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EN BANC

[G.R. No. 142577. December 27, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUPERTO RAMOS *y* DELA CRUZ,** *accused-appellant.*

SYNOPSIS

Accused-appellant was charged with rape for sexually abusing his sixteen-year old mentally retarded niece. The Information alleged two sets of special qualifying circumstances attendant to the commission of the crime, namely: (a) the minority of private complainant and her relationship to accused-appellant; and (b) her mental retardation and knowledge thereof by appellant. After due proceedings, the trial court found appellant guilty of the crime charged with the aggravating circumstances that the victim is under eighteen years of age and the offender is a relative by consanguinity within the third civil degree. He was sentenced to suffer the supreme penalty of death. Hence, this automatic review of the case.

The Supreme Court ruled that in the crime of rape, the special qualifying circumstance of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt. In this case, the prosecution failed to adduce evidence to prove the victim's age. The testimony of the victim as to her age, even if corroborated by her mother, is not sufficient proof of minority. The prosecution likewise adduced testimonial evidence inclusive of the admission of appellant that he was the uncle of the victim. However, under the Information, appellant was merely declared to be the uncle of the victim. It has been ruled that if the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim, the Information must allege that he is a relative by consanguinity or affinity (as the case may be) within the third civil degree. It is not enough for the Information to merely allege that appellant is the uncle of the victim.

On the second set of special qualifying circumstances, the prosecution was burdened to prove that (a) the victim was a

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mental retardate and that (b) accused-appellant knew of her mental condition. Knowledge of appellant of the mental condition of the victim may be proved by direct and/or circumstantial evidence. In this case, the prosecution adduced sufficient proof that the victim was a mental retardate. However, the prosecution failed to adduce incontrovertible evidence to prove that appellant knew of the mental retardation of the victim.

Consequently, the Court found accused-appellant guilty only of simple rape and meted the penalty of *reclusion perpetua.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** [I]n reviewing rape cases, the court has always been guided by three (3) well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) 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 defense. The primordial consideration in a determination concerning the crime of rape is the credibility and probative weight of complainant's testimony.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT ON APPEAL.—** [T]he findings of the trial court, its conclusions culled from said findings, its calibration of the testimonial evidence of the parties and the probative weight thereof are accorded, great respect, if not conclusive effect, by the appellate court because of the unique advantage of the trial court of monitoring and observing at close range the demeanor, deportment and conduct of said witnesses as they regale the trial court with their testimonies. In contrast, the appellate courts must contend itself only with the mute pages of the original records and the evidence adduced by the parties elevated by the trial court.

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3. **CRIMINAL LAW; RAPE; LACERATION OF HYMEN, WHETHER FRESH OR HEALED, IS THE BEST PHYSICAL EVIDENCE OF DEFLORATION; CASE AT BAR.**— Dr. Aves' findings based on his medical examination of Jocelyn that her hymen had multiple healed lacerations at 9 and 11 o'clock positions further buttressed Jocelyn's testimony that appellant had carnal knowledge of her. Laceration of the hymen, whether fresh or healed, is the best physical evidence of defloration.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IT IS HIGHLY INCONCEIVABLE THAT A NAIVE GIRL WOULD CONCOCT A TALE OF DEFLORATION, ALLOW EXAMINATION OF HER PRIVATE PARTS AND UNDERGO PUBLIC TRIAL, UNLESS SHE WAS IN FACT BEEN RAPED; CASE AT BAR.**— [I]t is highly inconceivable that Jocelyn, a naive girl, would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, tribulation and inconvenience, not to mention the trauma of a public trial, unless she was in fact raped by accused-appellant.

5. **ID.; ID.; DENIAL; CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE DECLARATION OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS.**— [D]enial of the crime charged is but self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. It bears stressing that accused-appellant's denial of the charge is corroborated only by his close kins, his niece and brother-in-law.

6. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES OR SPECIAL QUALIFYING CIRCUMSTANCES; MUST BE PROVED WITH EQUAL CERTAINTY AND CLEARNESS AS THE CRIME ITSELF.**— In the prosecution of criminal cases, especially those involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself, otherwise, there can be no conviction of the crime in its qualified form.

