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WHEREFORE, the instant petition is *DISMISSED*. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J.(Chairman), Vitug, and *Azcuna, JJ.*, concur.

Ynares-Santiago, J., took no part.

EN BANC

[G.R. Nos. 144305-07. February 6, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TACIO EMILIO *y* INTE,** *accused-appellant.*

SYNOPSIS

Accused-appellant Tacio Emilio *y* Inte was convicted by the Regional Trial Court of Benguet of three (3) counts of rape committed against his minor stepdaughter and was sentenced to suffer the penalty of death for each count. On automatic review, appellant maintained his innocence and assailed the credibility of the victim Maria Teresa. He posited that her unreasonable and unexplained delay in reporting the incidents to the proper authorities and to her relatives rendered her testimony highly dubious and suspect. He thus proffered that, in all probability, her charges were fabricated.

The Supreme Court affirmed appellant's conviction. The silence of the offended party in a case of rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all

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baseless, untrue and fabricated. If delay in making a criminal accusation is satisfactorily explained, it does not impair the credibility of a witness. At the time of the rape incidents, Maria Teresa was barely at the threshold of adolescence. The perpetrator is the husband of her mother whom she lived with and treated as her own parent. Her claim that fear prevented her from at once revealing what had been done to her by accused-appellant whom she had priorly seen fire his gun, is not hard to believe.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY DELAY IN MAKING A CRIMINAL ACCUSATION IF REASON THEREFOR IS SATISFACTORILY EXPLAINED.**— The silence of the offended party in a case of rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. If delay in making a criminal accusation is satisfactorily explained, it does not impair the credibility of a witness. At the time of the rape incidents, Maria Teresa was barely at the threshold of adolescence. Her assailant is the husband of her mother whom she lived with and treated as her own parent. Her claim that fear prevented her from at once revealing what had been done to her by accused-appellant whom she had priorly seen fire his gun is not hard to believe.

2. **ID.; ID.; ID.; MINOR INCONSISTENCIES; WHERE TESTIMONY IS CONSISTENT ON MATERIAL POINTS, SLIGHT CONFLICTING STATEMENTS WILL NOT UNDERMINE WITNESS' CREDIBILITY NOR THE VERACITY OF THE TESTIMONY; CASE AT BAR.**— Neither is this Court persuaded by accused-appellant's contention that the improbabilities and inconsistencies in Maria Teresa's testimony with respect to the dates and details of, and her conduct during and after, the alleged incidents render her accusations baseless. Specification of the exact date or time of the commission of the rape is not important as this is not an element of the crime. As for the alleged discrepancies in Maria Teresa's statements regarding the number of times she was mounted on and subsequently

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raped during the first incident, Maria Teresa had, on cross-examination, satisfactorily clarified that as to the first incident which occurred on a day in October 1995, accused-appellant mounted on her twice but succeeded in having carnal knowledge with her only during the first. At all events, errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and painful as rape. As long as the testimony is consistent on *material* points, as was Maria Teresa's, slightly conflicting statements will not undermine the witness' credibility nor the veracity of the testimony.

3. **ID.; ID.; ID.; INCONSISTENCIES ON MINOR DETAILS TEND TO BUTRESS RATHER THAN WEAKEN CREDIBILITY AND ERASES ANY SUSPICION OF COACHED OR REHEARSED TESTIMONY.**— The alleged inconsistencies in Maria Teresa's testimony pertaining to the persons to whom she reported the incidents prior to reporting them to the police and the exact positions of accused-appellant while he was on top of her are minor details which do not affect the essential integrity and veracity of her testimony. In fact they tend to buttress, rather than weaken, her credibility because they erase any suspicion of coached or rehearsed testimony.

4. **CRIMINAL LAW; QUALIFIED RAPE; FAILURE OF VICTIM TO SHOUT FOR HELP DOES NOT NEGATE COMMISSION OF RAPE.**— Accused-appellant focuses on Maria Teresa's failure to shout during the incidents. Failure of the victim to shout for help does not, however, negate the commission of rape. For, the workings of the human mind under emotional stress are unpredictable, such that people react differently to startling situations. The explanation of Maria Teresa that extreme fright and shock rendered her unable to scream for help is, to this Court, satisfactory. It bears noting that she not only cried. She struggled to extricate herself from him during the incidents. As to the way Maria Teresa comported herself after the rape incidents, the same cannot infirm her credibility. Being then only 11 in 1995 and 12 in 1996, she should not be judged by the norms of behavior expected of mature persons.

