vagina. Placido warned Shermalou not to shout, otherwise he will kill her. He touched Shermalou's private parts, mounted her, spread her legs, held her hands and inserted his penis inside her vagina. He then made forward and backward thrusts. However, the penis of accused-appellant was big and only a little portion of it was able to enter her vagina. Accused-appellant was so heavy that Shermalou felt pain on her shoulders and vagina. Momentarily, Shermalou felt her sex organ wet. Placido later dismounted but warned Shermalou not to tell anybody or he will kill her parents. He then returned Shermalou's panty, proceeded to the kitchen and left the house. Shermalou wiped her sex organ with her panty and later rinsed it. Petrified by the threats of Placido, Shermalou did not tell anybody, not even her Auntie Baby, about what Placido did to her that morning. Later, she met her Auntie Baby and played with the children. Shermalou had lunch in the house of her aunt. At about 5:00 p.m., Placido and Arcelia arrived home bringing a *karaoke*.

At about 7:00 p.m., that same day, Isabel was about to sleep when Erwin, Jr. told her mother that he saw Placido naked from the waist down and his penis erect, and Shermalou lying in bed without her panty. Sensing that his mother doubted his story, Erwin, Jr. told his mother to ask Shermalou. Appalled, Isabel called Shermalou and asked if the story related by Erwin, Jr. was true. Shermalou then told her mother: "*Mamang ya man rape conmigo si Lolo.*" (Mamang, I was raped by *Lolo*). In between sobs, Shermalou revealed that Placido had been raping her since she was six years old, while she was still in Grade I. Isabel then inspected her daughter's body and found that Shermalou had some contusions near her left and right

[4] The bed was transferred to the sala because the roof atop the bedroom was leaking due to rainfall (TSN, Alberto, July 13, 1996, p. 15).

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eyes. She asked Shermalou where she got the said contusions. Shermalou told her that she was boxed by Placido. Isabel then told her daughter that they will go to the doctor the next day. She further told her children not to reveal to their father what she told her because Erwin, Sr. might kill Placido or the latter might be able to escape.

The next day, at 4:00 a.m., Isabel and Shermalou reported the incident to the police authorities. SPO3 Eduardo Commendador Oya advised them to have Shermalou examined by a doctor to confirm that she was indeed sexually abused. Shermalou was brought to the PNP Regional Criminal Laboratory Section where Dr. Rodolfo Valmoria interviewed and conducted a genital examination on her. Shermalou walked normally. Dr. Valmoria signed a Medico-Legal Report No. M-343-95[5] which contained his findings:

SPECIMEN SUBMITTED:

Living person of one Shermalou Alberto *y* Carpio, 9 yrs. old, single, Fil., and a resident of Talisayan, Zamboanga City.

PURPOSE OF LABORATORY EXAMINATION:

To determine extent of injuries sustained and status of physical virginity.

FINDINGS:

Healing contusions, left zygomatic region and right infra-orbital region.

Absence of *pubic* hair. Labia majora full, convex and gaping. Labia minora pinkish in color and presenting in between is a fleshy tape of hymen with deep healing lacerations at 5 and 11 o'clock positions. There are marked erythema at both left and right vulvar mucosa.

Vaginal canal in (sic) narrow, only admits tip of examining little finger, subject complains of pain on insertion of tip of examining little finger. Abdomen is flat and tight, complains of pain at hypogastric region or palpation. Breasts infantile.

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[5] Folder of Exhibits of Crim. Case No. 3263(13593), Exhibit "B".

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Urethral and vaginal smears revealed the following results: Negative for spermatozoa cell, pus cell-moderate (3+) and bacilli few.

CONCLUSION:

Barring unforeseen complications the above-named injuries is estimated to resolve within 3 to 5 days more.

Subject is of non-virgin state physically.

Isabel and Shermalou proceeded to the police station where Shermalou gave her sworn statement to SPO3 Oya.[6] Isabel also signed a sworn statement (complaint)[7] before the police officer. The police authorities then arrested Placido on December 15, 1995 on the basis of the sworn declarations of Isabel and Shermalou and the medico-legal report of Dr. Valmoria.[8]

On December 17, 1995, Shermalou and Isabel filed with the Regional Trial Court a complaint for Rape against Placido, which reads:

COMPLAINT

The undersigned, under oath, hereby accuse PLACIDO LUNA *y* DELOS REYES of the crime of RAPE, committed as follows:

That on or about the 14th day of December, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, did then and there willfully, unlawfully and feloniously, have carnal knowledge of the undersigned SHERMALOU ALBERTO *y* CARPIO, a girl, eight (8) years old, and against the latter's will.

CONTRARY TO LAW.

Zamboanga City, Philippines, December 17, 1995.[9]

On December 26, 1995, Arcelia offered to Erwin, Sr. and Isabel ₱50,000.00 upon her retirement if they will no longer pursue the complaint for rape against her husband Placido.

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[6] *Id.*, Exhibit "D".

[7] *Id.*, Exhibit "F".

[8] *Id.*, Exhibit "G".

[9] *Id.*, Exhibit "E".

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Erwin, Sr. and Isabel refused the offer. Isabel told Arcelia that her daughter Shermalou was not an animal. Incensed by the rebuff, Arcelia demanded that the spouses Erwin and Isabel demolish their house, as the lot where their house stood was owned by a certain Vargas for whom Placido and Arcelia worked as caretakers of the property. Erwin, Sr. and Isabel vacated the property.

Accused-appellant adduced evidence that on December 12, 1995, Jesus Luna, the husband of Arcelia's daughter Joyce, brought to Placido a petition involving the Talon-talon lot to be filed in court, for his signature. However, Placido refused to sign the petition. He preferred just to go to the Hall of Justice on December 14, 1995 with his wife Arcelia to sign the petition.

