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adding that when petitioner was informed that he would actually be selling his property, the latter readily acceded.[24]

In fine, this Court finds that the parties to the Deed were fully aware of its contents and meaning, and that there were no acts done or events that occurred prior to, simultaneous to, or after the execution of the Deed that would indicate the intention of any of the parties to have been otherwise than to sell the property to respondent spouses.

WHEREFORE, the Petition is hereby *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 46107 dated April 30, 1996 is hereby *AFFIRMED*.

SO ORDERED.

Puno (Chairman), Panganiban, and *Sandoval-Gutierrez, JJ.*, concur.

Corona, J., on leave.

EN BANC

[G.R. No. 143708. February 24, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO SAMBRANO *y* TINDERO,** *accused-appellant.*

SYNOPSIS

For sexually abusing the five-year-old daughter of his common-law spouse, accused-appellant was charged and subsequently found guilty of the crime of rape by the Regional Trial Court of Bataan, and was sentenced to death.

Hence, this automatic review.

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[24] *Id.* at 18.

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Accused-appellant questioned his conviction. He assailed the credibility of the victim and her mother.

The Supreme Court sustained the findings of the trial court on the credibility of the victim and the other witnesses for the prosecution. It found the victim's testimony on the witness stand remarkable for its simplicity and candor. Under rigorous examination, she remained unperturbed by the confusing questions of the defense counsel. The fact that she could not fully explain the nature of "rape" was understandable. It could not be expected that a six-year child would define the term "rape" with exact precision, given her vocabulary and command of language. Despite this limitation, however, it was noteworthy that she never wavered in her claim that appellant imposed upon her his unwanted lust. Moreover, her testimony was supported by the medical findings of the presence of fresh lacerations on the victim's hymen. The Court further found not a viable defense the imputation of ill motive against the victim's mother. That she has another lover, and she would like to get rid of appellant by filing the charges against him, was too specious it deserved scant consideration. The Court held that no mother in her right mind would expose her daughter to the trauma resulting from a court case unless she is truly motivated by a desire to penalize the person responsible for her daughter's defilement. Consequently, appellant's failure to substantiate the imputation of ill motive against the principal witnesses constrained the Court to affirm the jurisprudential presumption that they were not so moved, hence, their testimonies were entitled to full faith and credence. Accordingly, the Court affirmed the decision of the trial court with modification as to award of damages.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.**— In reviewing rape cases, this Court is guided by three 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 the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; (3) the evidence for the prosecution must stand

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or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. With these guidelines in mind, after carefully considering the testimony of the victim and the appellant as well as the other witnesses, we are convinced that the findings of the trial court on the credibility of the victim and the other witnesses for the prosecution must be sustained.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; A SIX YEAR OLD CHILD CANNOT BE EXPECTED TO DEFINE THE TERM "RAPE" WITH EXACT PRECISION; CASE AT BAR.**— Under rigorous cross-examination, Sheen remained unperturbed by the confusing questions of the defense counsel. It is understandable that at her age, she could not fully explain the nature of "rape." As correctly pointed out by the prosecution, rape has a technical definition. We should not expect a six-year-old child to define the term "rape" with exact precision, given her vocabulary and command of language. Despite this limitation, however, it is noteworthy that she never wavered in her claim that appellant imposed upon her his unwanted lust.

3. **ID.; ID.; ID.; MOTIVE; NO MOTHER WOULD EXPOSE HER DAUGHTER TO THE TRAUMA RESULTING FROM A COURT CASE UNLESS MOTIVATED BY A DESIRE TO PENALIZE THE PERSON RESPONSIBLE FOR HER DAUGHTER'S DEFILEMENT.**— [T]he imputation of ill motive against the victim's mother is not a viable defense. That she has another lover, and she would like to get rid of appellant by filing the charges against him, is too specious it deserves scant consideration. Appellant admitted he was not legally married to Nilda Parilla and there was no legal impediment should Nilda desire to leave him. There is no reason for her to fabricate a tale so sick as to subject her daughter and herself to gossip and ridicule. The charges put her daughter's and her own reputation to public scrutiny. A court trial could expose them all to ridicule, not just the appellant. No mother in her right mind would expose her daughter to the trauma resulting from a court case unless she is truly motivated by a desire to penalize the person responsible for her daughter's defilement. Moreover, we note appellant could not name Nilda's alleged lover when asked during the direct examination. Nor did he try to confront Nilda about her alleged lover. When asked for