5. **ID.; ID.; STEPFATHER'S MORAL ASCENDANCY AND INFLUENCE OVER HIS STEPDAUGHTER SUBSTITUTES ELEMENT OF VIOLENCE AND INTIMIDATION.**— The rape of a stepdaughter by her stepfather is analogous to the sexual

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assault committed by a father against his own daughter. The stepfather's moral ascendancy and influence over his stepdaughter substitutes for violence and intimidation as an element of rape. He does not have to threaten the stepdaughter because she is cowed into submission when gripped with the fear of refusing the advances of a person she customarily obeys. There is no gainsaying that Maria Teresa looked upon accused-appellant as an authority figure, her stepfather of more than four years on whom, by accused-appellant's own information, she was *entirely dependent* for her day-to-day needs.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Romeo D. Lopez for accused-appellant.

D E C I S I O N

***PER CURIAM*:**

On May 22, 2000, in Criminal Cases Nos. 97-CR-2738, 97-CR-2739 and 97-CR-2740, the Regional Trial Court of Benguet, Branch 62, found accused-appellant Tacio Emilio guilty of three (3) counts of rape of his minor stepdaughter and imposed upon him the penalty of death for each.

The prosecution charged accused-appellant in separate Informations,[1] the inculpatory portions of which read as follows:

Criminal Case No. 97-CR-2738

That on or about the month of October 1995, at Bayabas, Municipality of Sablan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge and sexual intercourse with his stepdaughter MARIA TERESA ESLAO, a thirteen year old minor.

CONTRARY TO LAW.

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[1] *Rollo* at 16-21.

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Criminal Case No. 97-CR-2739

That on or about the 20th day of October 1996, at Bayabas, Municipality of Sablan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge and sexual intercourse with his stepdaughter MARIA TERESA ESLAO, a thirteen year old minor.

CONTRARY TO LAW.

Criminal Case No. 97-CR-2740

That on or about the month of October 1995, at Bayabas, Municipality of Sablan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge and sexual intercourse with his stepdaughter MARIA TERESA ESLAO, a thirteen year old minor.

CONTRARY TO LAW.

When arraigned on March 26, 1997,[2] accused-appellant, duly assisted by counsel, pleaded not guilty to the charges, whereupon joint trial commenced.

Culled from the records of the case are the following facts established by the prosecution:

Private complainant Maria Teresa Eslao and her half-sister Latifa were born out of wedlock to Teresita Eslao of Bayabas, Sablan, Benguet. Per birth certificate,[3] she was born on December 11, 1983.

On January 18, 1991, Maria Teresa's mother Teresita Eslao married accused-appellant [4] following which the couple, together with Maria Teresa and Latifa, resided at Teresita's house in Sitio Bekes, Bayabas, Sablan, Benguet. Wanting to eke out a more

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[2] Original Records at 37 and 39.

[3] Exhibit "B", Id. at 87.

[4] Exhibit "C", Id. at 88.

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comfortable life for her family, Teresita went to work in Malaysia on April 18, 1994,[5] leaving Maria Teresa and her 4-year old[6] sister Latifa under the care and custody of their stepfather-accused-appellant.

As was her wont, Maria Teresa slept in their living room while accused-appellant and her half-sister slept at the nearby bedroom.

At around midnight one day in *October 1995*, 11-year old Maria Teresa was roused from her sleep by accused-appellant who lay on top of her. By then, the blanket covering her had been removed and her short pants and underwear pulled down. And accused-appellant was inserting his penis into her vagina[7] on account of which she felt searing pain. Crying unabashedly, she tried to resist by pushing him but to no avail. After accused-appellant succeeded in having sexual intercourse with her, he repaired back to the bedroom.

Already exhausted, Maria Teresa eventually fell asleep. She later awoke not long after when she felt that accused-appellant was again on top of her. Although gripped with fear, she managed to push him away, drawing accused-appellant to return to the bedroom. She thus remained awake until daybreak.