On December 14, 1995, at 5:00 a.m., Placido and Arcelia locked their house and gave the key thereof to Joyce. At 5:45 a.m., the couple took the Biel Bus on their way to Don Gregorio Evangelista Memorial School in Sta. Catalina. The bus stopped in front of the City Hall. The couple alighted from the bus and took a passenger jeepney to the school. At about 6:50 a.m., they reached the school. Arcelia attended the flag-raising ceremony while Placido waited for his sister, Corazon Luna Dulaca, inside Arcelia's classroom. At 8:00 a.m., Rubia Baiti, a co-teacher of Arcelia, went to the classroom of Arcelia to borrow money which her son needed badly. Rubia did not have a single centavo at the time. She saw Placido and greeted him. Placido told Rubia that he was waiting for his wife. At about said time, Corazon arrived in the school. At 8:20 a.m., Placido and Corazon proceeded to the Public Attorney's Office. Placido signed the petition regarding their lot in Talong-talon in said office at 9:45 a.m. The signing was witnessed by Melania Abil,[10] the stenographer of the Public Attorney's Office. Thereafter, Placido and Corazon returned to the school arriving thereat at 10:50 a.m. Rubia saw Placido in the classroom of Arcelia at about 11:00 a.m. Later, Placido and Arcelia had lunch in the latter's classroom. Arcelia told her husband not to go home

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[10] *Id.*, Exhibit "4".

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yet as after classes they will get the Sony karaoke which she bought on installment from Golden Bell. Placido acceded and waited for his wife. At 4:45 p.m., Placido and Arcelia went to Golden Bell to claim the Sony karaoke. Arcelia acknowledge receipt of the merchandize.[11] From there, they took a tricycle to the Biel Bus Station where they took the bus to Talisayan. They reached Talisayan at about 6:00 p.m. The next day, December 15, 1995, at about 6:00 p.m., Isabel arrived in the house of Placido and inquired from Arcelia if Placido was at home. When Arcelia replied in the affirmative and opened the door of the house, police officers of the Criminal Investigation Service of the Philippine National Police entered the house and seized Placido for the alleged rape of his granddaughter, Shermalou.

Several days thereafter, the spouses Erwin, Sr. and Isabel demanded, in the presence of Barangay Chairman Danny Hasil, that Arcelia give them either the amount of ₱20,000.00 in consideration of their desistance in pursuing the case against Placido, or the amount of ₱6,000.00 so that they can demolish their house and relocate in Ayala. As Placido was already detained, Arcelia refused and ordered the spouses Erwin, Sr. and Isabel to demolish their house.

At one time, Isabel invited Placido and Arcelia to be her business partners in a small store that she was going to put up. The spouses agreed to infuse some money. However, after some time, the store closed. Isabel was not able to return the money that the couple had contributed and in lieu thereof, Isabel gave them unsold items from her store which items Placido and Arcelia sold in their own small store. Isabel had other business proposals, the latest of which was the putting up of a store at Recodo in Mar Fishing. She asked Placido and Arcelia to finance the same. However, Placido and Arcelia refused. At another time, before the December 14, 1995 incident, Isabel went to Arcelia asking for ₱15,000.00 so she can buy a house in Ayala. However, Arcelia refused to give her money. All these incidents led Isabel to concoct her story that Placido raped Shermalou.

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[11] *Id.*, Exhibit "3".

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Joyce Luna, the daughter-in-law and sister-in-law of accused-appellant, corroborated in part the testimony of accused-appellant and testified that on December 14, 1995 at 7:00 a.m., Erwin, Sr. and Isabel arrived in the house of Placido and Arcelia to cook food for their supper and for Isabel to iron out her clothes since there was no electricity in the house of the couple. Shermalou and Joyce's children then left for school at 7:00 a.m. Erwin, Sr. left at about 8:00 a.m. At noontime, Shermalou and her children returned home from school and ate lunch. The children thereafter returned to their school.

Dr. Rodolfo Valmoria, whom accused-appellant presented as witness, testified that with the use of a device, he measured the length and circumference of the penis of accused-appellant at normal size and when erect and signed a Medico-Legal Report No. M-213-96.[12] Considering the length and circumference of the erect penis of accused-appellant *vis-a-vis* the size of the vagina of private complainant who was only eight years old on December 14, 1995, if the penis of accused-appellant penetrated the vagina of private complainant, there would be a deep laceration of the hymen and of the perineum which is the external surface of the external vaginal canal made of subcutaneous tissues and small blood vessels. The small blood vessels would be disrupted. However, when he examined the vagina of private complainant, it would admit only the tip of the examining little finger and hence there was no actual penetration of her vagina by a penis contrary to the testimony of private complainant that the penis of accused-appellant penetrated her vagina. He also stated that when Shermalou arrived in her office for a genital examination, she acted normally.

As aforestated, the trial court rendered judgment convicting Placido of qualified rape, the decretal portion of which reads.

WHEREFORE, in consideration of all the foregoing, the Court finds the accused *Placido Luna y delos Reyes* guilty beyond reasonable doubt of the crime of "RAPE" and hereby sentences him to suffer

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[12] Folder of Exhibits of Crim. Case No. 3263(13593), Exhibit "5" and "6".

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the supreme penalty of *DEATH*, to indemnify the herein victim *Shermalou Alberto* the amount of *₱50,000.00* and to pay the costs.

SO ORDERED.[13]

Accused-appellant assails the decision of the court *a quo* contending that:

I

THE TRIAL COURT ERRED WHEN IT IGNORED THE TESTIMONY OF THE MEDICO-LEGAL OFFICER THAT THE LACERATIONS ON THE HYMEN OF THE PRIVATE COMPLAINANT HAPPENED ONE OR TWO MONTHS AGO BEFORE THE EXAMINATION OF COMPLAINANT ON DECEMBER 15, 1995 AND THAT THERE WAS NO BLEEDING FOUND IN THE COMPLAINANT'S ORGAN, WHICH CLEARLY SHOWED THAT THE CRIME OF RAPE WAS A MERE FABRICATION OF THE COMPLAINANT AND HER MOTHER.