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the reason behind these failures, appellant could not give any reasonable explanation except to say, *"I did not mention the name of her lover during the last hearing but now I am telling you his name"* and *"I am reserving it today to give the name of her lover."*

4. **ID.; ID.; ID.; WHEN THERE IS A FAILURE TO SUBSTANTIATE AN IMPUTATION OF ILL MOTIVE AGAINST THE WITNESSES, THE PRESUMPTION IS THAT THEIR TESTIMONIES ARE ENTITLED TO FULL FAITH AND CREDENCE.**— [A]ppellant's failure to substantiate the imputation of ill motive against the principal witnesses constrains us to affirm the jurisprudential presumption that they were not so moved, hence, their testimonies are entitled to full faith and credence. These testimonies and the medical evidence establish that the offense charged was committed beyond a shadow of doubt.

5. **CRIMINAL LAW; RAPE; LACERATION OF THE HYMEN IS THE BEST PHYSICAL EVIDENCE OF DEFLORATION.**— Sheen's testimony is supported by the medical findings of Dr. Firmacion on the presence of fresh lacerations on the victim's hymen. The lacerations may have been incurred, within the 24-hour period, consistent with her mother's testimony that she had Sheen examined immediately after the rape incident. Laceration of the hymen, whether fresh or healed, is the best physical evidence of defloration.

6. **ID.; ID.; CONSUMMATED WHERE ACCUSED'S SEXUAL ORGAN ENTERED THE LABIA, MINORA OR MAJORA, OF THE PUDENDUM.**— Now on appeal, appellant modified his theory from total denial to just a claim that contact between him and the victim was only attempted rape. He relied on *People vs. Campuhan* to bolster his testimony. But appellant's belated change of theory does not aid his cause. Appellant's reliance on the case of *Campuhan,* is misplaced. x x x In the present case, the categorical declaration of Sheen is that *"yong titi po niya nilagay po sa kiki ko."* ("His penis was put into my vulva.") When asked what she felt at that time, she replied "pain." There can be no doubt as to the real meaning of these words spoken by her. Appellant did not merely graze her *mons pubis,* that rounded eminence that becomes hairy after puberty. It appears that he was able to "penetrate" and went beyond the

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labia. The penis must enter the *labia, minora* or *majora,* of the *pudendum* to consummate the rape. Appellant's line of defense, that only attempted rape was committed, is far from persuasive. Based on the medical findings and the positive testimony of the victim and other prosecution witnesses, we agree with the trial court's conclusion that rape was consummated, not merely attempted.

7. **ID.; ID.; LUST IS NO RESPECTER OF TIME OR PLACE.—** Appellant's assertion that only his fingers were inserted inside Sheen's genitalia only confirms the monstrous act of abusing a helpless child of five. His assertion that he could not have raped Sheen for fear of being discovered is a *non sequitur.* That his sense of decency would have prevented him from imposing his degenerate desires on the child because Nilda was just nearby is a mere afterthought, a baseless pretext. Time and again, we held that lust is no respecter of time or place. Rape has been successfully consummated in places where people congregate, like parks or school premises, and even in a house where there are other occupants. In this case, appellant had the opportunity to be alone with the child, although for just a short time. That sufficed for him to take advantage of the opportunity to molest her.