Maria Teresa then prepared breakfast and partook of it with her sister and accused-appellant who looked at her menacingly.[8] Around midnight of that day, she again awoke to find accused-appellant on top of her.[9] Again, accused-appellant had already pulled down her short pants and underwear and was inserting his penis into her vagina.[10] Overcome by fear, she cried and albeit she struggled to resist his advances by pushing accused-appellant away, her efforts proved to be no match to his strength. His lust satisfied, accused-appellant went back to the bedroom.

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[5] TSN, October 1, 1997 at 15.

[6] TSN, May 5, 1998 at 9.

[7] TSN, June 16, 1997 at 12.

[8] *Id.* at 17.

[9] TSN, July 30, 1997 at 4.

[10] TSN, June 23, 1997 at 8.

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When morning came, Maria Teresa again prepared and had breakfast with her sister and accused-appellant. She performed the chores she had been accustomed to doing — washing the dishes, cleaning the house, and washing their clothes.

Close to a month after the two October 1995 incidents, or in November of the same year,[11] she went to live with her maternal grandmother. It was during this month that her mother Teresita arrived from Malaysia for a three-week vacation.[12] She, however, kept mum about the incidents, fearful of the repercussions that her revelation might bring.

On *October 20, 1996*, Maria Teresa and her cousins Jonah Hemeno and Nerissa Bayating[13] went to the house of her mother where they were to stay overnight. As she lay asleep between her cousins in the living room, she awoke to again find accused-appellant on top of her, inserting his penis into her vagina.[14] She thereupon pushed him away by swinging her right hand, causing accused-appellant to move to her right side to thereby push her cousin Nerissa. She immediately pulled up her underwear and jogging pants with her right foot,[15] and as she rose up crying, accused-appellant asked her why she reacted that way but she merely cursed him.[16] By this time, Jonah and Nerissa had awakened and asked her why she was crying. Without answering them, she left and headed toward the house of her grandmother[17] to whom she revealed her ordeals. She did also later reveal her ordeals to her uncles Carlos Mayunget, Paquito Ap-ap and Avelino Siano who advised her to report to the police.[18]

On December 13, 1996, Maria Teresa finally informed, *via* telephone, her mother who was in Malaysia about her "Daddy"

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[11] *Id.*, at 14.

[12] TSN, October 1, 1997 at 15.

[13] TSN, June 23, 1997 at 17.

[14] TSN, June 25, 1997 at 7.

[15] *Id.*, at 8.

[16] *Id.* at 10.

[17] *Id.* at 11.

[18] TSN, June 30, 1997 at 13.

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raping her[19] and pleaded with her to come home to attend to the matter. Her mother did come to the Philippines not long after.

On January 2, 1997, Maria Teresa executed a sworn statement at the Investigation Section of the Sablan Police Station[20] and went to the Provincial Prosecutor's Office at La Trinidad, Benguet where she filed the criminal complaints against accused-appellant.[21] She then proceeded to the Municipal Health Office of Sablan, Benguet where Dr. Judith T. Codamon, medico-legal officer of the municipality, conducted a physical examination on her[22] which yielded the following results:

> Perineal area — no excoriations, no lesions
> Hymen lacerated, 3:00 o'clock position
> Vagina admits 2 fingers with ease [23]

The trial court, brushing aside accused-appellant's denial, found accused-appellant guilty as charged in its decision on review, the *fallo* of which reads *verbatim* as follows:

> WHEREFORE, in view of all the foregoing, the Court finds Tacio Emilio *y* Inte guilty beyond reasonable doubt of the crime of rape in three (3) counts as charged in the three Informations, defined and penalized by Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, aggravated by the fact that the accused Tacio Emilio *y* Inte is the stepfather of the victim, Maria Teresa Eslao, and sentences him to suffer the penalty of DEATH for each count of rape as charged; to indemnify Maria Teresa Eslao, the victim, the sum of Seventy-Five Thousand (₱75,000.00) Pesos for each count of rape; and to pay Maria Teresa Eslao the sum of Fifty Thousand (₱50,000.00) Pesos for each count of rape as moral damages.
>
> Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to immediately transfer the said accused Tacio Emilio *y* Inte

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[19] TSN, October 1, 1997 at 16.