II

THE TRIAL COURT ERRED WHEN IT IGNORED THE INCONSISTENCIES AND MATERIAL CONTRADICTIONS IN PRIVATE COMPLAINANT'S TESTIMONY WHICH RENDERS HER TESTIMONY IMPROBABLE AND QUESTIONABLE, AND ENGENDER DOUBTS ON THE GUILT OF THE ACCUSED-APPELLANT.

III

THE TRIAL COURT ERRED WHEN IT IGNORED THE GLARING DISCREPANCY BETWEEN PRIVATE COMPLAINANT'S STATEMENT TO THE *BARANGAY* CAPTAIN AND HER COURT TESTIMONY.

IV

THE. TRIAL COURT ERRED WHEN IT IGNORED AND DISREGARDED THE FACT THAT THE PRIVATE COMPLAINANT'S MOTHER WHO FILED THE COMPLAINT HAS STRONG MOTIVE TO FALSELY CHARGE THE ACCUSED-APPELLANT WITH THE CRIME OF RAPE.

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[13] Original Records of Crim. Case No. 3263(13593), p. 123.

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V

THE TRIAL COURT ERRED WHEN IT HELD THAT THE PROSECUTION'S STORY IS MORE CREDIBLE DESPITE THE CLEAR, POSITIVE AND CONVINCING TESTIMONY OF ACCUSED-APPELLANT AND THE TESTIMON'ES OF HIS CORROBORATING WITNESSES.

VI

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE AS CHARGED.

VII

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH ON THE ACCUSED-APPELLANT.

The first to sixth errors assigned by accused-appellant being interrelated with each other, the Court will delve into and resolve the same simultaneously.

Accused-appellant contends that private complainant's testimony is improbable marked with inconsistencies. He asserts that private complainant testified that when accused-appellant ordered Erwin, Jr. to fetch water from the well, the latter was already in the house of accused-appellant. However, private complainant contradicted herself in response to the question of the trial court when she stated that Erwin, Jr. was already in the well. Accused-appellant further avers that private complainant testified that accused-appellant ordered Erwin, Jr. to fetch water while the latter was defecating in the toilet and it was then that accused-appellant pushed her to the bed in the sala. Again she contradicted herself when she testified in response to the question of the trial court that when accused-appellant was giving instructions to Erwin, Jr. to fetch water, she was already in bed after having been pushed by accused-appellant. Accused-appellant stresses that the contradictions and inconsistencies in the testimony of private complainant constitute proof that she was prevaricating and rendered her entire testimony barren of probative weight. Moreover, private complainant swore to tell the truth before the court because

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she was afraid that her mother will go to jail. Isabel coached Shermalou into testifying as she did against accused-appellant.

Accused-appellant points out that private complainant's account of the events immediately before and at the time she was allegedly raped by him is belied by Isabel's sworn statement[14] wherein she declared that when she talked with her son, Erwin, Jr. in the evening of December 14, 1995, he related to her that earlier that day at about 7:00 a.m., Erwin, Jr. and his sister Shermalou went to the house of accused-appellant for Erwin, Jr. to defecate and accused-appellant asked them to massage his stomach to relieve himself of gas pain; that Erwin, Jr. saw the size of the sexual organ of accused-appellant and that Erwin, Jr. was ordered by accused-appellant to leave the house while Shermalou was asked to remain and continue massaging accused-appellant. Accused-appellant states that when she testified, Shermalou failed to mention having been ordered by accused-appellant to massage his abdomen before he raped her. The failure of the prosecution to present Erwin, Jr. as a witness to corroborate the testimony of Isabel and Shermalou debilitated the case of the prosecution.

Accused-appellant further contends that private complainant's testimony that she was raped by him on December 14, 1995 is belied by her behavior when she was examined by Dr. Valmoria on December 17, 1995. At that time, private complainant acted normally, showing no external manifestations of the trauma of one who has just been sexually ravished. Moreover, private complainant's testimony, cannot prevail over the testimony of Dr. Valmoria who testified that since the lacerations of the hymen of private complainant were deep-healed, she must have been sexually abused about a month or two months before December 14, 1995 and the findings of the doctor that considering the length and diameter of the erect penis of accused-appellant it would have been impossible for it to penetrate the vagina of private complainant which admitted only the tip of the examining little finger without causing lacerations in the hymen, the perineum

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[14] Folder of Exhibits of Crim. Case No. 3263(13593), Exhibit "D".

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and the fourchette. Moreover, Dr. Valmoria testified that he found no fresh lacerations on the hymen of private complainant and spermatozoa in her sex organ.

Accused-appellant asserts that the charge of rape against him was but a vicious concoction of Isabel to pillory him for his refusal to give her money in the amount of ₱20,000.00 and to infuse capital in her business venture. Finally, accused-appellant states that the trial court ignored his defense of alibi buttressed as it was by clear and convincing evidence.

This Court is not swayed by accused-appellant's contentions and ratiocinations. In reviewing rape cases, this Court is guided by three well entrenched principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused though innocent to disprove; (2) in view of the intrinsic nature of the crime of rape, where only two persons are usually involved, the testimony of the private complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the accused.[15] Trial courts have the unique advantage of observing and monitoring at close range the attitude, conduct and deportment of the witnesses, as they narrate their testimonies before said court. The legal aphorism is that the findings of the trial courts, their calibration of the testimonies of witnesses and their assessment of the probative weight of the evidence of the parties and the conclusions of the trial court culled from said findings are accorded by the appellate court great respect, if not conclusive effect, unless the trial court ignored, misunderstood, misinterpreted or misconstrued cogent facts and circumstances which, if considered, would alter the outcome of the case.[6] In this case, the trial court found Shermalou and her testimony to be credible and entitled to probative weight:

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[15] *People vs. Baygar*, 318 SCRA 358 (1999).