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7. **ID.; RAPE; SPECIAL QUALIFYING CIRCUMSTANCES; VICTIM'S MINORITY AND HER RELATIONSHIP TO ACCUSED; MUST BE BOTH ALLEGED AND PROVEN BEYOND REASONABLE DOUBT; CASE AT BAR.**— As a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt. To prove the minority of Jocelyn, the prosecution was burdened to adduce in evidence her birth certificate as it is the best evidence to prove her age at the time of the commission of the crime. Substitutionary evidence, absent proof of loss or destruction of the original of her birth certificate or the unavailability thereof without fault of the prosecution, including the testimony of Jocelyn and of her mother, will not suffice. Neither can the relationship of the accused to the victim be established by mere testimony, not even if the same was admitted by the accused. ... In this case, the prosecution failed to adduce in evidence the original of the certificate of birth of Jocelyn. There is no evidence that said certificate of birth was lost or destroyed or was unavailable without the fault of the prosecution. Hence, substitutionary evidence was inadmissible. The testimony of Jocelyn as to her age, even if corroborated by her mother, is not sufficient proof of minority. The prosecution adduced testimonial evidence inclusive of the admission of accused-appellant that he was the uncle of Jocelyn. However, under the Information, accused-appellant was merely declared to be the "uncle" of Jocelyn. We have held that if the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim, the information must allege that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree." It is not enough for the information to merely allege that accused-appellant is the uncle of private complainant. Even if the prosecution proved that accused-appellant was in fact the uncle of Jocelyn, the death penalty cannot be meted on accused-appellant on account of said relationship.

8. **ID.; ID.; ID.; VICTIM'S RETARDATION AND KNOWLEDGE THEREOF BY ACCUSED; PROSECUTION IS BURDENED TO PROVE THAT VICTIM IS A MENTAL RETARDATE AND THAT ACCUSED KNEW HER MENTAL CONDITION; CASE AT BAR.**— [T]he prosecution was burdened to prove that (a) Jocelyn was a mental retardate and

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that (b) accused-appellant knew her mental condition. Knowledge by accused-appellant of the mental condition of Jocelyn may be proved by direct and/or circumstantial evidence. In this case, the prosecution adduced sufficient proof that Jocelyn was a mental retardate. However, the prosecution failed to adduce incontrovertible evidence to prove that accused-appellant knew of the mental retardation of Jocelyn. The barefaced facts that private complainant was the niece of accused-appellant and that they were neighbors before and at the time of the commission of the crime do not constitute conclusive proof that accused-appellant had knowledge of the mental retardation of private complainant absent evidence of external manifestations of her mental condition.

9. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY; AMOUNT OF ₱75,000.00, AWARDED ONLY WHERE CRIME OF RAPE IS QUALIFIED BY ANY OF THE CIRCUMSTANCES UNDER WHICH DEATH PENALTY IS AUTHORIZED BY LAW.**— In light of the reduction of the penalty imposed upon accused-appellant, the award of civil indemnity (erroneously designated as moral damages by the trial court) must likewise be reduced from ₱75,000.00 to ₱50,000.00. Civil indemnity in the amount of ₱75,000.00 is awarded only where the crime of rape was effectively qualified by any of the circumstances under which the death penalty is authorized by the present law.

10. **ID.; ID.; MORAL DAMAGES; AWARDED IN CASE AT BAR.**— [A]ccused-appellant is also liable for moral damages in the amount of ₱50,000.00. In rape cases, the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof.

APPEARANCES OF COUNSEL

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

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DECISION

CALLEJO, SR., *J.*:

This is an automatic review of the Decision dated November 19, 1999 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 21 in Criminal Case No. 659-M-98 finding accused-appellant Ruperto Ramos *y* dela Cruz guilty beyond reasonable doubt of the crime of rape and likewise imposing upon him the supreme penalty of death. Accused-appellant was ordered to pay private complainant the amount of ₱75,000.00 as moral damages.

Upon the complaint of the victim, Jocelyn Ramos, an Information charging accused-appellant of rape was filed before the RTC of Malolos, Bulacan. The Information states:

> The undersigned Asst. Provincial Prosecutor, on complaint of the offended party, accuses Ruperto Ramos *y* dela Cruz of the crime of Rape, penalized under the provisions of Art. 335 of the Revised Penal Code, as amended by R.A. 8353, committed as follows:
>
> That on or about the 14th day of December, 1997, in the municipality of Sta. Maria, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the said accused, Ruperto Ramos *y* dela Cruz, being an uncle of complainant Jocelyn Ramos, a 16 year old mentally retarded minor, and knowing of her mental condition, did then and there wilfilly, unlawfully and feloniously, by means of threats or intimidation and with lewd designs, have carnal knowledge of said complainant against her will and without her consent.
>
> Contrary to law."[1]

During the arraignment, accused-appellant, with the assistance of counsel, pleaded not guilty to the charge.