[20] TSN, June 25, 1997 at 23.

[21] *Id.* at 25–27.

[22] *Id.* at 31.

[23] Exhibit "A", Original Records at 11.

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to the custody of the Bureau of Corrections, City of Muntinlupa, Metro Manila.

Conformably with Section 1, Rule 111, Rules of Court, the corresponding filing fee for the Fifty Thousand (₱50,000.00) Pesos herein awarded as moral damages for each count of rape shall constitute a first lien on this judgment.

Let a copy of this Judgment be furnished to the Provincial Jail Warden of Benguet Province for his information and guidance.

Let the records of these cases be transmitted to the Supreme Court for automatic review and judgment within the period provided by law.

SO ORDERED.[24]

The cases are now before this Court for automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

Accused-appellant maintains his innocence and assigns the following errors to the trial court:

I. THE TRIAL COURT ERRED WHEN IT DID NOT APPRECIATE THE UNREASONABLY LONG AND UNEXPLAINED DELAY OF THE PRIVATE COMPLAINANT IN INSTITUTING CRIMINAL PROCEEDINGS.

II. THE TRIAL COURT ERRED WHEN IT DID NOT APPRECIATE THE LACK OF CREDIBILITY OF THE PRIVATE COMPLAINANT.

III. THE TRIAL COURT ERRED WHEN IT DID NOT APPRECIATE THE ODD CONDUCT OF THE PRIVATE COMPLAINANT IMMEDIATELY FOLLOWING THE ALLEGED RAPE.

IV. THE TRIAL COURT ERRED WHEN IT RELIED ON THE LACK OF MOTIVE OF PRIVATE COMPLAINANT.

V. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED WITH A FINDING OF GUILT BEYOND REASONABLE DOUBT.[25]

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[24] RTC Decision at 30–31, *Rollo* at 75-76.

[25] Appellant's Brief at 1, *Rollo* at 86.

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In the main, accused-appellant assails the credibility of Maria Teresa. He posits that her unreasonable and unexplained delay in reporting the incidents to the proper authorities and to her relatives renders her testimony highly dubious and suspect.[26] He thus proffers that, in all probability, her charges are fabricated.

This Court is not persuaded. The silence of the offended party in a case of rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated.[27] If delay in making a criminal accusation is satisfactorily explained,[28] it does not impair the credibility of a witness.

At the time of the rape incidents, Maria Teresa was barely at the threshold of adolescence. Her assailant is the husband of her mother whom she lived with and treated as her own parent. Her claim that fear prevented her from at once revealing what had been done to her by accused-appellant whom she had priorly seen fire his gun is not hard to believe. Thus she declared:

Q: In the first two rape incidents, you were raped in 1995. Is that correct?

A: Yes, Sir.

Q: And when your mother arrived in November of 1995, it was barely less than a month that you were raped. Is that correct?

A: Yes, Sir.

Q: But you did not report these two rape incidents that happened in October of 1995 to your mother?

A: No, Sir.

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[26] Appellant's Brief at 9, *Rollo* at 91.

[27] *People v. Yambao*, 193 SCRA 571, 579 (1991).

[28] *People v. Tanail*, 323 SCRA 667, 675 (2000) (citation omitted).

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Q: Why?

A: *I was scared at that time or afraid, if I will tell my mother what happened to me, [accused-appellant] might go after me when I will go out of the house.*

Q: From the time you were raped in 1995 October up to the time you reported the matter to the Police, did you not have a chance to . . . were you not free to go around Sablan and have the chance to report to the Police?

A: No, Sir.

xxx xxx xxx

Q: Your answer to the last question is "*haan man,*" stated as "No, Sir." Why?

A: "*Mabutengak gamin ta no kasparigan baka rumuarrak diay balay ta kuna no agipulungak.*" (Interpreted freely as, *I was afraid because to my mind if I will go out of the house my stepfather might go after me because he might think that I will go out and report what happened to me.*) (Italics supplied)[29]

Neither is this Court persuaded by accused-appellant's contention that the improbabilities and inconsistencies in Maria Teresa's testimony with respect to the dates and details of, and her conduct during and after, the alleged incidents render her accusations baseless.