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

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The Court has thoroughly scrutinized the transcripts of the testimony of *Shermalou Alberto*, the herein complainant, as well as the notes it took down during the proceedings, and noted that at one point of her testimony in chief, she shed tears. It had been ruled in the case of *People vs. Gecomo, 254 SCRA 82, that* ***"the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience."*** Subjected to a lengthy cross-examination, she remained steadfast in pointing to the accused as the person who raped her. Her answers to the questions were frank, straightforward and categorical. She even revealed new matters which were not testified to by her on direct examinations. For instance, she said, she was still sleeping when her father and mother left their house in the early morning of *December 14, 1995,* thus, belying the claim of *Joyce Luna,* that her brother, *Erwin,* was in her house at *7 o'clock* that *morning* to cook rice and that her sister-in-law, *Isabel Alberto*, was also in her house that morning, to iron her clothes. It was also during the cross-examination that she explained the reason why she and her brother were using the toilet of the accused. She also revealed other details not found in her testimony-in-chief which enhances the veracity of her accusation.

There is nothing in the records of this case and in the testimonies of the witnesses to include those presented by the defense that reveals any ill motive on the part of complainant, *Shermalou Alberto*, to concoct her tale of ravishment in the hands of the herein accused. This being so, the rule enunciated by the *Supreme Court* in the case of *People vs. Cagto, 253 SCRA 455,* to the effect that when there is no motive to testify against the accused, the testimony of a rape victim is credible, shall apply. In another case, the *Supreme Court* said that "*Full credence is accorded the testimony of a rape victim who has shown no ill motive to testify against the accused.*" (*People vs. Canada*, 253 SCRA 277).

xxx xxx xxx[17]

The Court has painstakingly examined the evidence on record, and is convinced that the aforesaid findings of the trial court are buttressed by said evidence, and its conclusions anchored on said findings are precise and logical and in conformity with ordinary human experience.

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[17] Original Records of Crim. Case No. 3263(13593), pp. 117-118.

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It is established jurisprudence that testimony must be considered and calibrated in its entirety inclusive and not by truncated or isolated passages thereof.[18] Due consideration must be accorded to all the questions propounded to the witness and her answers thereto.[19] The whole impression or effect of what had been said or done must be considered and not individual words or phrases alone.[20] Moreover, rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds, often forcing the victim's conscience or subconscious to forget the traumatic experience, and casts a stigma upon the victim, scarring her psyche for life.[21] A rape victim cannot thus be expected to keep an accurate account and remember every ugly detail of the appalling and horrifying outrage perpetrated on her especially since she might in fact have been trying not to remember them. Rape victims do not cherish in their memories an accurate account of when and how, and the number of times they were violated.[22] Error-free testimony cannot be expected most especially when a young victim of rape is recounting, details of a harrowing experience, one which even an adult would like to bury in oblivion deep in the recesses of her mind, never to be resurrected.[23] Moreover, a rape victim testifying in the presence of strangers, face to face with her tormentor and being cross-examined by his hostile and intimidating lawyer would be benumbed with tension and nervousness and this can affect the accuracy of her testimony.[24] Often, the answers to long-winded and at times misleading

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[18] *People vs. Abalde*, 329 SCRA 418 (2000).

[19] FRANCISCO, *THE REVISED RULES OF COURT OF THE PHILIPPINES*, 1991 ed., Volume VII, Part II, p. 542.

[20] *People vs. Rosario*, 246 SCRA 658 (1995).

[21] *People vs. Cula*, 329 SCRA 101 (2000).

[22] *People vs. Historillo*, 333 SCRA 615 (2000).

[23] *People vs. Tamala*, 284 SCRA 436 (1998).

[24] *People vs. Perez*, 270 SCRA 181 (1997); *People vs. Arafiles*, 325 SCRA 181 (2000).

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questions propounded to her are not responsive. However, considering her youth and her traumatic experience, ample margin of error and understanding should be accorded to a young victim of a vicious crime like rape.

In this case, the private complainant was barely ten years old and a Grade III pupil when she testified before the trial court. It is true that her testimony as to where precisely her brother Erwin, Jr. was or where she was when accused-appellant ordered Erwin, Jr. to fetch water after defecating was incongruent. However, the inconsistencies and contradictions in the testimony of private complainant pertained only to trivial, collateral and peripheral matters and not to the particulars of the crime and hence, did not denigrate her credibility and the verisimilitude of her testimony. Such minor contradictions or inconsistencies are even indicative of an unrehearsed testimony and serve to strengthen and enhance her credibility.[25] Despite the grueling, intensive and incisive cross-examination by counsel of accused-appellant, not to mention the clarificatory questions by the trial court, private complainant remained intractable and consistent as she unfolded to the court, with tears cascading from her eyes, how she was ravished by accused-appellant after hiding her panty and applying cooking oil on his penis to facilitate its entry into her vagina. She even demonstrated to the court how accused-appellant consummated his lecherous and diabolical acts on her.[26]

Private complainant's account of how accused-appellant defiled her was replete with details that the Court finds accused-appellant's assertion that Isabel coached her daughter into testifying against him highly improbable if not incredible. The fact that private complainant was crying during her testimony bolstered her credibility with the verity born out of human nature and experience.[27] Indeed, recalling and relating the heartrending

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[25] *People vs. Lampaza*, 319 SCRA 112 (1999).

[26] TSN, March 13, 1996, pp. 11-17, 32-37.