At the trial, the prosecution adduced evidence that the spouses Efren Ramos and Fortunata Ramos have two children, namely, Jocelyn, then fifteen years old at the time of the commission of the crime, and Mary Grace, who was then six years old.

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[1] Records, p. 2.

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Fortunata and her children resided in a compound in Partida Pulong Buhangin, Sta. Maria, Bulacan. Accused-appellant, the older brother of Efren, resided in the same compound. His house was about twenty meters away from the house of Efren and Fortunata. Efren worked abroad. He had been away from home for several years already.

On December 14, 1997, at around noontime, Jocelyn was outside the house playing with her younger sister Mary Grace and their seven-year old neighbor Joel Santiago. While the children were busy playing, accused-appellant, then wearing an undershirt and shorts, waved his hand to Jocelyn and motioned for her to come to his house. Jocelyn dutifully approached accused-appellant and entered his house through the kitchen. Once Jocelyn was inside the house, accused-appellant locked the door to the kitchen. He then led her to his bedroom. Once they were inside, accused-appellant locked the bedroom door. He undressed Jocelyn and made her lie down on the bed. Accused-appellant placed himself on top of her. He spread her legs apart while he mashed her breast and sucked her nipples. Thereafter, accused-appellant inserted his penis into her sexual organ. Jocelyn felt pain as he made the pumping motion while inserting his private part into hers. Jocelyn could not do anything but cry. Accused-appellant threatened her by gnashing his teeth and ordered her not to tell anyone else. According to Jocelyn, that was not the first that accused-appellant had sexually abused her.

Unknown to accused-appellant, Mary Grace and Joel saw Jocelyn enter the house of accused-appellant that day. They went to the window of the house of accused-appellant and propped themselves up alternately on each other's shoulder to be able to peep through the window. Joel saw Jocelyn lying on the bed totally naked, with accused-appellant on top of her. Joel saw accused-appellant inserting his penis into her vagina. Mary Grace in turn saw accused-appellant fondle the breasts of Jocelyn while she was lying down and thereafter insert his hand into Jocelyn's underwear.

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At about 4:00 p.m. that day, Mary Grace told her mother Fortunata about what transpired between accused-appellant and Jocelyn. When Fortunata confronted Jocelyn about it, the latter confirmed what Mary Grace had told their mother. Since her husband was abroad, Fortunata went to Rafael Ramos, the older brother of Efren and accused-appellant, for guidance. Rafael advised her to file a criminal complaint against accused-appellant for his dastardly acts.

Following her brother-in-law's advice, Fortunata, on behalf of Jocelyn, filed a criminal complaint against accused-appellant for rape with the Municipal Trial Court (MTC) of Sta. Maria, Bulacan on December 15, 1997. The complaint was signed by Fortunata. Jocelyn affixed her thumbmark thereto.[2] Jocelyn was 16 years old at the time. In her sworn statement, Fortunata claimed that accused-appellant raped Jocelyn.[3]

Dr. Manuel Aves, medico-legal of the Bulacan Provincial Crime Laboratory, conducted a genital examination of Jocelyn on December 17, 1997. He found multiple healed lacerations at 9 and 11 o'clock positions on Jocelyn's hymen. He opined that the lacerations could have been caused by sexual intercourse. Dr. Aves likewise declared that Jocelyn was suffering from moderate mental retardation, and placed her mental capacity equivalent to that of a six-or seven-year old child.[4]

After a series of psychiatric examinations conducted on her by Dr. Bernadette Arcena of the National Center for Mental Health, the latter confirmed that Jocelyn was indeed a mental retardate whose mental age was equivalent to that of a six-year old child.[5]

For his part, accused-appellant denied having any carnal knowledge of Jocelyn. He admitted that Jocelyn is his niece,

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[2] *Ibid.*, Exhibit "A".

[3] *Ibid.*, Exhibit "B", p. 115.

[4] *Ibid.*, Exhibit " C", p. 116.

[5] *Ibid.*, Exhibit "D", p. 117.

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being the daughter of Efren, his younger brother. Accused-appellant claimed that he was in his house on December 14, 1997 with his brother-in-law Victor Gamboa, his niece Mildred Ramos who was the wife of his nephew Roland Ramos, his five-year old son Ryan, and Roland's and Mildred's daughter, Ranyamae Ramos. Accused-appellant asserted that Jocelyn never went to his house on December 14, 1997.

Mildred Ramos corroborated accused-appellant's claim and testified that both of them were in their house the whole day on December 14, 1997, and that she did not see Jocelyn inside the house or enter accused-appellant's bedroom on that day.