8. **ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY; VICTIM'S AGE MUST BE PROVED WITH EQUAL CERTAINTY AND CLEARNESS AS THE CRIME ITSELF TO WARRANT IMPOSITION OF DEATH PENALTY; CASE AT BAR.—** Under Article 335, seventh paragraph, no. 4, of the Revised Penal Code, as amended by Republic Act No. 7659, the crime of rape committed upon a child below seven (7) years old is punishable by death. We have previously held that the victim's age, being a qualifying circumstance which could raise the penalty to the supreme penalty of death, must be proved with equal certainty and clearness as the crime itself. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. Here, the prosecution indubitably established that Sheen Gonzales was only five (5) years old when she was raped. The certified true copy of her certificate of live birth shows that she was born on December 1, 1992, making her only five (5) years old when appellant raped her. Her age was also corroborated

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by her mother's testimony. Hence, all the elements of the offense were properly proved beyond reasonable doubt, and the trial court did not err in imposing the death penalty.

9. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY FOR RAPE VICTIM SHALL BE ₱75,000.00 WHERE DEATH PENALTY WAS IMPOSED; AWARD OF MORAL AND EXEMPLARY DAMAGES, UPHELD.**— As to the damages, we have held that if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000. Thus, the trial court's award of ₱75,000 as civil indemnity is in line with existing case law. Also, in rape cases moral damages are awarded without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of ₱50,000 as moral damages should also be increased to ₱75,000 pursuant to current jurisprudence on qualified rape. Lastly, exemplary damages in the amount of ₱25,000 is also called for, by way of public example, and to protect the young from sexual abuse.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***PER CURIAM*:**

On automatic review is the decision[1] dated April 19, 2000, of the Regional Trial Court of Bataan, Branch 3, in Criminal Case No. 6937, finding appellant guilty beyond reasonable doubt of raping the daughter of his common-law spouse and sentencing him to suffer the ultimate penalty of death, to indemnify the victim in the amount of ₱75,000.00 as well as to pay moral damages of ₱50,000.00.

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[1] *Rollo*, pp. 23–29.

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The criminal complaint filed by the victim's mother, Nilda N. Parilla, alleged:

> That on or about October 20, 1998 at Brgy. San Juan, Samal, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused, motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge or sexual intercourse with *Sheen Gonzales*, a five year old minor and a daughter of the undersigned who is the common-law spouse of the accused, against the will and consent of the said *Sheen Gonzales*, and to her damage and prejudice.
>
> CONTRARY TO LAW.[2]

On November 6, 1998, appellant, assisted by counsel, was arraigned and pleaded "not guilty" to the rape charge. Trial ensued thereafter.

The prosecution presented four witnesses, namely: Nilda Parilla, Dr. Emelita Firmacion, Pet Byron Buan and the child-victim Sheen Gonzales.

NILDA N. PARILLA testified that her daughter, Sheen, was born on December 1, 1992.[3] According to her, Sheen was five (5) years old when appellant raped her. She said appellant is her common-law spouse. She recalled that on October 20, 1998 at around 10:00 A.M., she was in the yard, washing their dirty clothes. Sheen and appellant were also there. Appellant helped the witness by pumping the artesian well. After Sheen had taken a bath in the yard, her mother told her to go home so she could get ready for school. Their house is only 25 meters away from the place. When the witness finished rinsing the clothes, she likewise told appellant to go home while she remained to hang the clothes to dry. Thereafter, she too went home.[4]

Upon reaching their house, she was surprised to see her daughter still at home. Sheen looked pale and seemed afraid.

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[2] Records, p. 1.

[3] TSN, November 18, 1999, p. 3; see also Certificate of Birth, at Records, p. 91.

[4] TSN, January 22, 1999, pp. 2–5.

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When asked why she was still home, Sheen replied that she was looking for something. Nilda noticed that Sheen's clothes were crumpled so she raised her daughter's skirt so as to change her clothes. It was then she saw that Sheen's panties were inside out and had blood stains on it. She asked her daughter about the bloodstains to which the latter allegedly replied "*inindot daw siya ng tatay niya.*"[5] Realizing what her daughter meant, Nilda looked for appellant to confront him. She asked appellant about her daughter's bloodied underwear but appellant told her to ask Sheen instead. Sheen by then was already crying. She nagged him about the bloodied underwear but he kept evading the issue. Moments later, their lessor, Barangay Councilor Rafael Guinto, arrived and witnessed the commotion. She forthwith asked for his assistance. Councilor Guinto called for the police who came and arrested appellant.[6] According to the witness, the police accompanied her and Sheen to the Bataan Provincial Hospital where the doctor examined Sheen.[7]