[27] *People vs. De Guzman y San Juan*, 343 SCRA 267 (2000).

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past will trigger copious tears as a consequence. A Filipina, more so a young girl like private complainant, is by nature shy. When she cries rape, she is saying in effect all that is necessary to show that rape was indeed committed.[28]

Jurisprudence holds that the testimony of rape victims who are young and immature deserves full credence and full probative weight. In this case, accused-appellant even unabashedly admitted that private complainant had no ill or devious motive for charging him with rape. Accused-appellant was no less the step-grandfather of private complainant. She charged accused-appellant with rape and testified on her heartrending ordeal only to quench her thirst for justice. Indeed, no woman, especially one of tender age, would concoct a story of defloration, allow the examination of her private parts, and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by an innate desire to have the culprit apprehended and punished for his dastardly acts.[29]

Accused-appellant cannot find solace in the incoherence of the testimony of private complainant for another reason. The private complainant was not confronted on cross-examination by counsel of accused-appellant with her inconsistent testimony and accorded a chance to explain the same as required by Section 13, Rule 132 of the Revised Rules of Evidence. In *People vs. Campaner*,[30] we held that:

> x x x Under Rule 132, §13, in order to impeach Geraldine's credit, her previous testimony, alleged to be inconsistent with her subsequent one, should have been shown or read to her and then she should have been asked to explain the apparent discrepancy. This was not done in this case and accused-appellant cannot derive any benefit from the supposed contradictions in Geraldine's testimony.

The prosecution cannot be faulted nor its cause debilitated merely because it did not present Erwin, Jr. as a witness to

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[28] *People vs. Lor*, 361 SCRA 402 (2000).

[29] *People vs. Bernaldez*, 294 SCRA 317 (1998).

[30] 336 SCRA 439, 453 (2000).

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corroborate the testimonies of private complainant and their mother Isabel. There is no law or rule requiring the prosecution to present corroborative evidence. The testimony of private complainant when credible and trustworthy is sufficient to convict the accused-appellant.[31] The prosecution need not present any corroborative evidence as it would be a surplusage.[32]

Neither are the credibility of private complainant and the verity of her testimony destroyed simply because she did not testify that as narrated by Erwin, Jr. to his mother, before accused-appellant had carnal knowledge of private complainant, accused-appellant, with his penis in full view of private complainant and Erwin, Jr. ordered the two children to massage his abdomen. The matter of whether or not Erwin, Jr. and Shermalou first massaged the abdomen of accused-appellant before he raped her was merely peripheral and collateral to the *corpus delicti*.

The prosecution was not enfeebled by the testimony of Dr. Rodolfo Valmoria, as a witness for accused-appellant and his Medico-Legal Report[33] on the length of the penis of accused-appellant and the circumference of its shaft and glans. Indeed, the testimony of Dr. Valmoria testifying for accused-appellant even buttressed the case of the prosecution.

The absence of spermatozoa in the sex organ of private complainant on December 15, 1995 does not disprove rape.[34] It could be that before private complainant was examined by the doctor on December 15, 1995, she washed her sex organ or urinated thus accounting for the absence of any spermatozoa in her sex organ. Neither does the absence of fresh lacerations in the hymen of private complainant disprove rape. On the other hand, we held that lacerations whether healed or fresh are the best physical evidence of forcible defloration.[35] The barefaced

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[31] *People vs. Peñola*, 308 SCRA 145 (1999).

[32] *People vs. Tabanggay*, 334 SCRA 575 (2000).

[33] Folder of Exhibits of Crim. Case No. 3263(13593), Exhibit "5".

[34] *People vs. Lacaba*, 318 SCRA 301 (1999).

[35] *People vs. Bayona*, 327 SCRA 190 (2000).

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fact that the penis of accused-appellant in full erection was 9.0 centimeters long and the circumference of its shaft was 9.05 centimeters and the circumference of its glans was 11.0 centimeters do not preclude rape. In *People vs. Ablog*,[36] we held that:

> x x x Nor is it improbable for a penis the size of one and three-fourths (1¾) to penetrate the vagina of a ten-year old girl and for her vagina to still exhibit a strong resistance to an index finger. Not only are the sizes of his penis and an index finger not too far apart but it must also be stressed that the resistance of the hymen does not depend on the size of the penetrator but on the laxity of the hymen itself.

Even if accused-appellant made forward and backward thrusts while on top of private complainant before he ejaculated, his penis may not have been able to penetrate and rupture the hymen of private complainant. It bears stressing that private complainant never claimed when she testified that the shaft of the penis of accused-appellant penetrated her hymen. She merely testified that the penis of accused-appellant was big and only a "little or small portion" of which gained entry into her vagina.

xxx xxx xxx

Q Will you describe how you felt when you said that the organ of your *lolo* was inside?
A It was only *a small portion* of it that got inside.

Q How do you know that it was a small portion?
A Because it is me and I felt it.

Q Is it not that the organ of your *lolo* is very big?
A Yes, it is very big.

Q Can you tell us how big it is?

COURT INTERPRETER

Witness demonstrating the organ of his *lolo* by placing three of her closed fist — one over the other.

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[36] 309 SCRA 222 (1999).

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ATTY. SOTTO

Q All right, to make it clear. I have here a piece of rolled paper, will you please make the adjustment in this rolled paper the size of your *lolo's* penis or private part.

COURT INTERPRETER

Witness demonstrating by using the rolled bond paper.

ATTY. SOTTO

May we request that the length mentioned by the witness be marked, Your Honor.

ACP BALAN

The approximate.

ATTY. SOTTO

Q Now, this is the diameter of your *lolo's* organ, is it not?
A Yes, sir.

Q Now, with the same rolled paper you can make the adjustment by rolling it just to show how big or the diameter of your *lolo's* organ by using the same paper.
A As big as this.