Victor Gamboa testified that his sister and accused-appellant were married. The couple had a son named Ryan. They resided in Dagupan City until accused-appellant's wife died in 1996. By then, Ryan was already four years old. After his wife's death, accused-appellant left Dagupan City and resided in the house of Roland Ramos and Mildred Ramos, leaving Ryan Ramos in the custody of Victor Gamboa. On December 13, 1997, at about 3:00 p.m., Victor Gamboa and Ryan arrived in Sta. Maria, Bulacan to visit accused-appellant. Victor Gamboa and Ryan stayed in the house of Roland Ramos and Mildred Ramos the whole day on December 14, 1997. He and Ryan left at about 6:00 p.m. and returned to Dagupan City. He never saw Jocelyn in said house the whole day on December 14, 1997.

Accused-appellant further testified that Fortunata was just envious of him because his (accused-appellant's) inheritance was still intact while that of Fortunata's family had already been depleted. He further claimed that Fortunata bore a grudge against him because she borrowed ₱500.00 or ₱300.00 from him but he refused to lend her any amount; and that he caused the removal of the illegal electricity connection in Fortunata's house. Accused-appellant claimed that while he was in prison, Fortunata's driver Domingo came to him and demanded the payment of half a million pesos as settlement of the case but accused-appellant refused to pay as he did not have such amount of money. Accused-appellant also asserted that Jocelyn was

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always out of the house with her "*barkadas*," implying that she could have been sexually abused while with them.

The trial court rendered judgment finding appellant guilty beyond reasonable doubt of raping his niece Jocelyn and sentencing him to suffer the supreme penalty of death. The dispositive portion of the trial court's decision reads:

"WHEREFORE, this Court finds and so holds accused RUPERTO RAMOS to be GUILTY beyond reasonable doubt, of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 8353 with the attendant aggravating circumstances that 'the victim is under eighteen years of age and the offender is a x x x relative by consanguinity or affinity within the the (*sic*) third civil degree. x x x

Relative thereto, this Court cannot find a way to differ from the High Court's impression that of all the so-called heinous crimes, none perhaps more clearly provokes feelings of outrage, detestation and disgust than incestuous rape. (*People vs. Baculi*, 246 SCRA 756) Accordingly, absent any circumstances that would mitigate the commission thereof, he is hereby sentenced to suffer the supreme penalty of DEATH by lethal injection.

In line with established jurisprudence, the said accused is also ordered to indemnify the offended party Jocelyn Ramos, in the sum of ₱75,000.00 for moral damages.

With costs against the accused.

SO ORDERED."[6]

In his appeal brief, accused-appellant assails the decision of the trial court, alleging that:

"I

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN TOTALLY IGNORING/DISREGARDING THE VERSION OF THE DEFENSE.

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[6] *Ibid.*, p. 159.

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II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."[7]

The issues raised by appellant shall be resolved jointly as they are interrelated.

We agree with accused-appellant's pose that, in reviewing rape cases, the court has always been guided by three (3) well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) 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 defense.[8] The primordial consideration in a determination concerning the crime of rape is the credibility and probative weight of complainant's testimony.[9]

The legal aphorism is that the findings of the trial court, its conclusions culled from said findings, its calibration of the testimonial evidence of the parties and the probative weight thereof are accorded, great respect, if not conclusive effect, by the appellate court because of the unique advantage of the trial court of monitoring and observing at close range the demeanor, deportment and conduct of said witnesses as they regale the trial court with their testimonies. In contrast, the appellate courts must contend itself only with the mute pages

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[7] *Rollo*, p. 48.

[8] *People of the Philippines vs. Norberto Del Mundo, Sr.*, 356 SCRA 45, 50 (2001).

[9] *People of the Philippines vs. Rodegelio Turco, Jr.*, 337 SCRA 714, 722 (2000).

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of the original records and the evidence adduced by the parties elevated by the trial court.[10]

In this case, the trial court found Jocelyn credible and gave full probative weight to her testimony thus:

"More so, as herein observed, when Jocelyn has been able to communicate her experience in a manner that was clear as well as consistent. Neither was her testimony attended by material flaws in the cross-examination. On the contrary, more details were extracted of her regarding the incident in question. Hence, we find no valid reason to disregard or discredit her testimony."[11]

Indeed, the findings of the trial court are buttressed by the testimony of Jocelyn as she vividly recalled how accused-appellant defiled her, with tears welling from her eyes, her sex organ throbbing with pain caused by penile penetration:

"Atty. Bernabe:

Q Madam Witness do you know the accused in this case Ruperto Ramos?
A Yes, sir.