DR. EMELITA Q. FIRMACION, physician at the Bataan Provincial Hospital, testified that she conducted a physical and genital examination on Sheen on October 20, 1998 at around 1:50 P.M. Her examination showed that the victim's *labia majora* and *minora* were well opposed; there were fresh lacerations on the victim's hymen at the 3 o'clock and 9 o'clock positions, and there was presence of *erythema* around the vaginal opening.[8] She stated that the victim's hymen could have been lacerated within the 24-hour period prior to the examination. She also testified that there are several causes of hymenal laceration, namely: penetration of an erect penis (without causing hymenal laceration); insertion of foreign body; insertion of the finger; instrumentation; heavy exercises like gymnastics; and masturbation.[9]

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[5] Her father copulated with her.

[6] *Id.* at 5–8.

[7] *Id.* at 8–9.

[8] TSN, May 14, 1999, pp. 2, 4–5.

[9] *Id.* at 5.

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PET BYRON T. BUAN,[10] a forensic biologist of the National Bureau of Investigation (NBI), testified that on March 24, 1999, he examined two pairs of underwear, both belonging to the victim. The specimens were brought to the NBI laboratory upon the request of the victim's mother. He conducted a blood test examination on the two pairs of underwear and found that these had reddish brown stains, which yielded positive results for the presence of human blood showing the reactions of group "O". He also got and examined fresh blood samples from Sheen, the result of which showed that the blood belongs to group type "O".[11]

On cross-examination, he admitted that he had no personal knowledge of the ownership of the underwear brought to him for examination and that he merely relied on the labels on the containers of the specimens submitted to him for laboratory testing.[12]

SHEEN N. GONZALES was the last witness for the prosecution. She testified on November 11, 1999. She was six years old at the time of her testimony. She declared that on October 20, 1998, appellant undressed her and inserted his penis inside her organ ("*yong titi po niya nilagay sa kiki ko*").[13]

The defense presented appellant ROGELIO SAMBRANO as its sole witness. The trial court summed up his version of the incident as follows:

He denied that he raped Sheen Gonzales. He said that the medical certificate can disprove the rape. However when counsel told him that the medical report shows lacerations on the private part of the child and that her panties had blood similar to her own type of blood, he told this story: In that morning at 10:00 A.M., he was cleaning the pigpen while Sheen Gonzales was watching him. Sheen climbed the *balustre* and when he placed her down, she complained of aches.

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[10] Also spelled as Pet Bryan T. Buan in the decision of the trial court.

[11] TSN, June 11, 1999, pp. 2, 4–7.

[12] *Id.* at 8.

[13] TSN, November 11, 1999, pp. 2–3.

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It was only Nilda Parilla who was saying that he raped her daughter. Sheen Gonzales was taught by her mother to testify against him. He denied that he helped Nilda Parilla in pumping the artesian well. He insisted that at about 10:30 A.M. on October 20, 1998, he was taking a rest for having just cleaned the pigpen. He was not able to get a good sleep the night before as he had watched his pig which was then giving birth. He was therefore tired and woke up at 8:00 A.M.[14]

The trial court found the prosecution's version credible and convicted appellant as follows:

WHEREFORE, finding accused Rogelio Sambrano guilty beyond reasonable doubt as principal by direct participation of the crime of rape, the Court hereby sentences him to suffer DEATH in accordance with the prevailing law and orders him to indemnify his victim Sheen Gonzales the amount of ₱75,000.00 and pay her moral damages in the amount of ₱50,000.00.

x x x x x x x x x

SO ORDERED.[15]

Hence, this automatic review. Appellant raises the sole error that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY, BEYOND REASONABLE DOUBT, OF THE CRIME OF RAPE DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.[16]

The issues for resolution are (1) whether the charge against appellant was proven beyond reasonable doubt, and if so, (2) whether the penalty imposed on him is appropriate. Unavoidably, we must look into the credibility of the witnesses to resolve these issues.