Specification of the exact date or time of the commission of the rape is not important[30] as this is not an element of the crime.

As for the alleged discrepancies in Maria Teresa's statements regarding the number of times she was mounted on and subsequently raped during the first incident, Maria Teresa had, on cross-examination, satisfactorily clarified that as to the first incident which occurred on a day in October 1995, accused-

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[29] TSN, September 25, 1997 at 14-15.

[30] *People v. Alvero*, 329 SCRA 737, 747 (2000) (citation omitted); *People v. Sancha,* 324 SCRA 646, 654 (2000) (citation omitted).

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appellant mounted on her twice but succeeded in having carnal knowledge with her only during the first.[31]

At all events, errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and painful as rape.[32] As long as the testimony is consistent on *material* points, as was Maria Teresa's, slightly conflicting statements will not undermine the witness' credibility nor the veracity of the testimony.[33]

Accused-appellant focuses on Maria Teresa's failure to shout during the incidents. Failure of the victim to shout for help does not, however, negate the commission of rape.[34] For, the workings of the human mind under emotional stress are unpredictable, such that people react differently to startling situations.[35] The explanation of Maria Teresa that extreme fright and shock rendered her unable to scream for help[36] is, to Court, satisfactory. It bears noting that she not only cried. She struggled to extricate herself from him during the incidents.

As to the way Maria Teresa comported herself after the rape incidents, the same cannot infirm her credibility. Being then only 11 in 1995 and 12 in 1996, she should not be judged by the norms of behavior expected of mature persons.[37]

The alleged inconsistencies in Maria Teresa's testimony pertaining to the persons to whom she reported the incidents prior to reporting them to the police and the exact positions of accused-appellant while he was on top of her are minor details which do not affect the essential integrity and veracity of her

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[31] TSN, July 21, 1997 at 19.

[32] *People v. Lomerio*, 326 SCRA 530, 548 (2000) (citation omitted); *People v. Cula*, 329 SCRA 101, 113 (2000).

[33] *People v. Licando*, 331 SCRA 357, 370 (2000) (citation omitted).

[34] *People v. Barcelona*, 325 SCRA 168, 176 (2000) (citation omitted).

[35] *People v. Cabradilla*, 133 SCRA 413, 418-419 (1984).

[36] TSN, June 23, 1997 at 6.

[37] *People v. Remoto*, 244 SCRA 506, 519-520 (1995).

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testimony. In fact they tend to buttress, rather than weaken, her credibility because they erase any suspicion of coached or rehearsed testimony.[38]

As observed by the trial court:

> x x x Her answers were straightforward, categorical and spontaneous. x x x Even when pressed with embarrassing questions, she answered them bereft of equivocation and stood firm on her experience of defloration, not once but three times. Absent were telltales (sic) of prevarication in her entire testimony. This is not to say that her testimony was impeccable. Indeed, because of the long direct and cross-examinations, Maria Teresa committed, here and there, in her testimony, inconsistencies or contradictions but they refer to inconsequential details. Her depiction of the three sexual assaults of Tacio Emilio was candid and compatible with human experience. There were no traces of coached testimony.[39]

As for the reasons which accused-appellant proffers, as reflected in his following testimony, could have motivated Maria Teresa's filing of the charges against him:

Q: Maria Teresa Esiao, your stepdaughter, who was thirteen (13) years old in 1995 accused you of three (3) serious offenses of rape, can you tell the Court what reason has she to accuse you of three (3) serious offenses? Do you know of any reason?

A: I do now (sic) know, your Honor, but personally maybe *that is her way of letting me go and leave the store so that she will be the one to manage or tend to the store.*

Q: Other than that perception, do you have any good justified reason for her to file these three (3) cases against you?

A: I do not know, your Honor, but *when they were younger they already showed and told me that they don't like me as their stepfather.*

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[38] *Lomerio,* 326 SCRA 548 (citation omitted).

[39] RTC Decision at 15, *Rollo* at 15.

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Q: Aside from that, do you have any other reason why Maria Teresa accused you of three (3) counts of rape?