Q If he is inside the court room will you please point him to us?
A (The witness is pointing to a man in handcuff.)

Court:

Q Why do you know the accused?
A He is the brother of my father, Your Honor.

Q Who is older Ruperto or your father?
A Ruperto, Your Honor.

Q What is the name of your father?
A Efren Ramos, Your Honor.

Atty. Bernabe:

Q Sometime in December 14, 1997, do you recall if you have met your uncle Ruperto Ramos?

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[10] *People of the Philippines vs. Aurelio Delovino*, 247 SCRA 637 (1995).

[11] RTC Decision, November 19, 1999, p. 5; *Rollo*, p. 27.

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A Yes, sir.

Q How did you come to see and meet the accused Ruperto Ramos?
A He kept on looking at me, Sir.

Q And when he was looking at you on that date of December 14, 1997, what happened next?
A He was undressing me, Sir.

Q In what place that you were being undressed by the accused?
A Inside his bedroom, Sir.

Q How come that you were at the bedroom on your uncle on that day?
A He was calling me, Sir.

Court:

Q What time of the day is that?
A Noon time, Your Honor.

Atty. Bernabe:

Q Where were you when you were being called by your uncle?
A I was in the house of *Ka* Nene, Sir.

Q Why were you there in the house of *Ka* Nene?
A I was playing with Grace, Sir.

Q Who is this Grace?
A My sister, Sir.

Q Aside from Grace who else those you were playing with?
A Joel, Sir.

Q How far is this house of *Ka* Nene to the house of Ruperto Ramos?
A Further than this wall, Sir.

Court:

Q How about that door?
A That is, Your Honor, (about 6 meters.)

Atty. Bernabe:

Q As you were called by your uncle, was he shouting or how were you called?

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A He was waving his hand at me, Sir.

Q After he waved his hand, what did you do?
A I approached him, Sir.

Q Did he say anything when you approached him?
A Yes, Sir.

Q What was that?
A He asked me to enter the house, Sir.

Q After entering the house, what happened next?
A He went to the kitchen and locked the doorknob, Sir.

Q What happened after?
A He made me enter his bedroom and locked the doorknob, Sir.

Q And when the two of you were already inside his bedroom and locked the doorknob what happened?
A He undressed me and made me lie down on his bed, sir.

Q Before you were made to lie down on the bed, what did you do?
A He placed himself on top of me, sir.

Q When you were already lying down what did Ruperto Ramos do to you?
A He placed on top of me. He was doing the pumping, "*kumakantot sa akin*"" sir.

Q How did he do that?
A My legs were spread, sir.

Q What else?
A He was sucking my nipples, sir.

Q What else did he do?
A He was biting my breast, sir.

Q What else did he do aside from those you have already said?
A (The witness is hesitating.) No, sir.

Court:

Q What was the attire of the accused when he was calling you?
A Sando and shorts, Your Honor.

Q And what was his attire when he placed on top of you?

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A He was wearing long maong and sando, Your Honor.

Q Was it short or long pants?
A Short, Your Honor.

Atty. Bernabe:

Q How about you when you were already lying down and your nipple being sucked by the accused?
A I was naked, Sir.

Q How about at the time when you said the accused was pumping on top of you, did you wear anything?
A I was cloth, Sir.

Q How about the accused was he wearing anything when he pumped on you?

Atty. Balagtas:

Already answered.

Court:

Q What about you when you were lying, what was your position was (*sic*) you pacing (*sic*) down or pacing (*sic*) up?
A Pacing (*sic*) me, Your Honor.

Atty. Bernabe:

Q You made mention a while ago that your legs were spread. . . .

Atty. Balagtas:

Already answered, Your Honor.

Court:

Q In this information it alleges here that the accused knowingly the mental condition of the complainant did then and there willfully and feloniously by means of threats or intimidation and with lewd designs have carnal knowledge with the said complainant against her will and without consent, what can you say about it?
A Yes, Your Honor, he threatened me.

Atty. Bernabe:

Q How did he threaten you?

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A He was . . . (witness demonstrating clenching her teeth).

Court:

Q Did he say anything when he clenched his teeth?
A Yes, Your Honor.

Q What did he say?
A Not to tell anybody, Your Honor.

Atty. Bernabe:

Q What did you feel when the accused place on top of you?
A I was hurt, sir.

Q Why?
A It was painful, sir.

Court:

Q What part of your body?
A (Witness pointing to her private part.)