ATTY. SOTTO

May we request that the same coupon bond to which the witness made the adjustment insofar as the diameter is concerned, may we request that this be stapled so that the actual size of the diameter indicating thereat be measures (sic), Your Honor or it be pasted your Honor.

COURT

It is up to you.

ATTY. SOTTO

Q Now, approximately, is this the diameter of your *lolo's* private part?
A Yes, sir.

Q And this length as you said is from this, up to this one, right?
A Yes, sir.

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Q Now, you said the insertion was only a little?
A Yes, sir.

Q Now, using the same paper that you said which is the size of your *lolo's* organ, will you please tell us up to where was your *lolo's* organ inserted in the private organ?

COURT INTERPRETER

Witness again describing the size of the insertion of the penis in the same rolled bond paper.

ATTY. SOTTO

May we request your Honor that the rolled coupon bond be marked as Exhibit "1" for the accused.

The lenth (sic) as indicated by the witness, may we request that this be marked as Exhibit "1-A"; and the length of the organ that was actually inserted according to the witness as marked in this paper and indicated by her, be marked as Exhibit "1-B".

Q Now, you said that the organ of your *lolo* was inserted up to this point, and you said it was only a little that was inserted.
A Yes, sir.

xxx xxx xxx.[37]

Dr. Rodolfo Valmoria testified that with the application of cooking oil on a fully erect penis of accused-appellant, the head of the penis can gain entry into the sex organ of private complainant and could cause damage to the hymen:

xxx xxx xxx.

Q Now, doctor, you said that the vaginal canal is narrow, that only the tip of the little finger will insert out of force?
A Yes, sir.

Q Now, supposed (sic) an erected penis and applied with oil and fluid for pressure, even the head of the penis doctor, can be inserted to it?

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[37] TSN, March 13, 1996, pp. 37-39.

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A Yes, sir, it depends upon the size of the erected penis, even a tip of the little finger, it can be penetrated by a small finger, but with oil, applied with oil, and you will exert effort, and it could be possible with oil; I think the hymen there is damage because of the force (sic) entry.

Q Now, as a result of your investigation, do you still consider Shermalou Alberto has been injured?

A She is non-virgin.[38]

In response to the questions of the trial court and to the questions on direct examination of counsel of accused-appellant, no less Dr. Valmoria testified that although there was no penetration by the penis of accused-appellant of the hymen of private complainant, there was entry by his penis into the labia minora and labia majora of the sex organ of private complainant:

COURT:

Alright. Few questions from the court.

Q Correct me if I am wrong, the outer portion of the penireum (sic) is called the labia majora?

A Yes, Your Honor.

Q And the inner portion is the labia minora?

A Yes, Your Honor.

Q When it is entered first by any object, or the penis organ it is the labia majora?

A Yes, Your Honor.

Q There after, its (sic) entered into the labia minora?

A Yes, Your Honor.

Q In this particular case, could you say this hard object entered the labia minora?

A Its (sic) depend, it is separate, the labia minora is the inner portion, and labia majora is the outer portion.

Q Considering the injury that you found in the hymen as you said the position is 5 o'clock and 11 o'clock, there was an entry of hard object on the labia majora as well as the labia minora?

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[38] TSN, March 7, 1996, p. 13.

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A Yes, Your Honor.[39]

xxx xxx xxx

ATTY. SOTTO

Q So that, if an organ like that of the accused's if it would penetrate the organ of the child, would you say that even the blood vessels would have been disrupted?

A Yes, disruption of the blood vessels.

Q You have actually examined the organ of the child, and she claimed that she was raped, and there was actual penetration, as she clearly claimed, with this, what would actually be your observation?

A There might be penetration, per examining finger, but in this particular case, it only admits the tip of the examining finger, so, I would say, there was no actual penetration.

Q So, you are saying now that there could be no actual penetration?

A No actual penetration, but possibly, it only hit the labia majora and then extends to the hymen.[40]

The presence of deep-healed lacerations in the hymen of private complainant do not preclude the entry of the penis of accused-appellant into the pudendum on December 14, 1996 as testified to by private complainant. Indeed, the presence of the deep-healed lacerations confirmed the testimony of private complainant that accused-appellant had been abusing her since she was in Grade I. The doctor testified that with the entry of the penis of accused-appellant into the pudendum of private complainant on December 14, 1996 the area of the already deep-healed lacerations on the hymen was extended or enlarged at 9:00 and 11:00 o'clock positions:

xxx xxx xxx

Q So, let (sic) say, the woman was virgin before she was raped, the hymen was lacerated at about 5:00 o'clock doctor, it was

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[39] *Id.*, at 25-26.

[40] TSN, December 20, 1996, p. 27.

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another insertion of the penis for the past several days, then another laceration?

A It has not been lacerated from 3:00 to 5:00 o'clock the location of the laceration, now, there are lacerations before the examination, one month or two months ago, there were several insertions of the penis in the vagina, probably it produced shallow, probably enlargement on the same area.

Now, another laceration, but the laceration is just only on the extend on the base, for example if this is the hymen, there is a shallow laceration, it could be possible following insertion it will extend this laceration on the vaginal canal, the same laceration.

Q In this particular case, when you examined Shermalou Alberto, there is a possibility of the extend (sic) of laceration?