A: One reason was *when I let her stop going to school.*

Q: Are you telling the Court that these are the three (3) reasons that you perceived and that upon these reasons she filed these three (3) rape cases against you?

A: Yes, your Honor.[40] (Italics supplied).

this Court finds the same unthinkable. It is farfetched to consider or believe that Maria Teresa would purposely subject herself to the humiliation attendant to an accusation for rape for the above-mentioned reasons, especially given her tender years and non-exposure to the ways of the world.

Clutching at straws, accused-appellant claims that it was impossible for him to have raped Maria Teresa as he is impotent.[41] He failed, however, to present evidence to that effect, or that if he is, that his impotency is absolute. The presumption in favor of his potency[42] thus remains.

In fine, Maria Teresa's testimony not only stood the test of credibility. It was corroborated by Dr. Codamon's finding of lacerations in her hymen which, as opined by her, are most commonly caused by the entry of a turgid penis into the vagina.[43]

The rape of a stepdaughter by her stepfather is analogous to the sexual assault committed by a father against his own daughter. The stepfather's moral ascendancy and influence over his stepdaughter substitutes for violence and intimidation as an element of rape.[44] He does not have to threaten the stepdaughter because she is cowed into submission when gripped

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[40] TSN, September 10, 1998 at 13-14.

[41] TSN, May 5, 1998 at 12.

[42] *People v. Palma*, 144 SCRA 236, 242 (1986).

[43] TSN, June 9, 1997 at 7.

[44] *People v. Casil*, 241 SCRA 285, 292 (1995) (citation omitted).

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with the fear of refusing the advances of a person she customarily obeys.[45] There is no gainsaying that Maria Teresa looked upon accused-appellant as an authority figure, her stepfather of more than four years on whom, by accused-appellant's own information,[46] she was *entirely dependent* for her day-to-day needs.

The three informations allege that Maria Teresa was 13 years old at the time of the commission of the crimes. Her birth certificate[47] presented during the trial shows, however, that she was born on December 11, 1983. Hence, she was 11 years and 10 months old when the first and second rape incidents took place in October 1995 and 12 years and 10 months old when the third rape incident occurred in November 1996. Since the elements of a crime must be set out in the complaint or information to apprise the accused of the crime of which he is being charged,[48] the allegation in the informations in Criminal Case Nos. 97-CR-2738 and 97-CR-2740 covering the incidents which occurred in 1995 that Maria Teresa was 13 years old can not be deemed to have been modified by the date of her birth appearing in the birth certificate. Undoubtedly, however, she was a minor, below 18 years of age, when the rape incidents of October 1995 took place.

The relationship of accused-appellant to Maria Teresa and her minority (below 18 years of age at the time of the commission of the crimes) having been alleged and proved, he must be meted the death penalty following Article 335 of the Revised Penal Code, as amended by R.A. 7659 which provides:

> Article 335. *When and how rape is committed.*
>
> xxx xxx xxx
>
> 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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[45] *People v. Balacano*, 336 SCRA 615, 625 (2000).

[46] TSN, September 10, 1998 at 12.

[47] Exhibit "B", *Rollo* at 87.

[48] *People v. Canonigo*, G.R. No. 133649, August 4, 2000.

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

xxx xxx xxx (Italics supplied)

Three members of this Court continue, however, to maintain the unconstitutionality of R.A. 7659 insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

With respect to the civil aspect of the case, this Court further awards to Maria Teresa exemplary damages, following jurisprudence,[49] in the amount of ₱25,000.00 for each count.

WHEREFORE, the decision of the Regional Trial Court of Benguet, Branch 62 in Criminal Case Nos. 97-CR-2738, 97-CR-2739 and 97-CR-2740 is *AFFIRMED, with MODIFICATION* consisting of the further award to the private complainant Maria Teresa Eslao of ₱25,000.00 (or a total of ₱75,000.00) as exemplary damages.

In accordance with Section 25 of R.A. 7659 amending Article 83 of the Revised Penal Code, upon the finality of this decision, let the records of these cases be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

Costs *de oficio.*

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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[49] *People v. Bayona*, 327 SCRA 190, 202 (2000).