Atty. Bernabe:

Q Why did you feel pain?
A Because I was crying, sir. My tears rolled down my cheeks.

Q You said that your private part was painful, can you tell the Honorable Court.

Court:

Q Are you ashame[d] to tell everything? Because of the number of men inside the Courtroom?
A Yes, Your Honor.

Q Will you be able to tell us more details if we exclude the audience?
A Yes, Your Honor.
(Audience is ordered to move outside.)

Atty. Bernabe:

Q Your answer to the last question, what did Ruperto Ramos do to you?
A He inserted his penis to my private part, sir, "*ang titi niya ipinasok sa pepe ko.*"

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Q Madam Witness how many times did your uncle, you said he inserted his penis inside your private part?
A Often, sir."[12]

Jocelyn's testimony, standing alone, is conclusive proof of the guilt of accused-appellant for the crime of rape. Nonetheless, as found by the trial court, Joel and Mary Grace substantially corroborated Jocelyn's testimony on its material points. Mary Grace testified seeing accused appellant mashing the breast of Jocelyn and sucking her nipples:

"Q As you and Joel were playing then, did you observe any unusual incident?
A Yes, sir.

Q Please tell the Court what was that?
A We went inside the room of the house of Ruping, the room owned by Ruping and while we were viewing TV, we saw Ruping inserting his hands to the private part of my sister. He is inserting his hands inside the party (*sic*) of Josylyn (*sic*).

Q And after seeing that, what happened next?
A We went outside and we reported the incident to the mother of Joel.

Q Madam witness, your playmate Joel testified that you and him went by the window and by stepping on your shoulder that he saw Ruping doing something to your sister, is it not a fact that Joel stepped on your shoulder on that particular day?
A Yes, sir.

Q After Joel had stepped on your shoulder you also testified that you stepped on his shoulder and you were the one saw something going on inside the room. What is that something that you have seen?
A There was sir, he mashed her brest (*sic*) and he sucked her nipples.

Q Aside from that, what else?

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[12] TSN, November 6, 1998, pp. 3-9.

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A While my sister is lying down, the accused is inserting his finger to the private part of my sister. (referring to Josylyn)

Q And what else transpired aside from those?
A That is all, sir."[13]

Joel testified seeing accused-appellant and Jocelyn lying in bed naked, accused-appellant on top of her and inserting his penis into her vagina:

"Atty. Bernabe:

Mister witness, sometime in December, 1997, did you have occasion to see accused Ruperto Ramos?
A. Yes, sir.

Q. Where did you see him?
A. In the room, sir.

Q. Who was with him in the room?
A. Jocelyn, sir.

Q. Who is Jocelyn?
A. Our neighbor, sir.

Q. And you made mention that you saw Jocelyn and Ruperto Ramos inside the room. Who is the owner of that house if you know?
A. Rupin, sir.

Q. When you made mention of Ruping, you are referring to the accused Ruperto Ramos?
A. Yes, sir.

Q. When you said you saw them, what were they doing?
A. Ruperto was lying on top of Jocelyn, sir.

Q. How did you come to know about that matter?
A. We went to the back window and we used an object to step on to see them, sir.

Q. You made mention of Grace. Who is Grace?
A. My playmate, sir.

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[13] TSN, October 14, 1998, pp. 4-5.

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Q. How is she related to Jocelyn?
A. They are sisters, sir.

Q. Please tell the Honorable Court what exactly did you see when you said Ruperto Ramos was on top of Jocelyn?
A. "*Binuburat ang titi.*"

Q. And were they wearing anything?
A. None, sir.

Court:

Who in particular had no clothing?
A. Both of them, sir.

Q. And for how long did you see Ruperto Ramos on top of Jocelyn?
A. It was long but I could not estimate, sir.

Atty. Bernabe:

Now, when Ruperto Ramos was on top of Jocelyn, what specifically was Ruperto Ramos doing?

Atty. Balagtas:

Already answered.

Atty. Bernabe:

How about Jocelyn, what was she doing at that time?
A. Jocelyn was lying front (*nakadapa*), sir.

Q. Aside from the fact that you claim that Ruperto . . . (interrupted)

Court:

Just a minute. You just stated that Jocelyn was lying front and Ruperto Ramos was lying on top of her. Was Ruperto Ramos lying front on top of Jocelyn?
A. He was lying on top of the back of Jocelyn, sir.

Atty. Bernabe:

Aside from that, you claim that Ruperto was "*binuburat ang titi.*" Are there other acts which you have seen during that time?
A. The eggplant was inserted inside the private part of Jocelyn, sir.