A Yes, sir, there is laceration 9:00 and 11:00 o'clock to be extended laceration.[41]

In *People vs. Mahinay*,[42] we held that in proving sexual intercourse, it is enough that there is the slightest penetration of the male organ into the female sex organ. The mere touching by the male organ or instrument of the labia of the pudendum of the woman's private part is sufficient to consummate the crime. It is not even required for the consummation of the crime of rape that the hymen be ruptured or lacerated.[43]

We find nothing unnatural in the normal behavior of private complainant at the office of Dr. Rodolfo Valmoria on December 15, 1995 in spite of her ordeal on December 14, 1995. After all, the penis of accused-appellant failed to fully penetrate her hymen. She may have felt pain as the large penis of accused-appellant tried to penetrate her hymen but the pain may have already evanesced by the time she and her mother saw the doctor on December 15, 1995. Even if we assume for the nonce that private complainant was still in pain when she was in the

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[41] TSN, March 7, 1996, pp. 16-17.

[42] 302 SCRA 455 (1999).

[43] *Supra*, see note 17.

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office of the doctor, but had exhibited no external manifestation of the trauma she had suffered the day before, such behavior is not unexpected. Case law has it that:

> x x x Suffice to stress, it is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons. The range of emotion shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims.[44]

Private complainant's testimony that accused-appellant made forward and backward thrusts while on top of her is not inconsistent with her testimony that only a "little or small" portion of his penis in full erection managed to gain entry into her pudendum. Dr. Valmoria testified that the hymen of private complainant was so tight that it admitted only a tip of his examining little finger. Because of said thrusts, accused-appellant ejaculated, the sex organ of private complainant became wet and the penis of accused-appellant retracted. The penis of accused-appellant failed to penetrate her hymen.

Equally incredible is accused-appellant's contention that Isabel contrived the charge against him because of his and his wife's refusal to give the amount of ₱20,000.00 for the purchase of a lot or house or even ₱6,000.00 for Isabel and her family to vacate the property where their house was located. It bears stressing that accused-appellant was no less than the stepfather of Isabel's husband. We find it unbelievable that Isabel would concoct the charge against accused-appellant and instigate her young daughter into falsely testifying against accused-appellant for which the latter could be convicted and meted the death penalty or a long prison term simply and merely because accused-appellant and his wife refused to give Isabel the amount of ₱20,000.00 for the purchase of a lot or house, at the very least the amount of ₱6,000.00 for Erwin and Isabel's expenses in vacating the property where they resided. No mother in her

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[44] *People vs. Sta. Ana*, 291 SCRA 189 (1998).

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right mind would subject her young daughter to the humiliation, tribulation, disgrace and trauma attendant to a prosecution for rape if she were motivated solely to extort the measly amount of ₱20,000.00 or even ₱6,000.00 from accused-appellant and his wife. Isabel accompanied her daughter to the police authorities and helped her daughter file a complaint for rape against accused-appellant. As a mother, Isabel would and should give her daughter all the support to obtain justice and secure a conviction of accused-appellant for defiling her young daughter.[45] Isabel rejected Arcelia's offer to settle the case amicably for ₱50,000.00, payable upon her retirement by telling Arcelia that her daughter was not an animal:

FISCAL BALAN

xxx xxx xxx

Q Do you remember the date or month, or year that Mrs. Arcelia Alegaria Luna went to your house?
A Yes.

Q What month?
A It was on December 26, that she went to our house.

Q What year?
A 1995.

Q At that time, where were you residing?
A At Talisayan.

Q On the same house where this incident happened?
A Yes.

Q Now, what did Mrs. Arcelia Luna do in your house?
A She was asking for an amicable settlement, considering that we are just relatives and we belong to the same family.

Q Now, what did you answer, if any?
A I told her that it is not that easy; because my daughter was the victim; and, she promised to help us and offered us ₱50,000.00 upon her retirement.

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[45] *People vs. Lomerio*, 326 SCRA 530 (2000); *People vs. Thamsey*, 361 SCRA 460 (2001).

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Q Did you accept her offer?
A I did not accept it because I told her that my daughter is not an animal, and I am so certain that I am going to win in this case, at 100% sure.

Q Now, when you refused her offer for settlement, what happened next, if any?
A She was mad and ordered our house to be demolished.

Q Why? Whose lot is that where your house is built?
A They are the caretaker of the lot.

Q Now, did you remove your house?
A Yes, immediately.[46]

Significantly, accused-appellant's reliance on the testimony of Barangay Captain Danilo Hasil whom accused-appellant presented as rebuttal witness even backfired on accused-appellant because instead of confirming the claim of Arcelia and accused-appellant that Isabel went to the Office of the Barangay Captain to receive the money which Isabel was extorting from accused-appellant, the *barangay* captain declared that Isabel and her husband went to the Office of the Barangay Captain merely and simply to report the rape committed by accused-appellant on Shermalou and for no other purpose:

ATTY. SOTTO

Q Mr. Witness, do you know the person of Isabel Alberto?
A Yes.

Q How about the husband? Do you know the husband of Isabel Alberto?
A Yes.

Q Do you know the name of the husband of Isabel Alberto?
A Jim Boy.

Q Now, there was this testimony of Isabel Alberto before this Honorable Court that she never set foot in your office — in the Office of the Barangay Captain of Talisayan, what can you say about this?

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[46] TSN, January 22, 1997, pp. 8-9.

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FISCAL BALAN

The question is vague.

COURT

Yes; be specific on the time.

ATTY. SOTTO

Q At any time before; is that true that she never set foot in your office?
A They went to my office together with her husband, and the brother of her husband.

Q Do you know the name of the brother of her husband?
A Yes; Sonny Boy Alberto

Q Can you tell the Honorable Court when was this?
A Three days after the arrest of the accused.

Q And, when you say "accused" to whom are you referring to as the accused?
A Placido Luna.

Q And, why did Isabel Alberto and the husband and the brother of the husband go to your office?
A To record the incident that happened in their family; that the accused raped the daughter of Jim Boy and Isabel Alberto.

Q What else, if any, transpired while they were in your office?
A It was for record purposes.

Q Was there any other matter that was taken up while they were there?

FISCAL BALAN

The witness already answered that it was for record purposes.