Appellant assails the testimony of the victim Sheen Gonzales. He claims that private complainant was not able to describe how she was allegedly raped. According to appellant, this only

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[14] *Rollo*, p. 26.

[15] *Id.* at 29.

[16] *Id.* at 43.

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shows that the alleged rape was just an accusation maliciously and wickedly concocted by the private complainant's mother Nilda Parilla, who would do anything to be with her paramour.[17] Likewise, appellant claims that it is inconceivable for him to even attempt to rape Sheen at that time, considering that his common-law spouse was just nearby and could have easily discovered or witnessed the dastardly act imputed against him.[18] Appellant argues that there were no eyewitnesses to the crime such that it is possible that when Sheen testified that "*inindot siya ng tatay niya,*" what she actually meant was that the accused inserted his finger in her vagina and not his penis. This allegation is bolstered by the fact that Sheen was not able to describe the manner in which the alleged rape was committed upon her, according to appellant.[19]

The Office of the Solicitor General (OSG), for the appellee, contends that the medical evidence corroborates the child-victim's testimony.[20] The OSG argues that appellant's allegation that the rape charge was a mere fabrication of the victim's mother so that she could live with her supposed lover is not only false and unsubstantiated, but also ridiculous.[21] According to the OSG, the trial court did not err in assigning greater value to Sheen's testimony. Appellant's simple denial is unworthy of belief, said the OSG, as it is a mere attempt to contrive a defense in his favor to absolve him of his criminal liability.[22]

In reviewing rape cases, this Court is guided by three 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 the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually

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[17] *Id.* at 49.

[18] *Id.* at 49–50.

[19] *Id.* at 50.

[20] *Id.* at 72.

[21] *Id.* at 73–74.

[22] *Id.* at 77.

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involved, the testimony of the complainant should be scrutinized with great caution; (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[23] With these guidelines in mind, after carefully considering the testimony of the victim and the appellant as well as the other witnesses, we are convinced that the findings of the trial court on the credibility of the victim and the other witnesses for the prosecution must be sustained. Sheen Gonzales' testimony on the witness stand is remarkable for its simplicity and candor, thus:

Q: What did the accused do to you?
A: (Witness whispering) "*Ni-rape po niya ako.*"
Q: When you said rape, what did the accused do to you?
A: He undressed me, sir.
Q: After that, what did he do to you?
A: He put his penis inside my sex organ, sir ("*Yong titi po niya nilagay po sa kiki ko*")
Q: What did you feel when the accused put his private organ to your private organ.
A: Pain sir.[24]

Under rigorous cross-examination, Sheen remained unperturbed by the confusing questions of the defense counsel. It is understandable that at her age, she could not fully explain the nature of "rape." As correctly pointed out by the prosecution, rape has a technical definition.[25] We should not expect a six-year-old child to define the term "rape" with exact precision, given her vocabulary and command of language. Despite this limitation, however, it is noteworthy that she never wavered in her claim that appellant imposed upon her his unwanted lust, thus:

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[23] *People v. Ylanan*, G.R. No. 131812, August 22, 2002, p, 7.

[24] TSN, November 11, 1999, p. 3.

[25] *Id.* at 4.

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ATTY. GUIAO:

Sheen, who told you that you were raped?

A: Roger, madam.

Q: Your mother, did your mother tell you that you were raped?

A: No, madam.

Q: The person from the DSWD, did they tell you that you were raped?

A: No madam.

Q: How did you know that you were raped?

A: *"Si Roger po, sinabi po niya sa akin."*

Q: But you do not know if you were really raped, is that correct?

PROS. LASAM:

The witness had already answered that she was raped, Your Honor.

ATTY. GUIAO:

I am just asking her if she knows the essence of the term rape, Your Honor. That is material Your Honor, to test her credibility. When you said "*Ang titi po niya nilagay sa kiki ko,*" what do you mean?

A: I do not know, madam.

ATTY. GUIAO:

The answer is *"hindi ko po alam."* You do not know that because it did not really happen, am I correct?