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Q. By whom?
A. Ruping, sir."[14]

Dr. Aves' findings based on his medical examination of Jocelyn that her hymen had multiple healed lacerations at 9 and 11 o'clock positions further buttressed Jocelyn's testimony that appellant had carnal knowledge of her. Laceration of the hymen, whether fresh or healed, is the best physical evidence of defloration.[15]

Appellant's imputation of ill motive on Fortunata, Jocelyn's mother, was an act of utter desperation. His claims that Fortunata accused him of raping her daughter only out of envy because his inheritance was still intact while Fortunata's had already been depleted, and that he rebuffed Fortunata when she borrowed ₱500.00 or ₱300.00 from him and when he removed the illegal electrical connection installed in the house of Fortunata, are preposterous and outrageous. In the first place, it is highly inconceivable that Jocelyn, a naive girl, would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, tribulation and inconvenience, not to mention the trauma of a public trial, unless she was in fact raped by accused-appellant.[16] Accused-appellant failed to prove his assertion and relied only on his own self-serving testimony. Moreover, mothers are so protective of their children that they would give up their lives and fortune to protect their children from any threat or peril to their lives or limb and shield them from embarrassment, ridicule and any taint on their reputation. It is unthinkable that Fortunata will use Jocelyn as an instrument of malice, even for the purpose of avenging a personal slight, especially if it will subject Jocelyn to the embarrassment, trauma and stigma attendant to a rape trial unless accused-appellant

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[14] TSN, September 9, 1998, pp. 3-5.

[15] *People of the Philippines vs. Reyes,* G.R. Nos. 140642-46, August 7, 2002, p. 21.

[16] *People of the Philippines vs. Jaquilmac*, G.R. No. 139787, September 17, 2002, p. 10.

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indeed raped Jocelyn.[17] It must be pointed out that Fortunata first sought the advice of Rafael Ramos, the older brother of Efren and accused-appellant, before she assisted the private complainant in filing a complaint for rape against accused-appellant.

Ranged against the overwhelming evidence of the prosecution, accused-appellant's curt denial of the charge against him must necessarily fail. Case law has it that denial of the crime charged is but self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[18] It bears stressing that accused-appellant's denial of the charge is corroborated only by his close kins, his niece and brother-in-law.

In fine, we find that the trial court did not err in finding accused-appellant guilty beyond reasonable doubt of raping Jocelyn.

Accused-appellant contends that the trial court committed an error in imposing the penalty of death on him on its finding that private complainant was a minor at the time of the commission of the crime and that she was a relative of accused-appellant by consanguinity within the third civil degree. Accused-appellant contends that the prosecution failed to adduce conclusive evidence independent of the testimony of private complainant to prove the latter's minority. Neither did the prosecution allegedly prove that private complainant was a mental retardate. The Solicitor General on the other hand contends that the testimonies of private complainant and her mother constitute proof of minority of Jocelyn.

Articles 266-A and 266-B of the Revised Penal Code, as amended, provide in part that:

"Article 266-A. *Rape; When and How Committed.* — Rape is committed:

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[17] *Ibid.*

[18] *People of the Philippines vs. Castro Geraban*, 358 SCRA 213 (2001).

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

a) Through force, threat or intimidation;

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

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

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

x x x x x x x x x

Article 266-B. Penalties. —

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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

x x x x x x x x x

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime."[19]

In the appeal at bar, the information alleged two sets of special qualifying circumstances attendant to the commission of the crime of rape, namely, (a) the minority of private complainant and her relationship to accused-appellant; (b) her mental retardation and knowledge thereof by accused-appellant. Proof of only one of these special qualifying circumstances is sufficient to justify the imposition of the supreme penalty on death of accused-appellant.

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[19] *Supra.*

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In the prosecution of criminal cases, especially those involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself, otherwise, there can be no conviction of the crime in its qualified form.[20]

As a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt. To prove the minority of Jocelyn, the prosecution was burdened to adduce in evidence her birth certificate as it is the best evidence to prove her age at the time of the commission of the crime. Substitutionary evidence, absent proof of loss or destruction of the original of her birth certificate or the unavailability thereof without fault of the prosecution, including the testimony of Jocelyn and of her mother, will not suffice. Neither can the relationship of the accused to the victim be established by mere testimony, not even if the same was admitted by the accused. In *People vs. Tabanggay*,[21] we categorically declared:

"x x x Jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial of the accused. A duly certified certificate live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.