COURT

Well, that is another question.

Aside from that, was there anything that they did at that time?
A Aside from that, they were asking for a . . .

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FISCAL BALAN

For the record, the witness is having a hard time to answer.

A (by the witness) No other purpose, aside from that.

xxx xxx xxx[47]

The trial court did not give credence and probative weight to the collective evidence of accused-appellant to prove his defense of alibi. The Court agrees with the trial court's evaluation. Alibi as a defense in criminal prosecution is inherently weak because it is easy to concoct and difficult to disprove. It is a common and standard defense resorted to by one who is accused, and usually, relatives and close friends are utilized by him to corroborate said defense. Alibi cannot prevail over the categorical and positive identification by the victim of the accused-appellant as the culprit.[48] The accused-appellant is burdened to prove with clear and convincing evidence that at the time of the commission of the offense charged, he was in a place other than the *situs criminis* or immediate vicinity thereof such that it was physically impossible for him to have committed the crime charged.[49]

In the case at bar, private complainant categorically and unabashedly identified and pointed to accused-appellant, her own step-grandfather, as her rapist. Morever, from the house of accused-appellant to the city hall and from the city hall to Don Gregorio Evangelista Memorial School in Sta. Catalina, the travel time was only about an hour. Accused-appellant arrived in the Office of the Public Attorney and signed a petition thereat at 9:45 a.m. Since accused-appellant raped private complainant at 7:00 a.m. and left his house and proceeded to the Office of the Public Attorney, accused-appellant arrived in said office well before 9:00 a.m.

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[47] TSN, February 25, 1997, pp. 5-7.

[48] *People vs. Sanchez & People vs. Rada*, 308 SCRA 264, 191 (1999).

[49] *Dela Cruz vs. Court of Appeals, et al.*, 361 SCRA 636 (2001).

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Reliance by accused-appellant on his wife and on Joyce Luna, accused-appellant's daughter-in-law and sister-in-law (being the wife of the brother of accused-appellant) to corroborate his alibi, is misplaced. It is incredible that accused-appellant and Arcelia could account for their whereabouts on December 14, 1996 with precision.

Neither can accused-appellant rely on the testimony of Rubia Baiti because (a) she is a co-teacher of Arcelia; (b) Rubia declared that she had to go to the classroom of Arcelia at about 8:00 a.m. of December 14, 1995 because she did not even have a single centavo and had to borrow money from Arcelia only to declare in the same breathe that Rubia was ashamed to tell Arcelia that she had to borrow moneys[50]; and (c) Rubia was requested by Arcelia as a favor to testify for accused-appellant and only a week before Rubia testified; d) before Rubia was requested by Arcelia to testify for accused-appellant, Rubia did not know the date when she saw accused-appellant.[51] Likewise misplaced is the reliance by accused-appellant on the affidavit of Teofilo Sebilano appended to his Reply Brief. He failed to present Teofilo Sebilano as a witness before the trial court and failed to adduce the said affidavit as evidence during the trial. Moreover, the affidavit is hearsay evidence and hence, is worthless.

In the seventh assignment of errors, accused-appellant avers that there is no factual and legal basis for the imposition of the death penalty on him. The trial court imposed the death penalty on accused-appellant under Article 335 of the Revised Penal Code as amended by Republic Act 7659 which reads:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
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> 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by

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[50] TSN, August 6, 1996, p. 6.

[51] TSN, August 22, 1996, p. 13.

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consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

xxx xxx xxx.

While we agree with accused-appellant that the trial court erred in imposing the death penalty, however, it is for a reason other than those relied upon by him. The concurrence of the minority of private complainant and her relationship, whether by consanguinity or by affinity, with accused-appellant envisaged by law is a special qualifying circumstance warranting the imposition of the death penalty. Accused-appellant is not the parent, step-parent or ascendant of private complainant.[52] However, he is related to private complainant by affinity within third civil degree. The evidence on record shows that Arcelia, the grandmother of private complainant is legally married to accused-appellant.[53]

However, the relationship by affinity of private complainant to accused-appellant was not alleged in the Information as required by Section 9, Rule 110 of the Revised Rules on Criminal Procedure which reads:

Sec. 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

The aforesaid rule has been applied retroactively because it is favorable to the accused.[54] Since the relationship of accused-appellant and private complainant was not alleged in the Information, the same shall not be considered in upgrading the crime to rape in its qualified form; otherwise, accused-appellant

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[52] *People vs. Deleverio*, 289 SCRA 547 (1998).

[53] Folder of Exhibits of Crim. Case No. 3263(13593), Exhibit "5".

[54] *People vs. Galeno*, 359 SCRA 180 (2001).

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will be deprived of his right to be informed of the nature of the charge against him. In fine, accused-appellant is guilty only of statutory rape defined in Article 335 of the Revised Penal Code, as amended, punishable by *reclusion perpetua*. The penalty imposed by the trial court should be modified accordingly. The trial court ordered accused-appellant to pay private complainant civil indemnity in the amount of ₱50,000.00 but did not order him to pay moral damages. Current jurisprudence mandates accused-appellant to pay private complainant the amount of ₱50,000.00 by way of moral damages.[55]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court is hereby *AFFIRMED* with *MODIFICATION*. Accused-appellant is hereby found guilty beyond reasonable doubt of the crime of statutory rape defined in Article 335 of the Revised Penal Code, as amended, and is hereby meted the penalty of *RECLUSION PERPETUA*. The accused-appellant is hereby ordered to pay to private complainant the amount of ₱50,000.00 by way of civil indemnity and the amount of ₱50,000.00 by way of moral damages.

SO ORDERED.

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

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[55] *People vs. Sancha*, 324 SCRA 646 (2000); *People vs. De la Costa*, 304 SCRA 83 (1999).