A: No, madam, he did it.

Q: What did he really do?

PROS. LASAM:

That is self-explanatory, Your Honor. She already answered that.[26]

Sheen's testimony is supported by the medical findings of Dr. Firmacion on the presence of fresh lacerations on the victim's hymen. The lacerations may have been incurred within the 24-

[26] *Id.* at 4–5.

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hour period, consistent with her mother's testimony that she had Sheen examined immediately after the rape incident. Laceration of the hymen, whether fresh or healed, is the best physical evidence of defloration.[27]

Now on appeal, appellant modified his theory from total denial to just a claim that contact between him and the victim was only attempted rape. He relied on *People vs. Campuhan*[28] to bolster his testimony. But appellant's belated change of theory does not aid his cause. Appellant's reliance on the case of *Campuhan*, is misplaced. In Campuhan, when the court asked the victim if the penis of the accused touched her organ, her reply was "yes." When asked further if his penis "penetrated" her organ, she said "no." The medical finding that there was no physical evidence of rape was more conclusive, thus:

> This testimony alone should dissipate the mist of confusion that enshrouds the question of whether rape in this case was consummated. It has foreclosed the possibility of Primo's penis *penetrating* her vagina, however slight. Crysthel made a categorical statement denying penetration, obviously induced by a question propounded to her who could not have been aware of the finer distinctions between *touching and penetration.* Consequently, it is improper and unfair to attach to this reply of a four (4)-year old child, whose vocabulary is yet as underdeveloped as her sex and whose language is bereft of worldly sophistication, an adult interpretation that because the penis of the accused *touched* her organ there was sexual entry. Nor can it be deduced that in trying to penetrate the victim's organ the penis of the accused *touched* the middle portion of her vagina and entered the *labia* of her *pudendum* as the prosecution failed to establish sufficiently that Primo made efforts to penetrate Crysthel.[29]

In the present case, the categorical declaration of Sheen is that "*yong titi po niya nilagay po sa kiki ko.*" ("His penis was put into my vulva.") When asked what she felt at that time, she replied "pain". There can be no doubt as to the real meaning of

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[27] *People v. Reyes,* G.R. Nos. 140642-46, August 7, 2002, p. 21, citing *People vs. Bayona*, 327 SCRA 190, 199–200 (2000).

[28] 329 SCRA 270 (2000).

[29] *Id.* at 284–285.

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these words spoken by her. Appellant did not merely graze her *mons pubis*, that rounded eminence that becomes hairy after puberty.[30] It appears that he was able to "penetrate" and went beyond the *labia*. The penis must enter the labia, *minora* or *majora*, of the pudendum to consummate the rape.[31] Appellant's line of defense, that only attempted rape was committed, is far from persuasive. Based on the medical findings and the positive testimony of the victim and other prosecution witnesses, we agree with the trial court's conclusion that rape was consummated, not merely attempted.

Appellant's assertion that only his fingers were inserted inside Sheen's genitalia only confirms the monstrous act of abusing a helpless child of five. His assertion that he could not have raped Sheen for fear of being discovered is a *non sequitur*. That his sense of decency would have prevented him from imposing his degenerate desires on the child because Nilda was just nearby is a mere afterthought, a baseless pretext. Time and again, we held that lust is no respecter of time or place. Rape has been successfully consummated in places where people congregate, like parks or school premises, and even in a house where there are other occupants.[32] In this case, appellant had the opportunity to be alone with the child, although for just a short time. That sufficed for him to take advantage of the opportunity to molest her.

Finally, the imputation of ill motive against the victim's mother is not a viable defense. That she has another lover, and she would like to get rid of appellant by filing the charges against him, is too specious it deserves scant consideration. Appellant admitted he was not legally married to Nilda Parilla and there was no legal impediment should Nilda desire to leave him.[33] There is no reason for her to fabricate a tale so sick as to subject her daughter and herself to gossip and ridicule. The

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[30] *Id.* at 281.

[31] *Id.* at 282.