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[20] *People of the Philippines vs. Sitao,* G.R. No. 146790, August 22, 2002, p. 7.

[21] 334 SCRA 575 (2000).

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In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. x x x [We] cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed."

In this case, the prosecution failed to adduce in evidence the original of the certificate of birth of Jocelyn. There is no evidence that said certificate of birth was lost or destroyed or was unavailable without the fault of the prosecution. Hence, substitutionary evidence was inadmissible. The testimony of Jocelyn as to her age, even if corroborated by her mother, is not sufficient proof of minority.

The prosecution adduced testimonial evidence inclusive of the admission of accused-appellant that he was the uncle of Jocelyn. However, under the Information, accused-appellant was merely declared to be the "uncle" of Jocelyn. We have held that if the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim, the information must allege that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree." It is not enough for the information to merely allege that accused-appellant is the uncle of private complainant. Even if the prosecution proved that accused-appellant was in fact the uncle of Jocelyn, the death penalty cannot be meted on accused-appellant on account of said relationship. Consequently, accused-appellant can only be held liable for simple rape even if it was proven during the trial that he was the uncle of the victim and thus a relative by affinity of the victim within the third civil degree.[22]

On the second set of special qualifying circumstances, the prosecution was burdened to prove that (a) Jocelyn was a mental retardate and that (b) accused-appellant knew her mental condition. Knowledge by accused-appellant of the mental

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[22] *People of the Philippines vs. Ben Libo-on*, 358 SCRA 152, 176 (2001).

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condition of Jocelyn may be proved by direct and/or circumstantial evidence. In this case, the prosecution adduced sufficient proof that Jocelyn was a mental retardate. However, the prosecution failed to adduce incontrovertible evidence to prove that accused-appellant knew of the mental retardation of Jocelyn.

The barefaced facts that private complainant was the niece of accused-appellant and that they were neighbors before and at the time of the commission of the crime do not constitute conclusive proof that accused-appellant had knowledge of the mental retardation of private complainant absent evidence of external manifestations of her mental condition. The penalty of death is so severe that nothing but proof beyond reasonable doubt is required before the said penalty can be imposed. In sum then, accused-appellant is guilty of simple rape defined in Article 266-A of the Revised Penal Code as amended by Republic Act 7659 and should be meted the penalty of *reclusion perpetua*. In light of the reduction of the penalty imposed upon accused-appellant, the award of civil indemnity (erroneously designated as moral damages by the trial court) must likewise be reduced from ₱75,000.00 to ₱50,000.00. Civil indemnity in the amount of ₱75,000.00 is awarded only where the crime of rape was effectively qualified by any of the circumstances under which the death penalty is authorized by the present law.[23] In addition, accused-appellant is also liable for moral damages in the amount of ₱50,000.00. In rape cases, the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof.[24]

IN LIGHT OF ALL THE FOREGOING, the Decision dated November 19, 1999 of the Regional Trial Court, Branch 21 of Malolos, Bulacan in Criminal Case No. 659-M-98 is *AFFIRMED* with *MODIFICATION*. Accused-appellant is hereby found guilty beyond reasonable doubt of simple rape under Article 266-A of the Revised Penal Code and is hereby meted the penalty of

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[23] *People of the Philippines vs. Sitao, supra*, p. 9.

[24] *Ibid.*

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reclusion perpetua. He is ordered to pay the victim, Jocelyn Ramos, the amount of ₱50,000.00 as civil indemnity and the amount of ₱50,000.00 as moral damages.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 144025. December 27, 2002]

SPS. RENE GONZAGA and LERIO GONZAGA, *petitioners, vs.* **HON. COURT OF APPEALS, Second Division, Manila, HON. QUIRICO G. DEFENSOR, Judge, RTC, Branch 36, Sixth Judicial Region, Iloilo City, and LUCKY HOMES, INC., represented by WILSON JESENA, JR., as Manager,** *respondents*.

SYNOPSIS

Petitioners purchased a parcel of land from private respondent Lucky Homes, Inc., specifically denominated as Lot No. 19 and was mortgaged to the Social Security Commission (SSS) as security for their housing loan. Petitioners then started the construction of their house, not on Lot No. 19 but on Lot No. 18, as private respondent mistakenly identified Lot No. 18 as Lot No. 19. Petitioners offered to buy Lot No. 18 so they continued with the construction of their house. However, petitioners defaulted in the payment of their housing loan from SSS. Consequently, Lot No. 19 was foreclosed by SSS and after which petitioners offered to swap Lot Nos. 18 and 19 and demanded from private respondent that their contract of sale