[32] *People v. Torejos*, 326 SCRA 75, 87 (2000).

[33] TSN, February 17, 2000, p. 3.

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charges put her daughter's and her own reputation to public scrutiny. A court trial could expose them all to ridicule, not just the appellant. No mother in her right mind would expose her daughter to the trauma resulting from a court case unless she is truly motivated by a desire to penalize the person responsible for her daughter's defilement.[34] Moreover, we note appellant could not name Nilda's alleged lover when asked during the direct examination. Nor did he try to confront Nilda about her alleged lover. When asked for the reason behind these failures, appellant could not give any reasonable explanation except to say, "*I did not mention the name of her lover during the last hearing but now I am telling you his name" and "I am reserving it today to give the name of her lover.*"[35]

Consequently, appellant's failure to substantiate the imputation of ill motive against the principal witnesses constrains us to affirm the jurisprudential presumption that they were not so moved, hence, their testimonies are entitled to full faith and credence.[36] These testimonies and the medical evidence establish that the offense charged was committed beyond a shadow of doubt.

Under Article 335, seventh paragraph, no. 4,[37] of the Revised Penal Code, as amended by Republic Act No. 7659, the crime

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[34] *People v. De los Reyes*, 327 SCRA 56, 67 (2000).

[35] *Supra*, note 33 at 4–5. Italics supplied.

[36] *Supra*, note 34.

[37] ART. 335. *When and how rape is committed.* — . . .

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

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

2. when the victim is under the custody of the police or military authorities.

3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

4. when the victim is a religious or a child below seven (7) years old.

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of rape committed upon a child below seven (7) years old is punishable by death.

We have previously held that the victim's age, being a qualifying circumstance which could raise the penalty to the supreme penalty of death, must be proved with equal certainty and clearness as the crime itself.[38] The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.[39]

Here, the prosecution indubitably established that Sheen Gonzales was only five (5) years old when she was raped. The certified true copy of her certificate of live birth[40] shows that she was born on December 1, 1992, making her only five (5) years old when appellant raped her. Her age was also corroborated by her mother's testimony.[41] Hence, all the elements of the offense were properly proved beyond reasonable doubt, and the trial court did not err in imposing the death penalty.

As to damages, we have held that if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000.[42] Thus, the trial court's award of ₱75,000 as civil indemnity is in line with existing case law. Also, in rape cases moral damages are awarded without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award.[43] However, the trial court's award of ₱50,000 as moral damages should also be increased to ₱75,000 pursuant to current jurisprudence on qualified rape.[44] Lastly, exemplary damages

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[38] *People v. Marahay*, G.R. No. 120625-29, January 28, 2003, p. 23.

[39] *People v. Ochea*, G.R. No. 146452-53, December 10, 2002, p. 15; *People v. Pruna*, G.R. No. 138471, October 10, 2002, p. 22.

[40] Exhibit "F", Records, p. 91.

[41] TSN, November 18, 1999, p. 3.

[42] *People v. Calderon*, G.R. Nos. 145343-46, December 3 2002, p. 23.

[43] *People v. Marahay, supra* at 24.

[44] *People v. Soriano*, G.R. No. 142779-95, August 29, 2002, pp. 48–49.

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in the amount of ₱25,000 is also called for, by way of public example, and to protect the young from sexual abuse.[45]

Three Justices of the Court maintain their position that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional, and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the assailed decision dated April 19, 2000 of the Regional Trial Court of Bataan, Branch 3, in Criminal Case No. 6937, finding appellant Rogelio Sambrano *y* Tindero guilty beyond reasonable doubt of qualified rape and imposing upon him the *DEATH* penalty, is *AFFIRMED*. Appellant is also ordered to pay the victim, Sheen Gonzales, the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages. Costs *de oficio*.

In accordance with Section 25 of R.A. No. 7659 amending Section 83 of the Revised Penal Code, let the records of this case be forthwith forwarded, upon finality of this decision, to the Office of the President for possible exercise of the pardoning power.

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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[45] *People v. Delos Santos*, G.R. No. 137047, October 15, 2002, p. 14.