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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, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

EN BANC

[G.R. Nos. 140961-63. January 14, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BOBBY GALIGAO,** *accused-appellant.*

SYNOPSIS

For sexually violating his daughters Dorivie Galigao, aged ten, Deborah Galigao, aged eight, and Daisy Galigao, aged thirteen, on three separate occasions, the Regional Trial Court found accused-appellant guilty of three counts of rape and sentenced him to suffer three death penalties.

Hence, this automatic review.

Appellant argued that the trial court erred in not considering the exempting circumstance of insanity in his favor and in the imposition of death penalty.

A defendant in a criminal case who interposes the defense of mental incapacity has the burden of establishing the fact that he was insane at the very moment when the crime was committed. There must be complete deprivation of reason in the commission of the act, or that the accused acted without discernment, which must be proven by clear and positive evidence. The mere abnormanity of his mental faculties does

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not preclude imputability. Indeed, a man may act crazy but it does not necessarily and conclusively prove that he is legally so. The non-medical opinion of defense counsel that appellant was bordering on insanity hardly measures up to the foregoing yardsticks. Thus, the Court held that in the light of the positive testimony of the victims proving appellant's criminal accountability, this bare and unsubstantiated defense must perforce fail. Accordingly, the Court affirmed the conviction of appellant, but only for two counts of rape committed against his daughters, Dorivie and Deborrah. It struck down the conviction of appellant for the rape allegedly committed against Daisy Galigao because neither a criminal complaint was presented nor a trial was ever conducted in the said case. The Court also found the imposition of death penalty excessive and unwarranted. It held that the circumstances attendant to this case justify the reduction of the penalty to *reclusion perpetua*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF VICTIM GIVEN FULL FAITH AND CREDIT IF STRAIGHTFORWARD, CANDID, UNSHAKEN BY RIGID CROSS-EXAMINATION AND UNFLAWED BY INCONSISTENCIES OR CONTRADICTIONS IN ITS MATERIAL POINTS.**— Suffice it to state that the testimonies of the victims bear the hallmarks of truth. They are consistent in their material points. When a victim's testimony is straightforward, candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.

2. **ID.; ID.; ID.; WHEN A WOMAN, MORE SO IF SHE IS A MINOR, SAYS SHE HAS BEEN RAPED, SHE SAYS, IN EFFECT, ALL THAT IS NECESSARY TO PROVE THAT RAPE WAS COMMITTED.**— Established is the rule that testimonies of rape victims, especially child victims, are given full weight and credit. In the case at bar, the victims were barely eight, ten and thirteen years old when they were raped. In a litany of cases, we have ruled that when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Youth and immaturity are generally badges of truth. Courts usually give greater weight

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to the testimony of a girl who is a victim of sexual assault, especially a minor, particularly in cases of incestuous rape, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and to have the offender apprehended and punished.

3. ID.; ID.; ID.; ILL-MOTIVE BECOMES INCONSEQUENTIAL WHERE THERE ARE AFFIRMATIVE, NAY, CATEGORICAL DECLARATIONS TOWARDS ACCUSED'S ACCOUNTABILITY FOR THE FELONY.— The embarrassment and stigma of allowing an examination of their private parts and testifying in open court on the painfully intimate details of their ravishment effectively rule out the possibility of false accusations of rape by the private complainants. Indeed, it would be most unnatural for young and immature girls to fabricate a story of rape by their father; allow a medical examination of their genitalia, subject themselves to a public trial and expose themselves to public ridicule at the instigation of their mother in order that the mother can carry on an alleged illicit relation with a paramour. Verily – Ill motive is never an essential element of a crime. It becomes inconsequential where there are affirmative, nay, categorical declarations towards the accused-appellant's accountability for the felony.

4. ID.; ID.; ID.; APPELLATE COURTS ARE BOUND BY THE FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO.— The evaluation of the credibility of witnesses and their testimonies is a matter that is best undertaken by the trial court because of its unique opportunity to observe the witnesses and their demeanor, conduct and attitude, especially under cross-examination. Appellate courts are bound by the findings of the trial court in this respect, unless it is shown that it has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case. We find no reason to disturb the factual findings of the trial court in this case.

5. ID.; ID.; ID.; WILLINGNESS OF COMPLAINANTS TO FACE POLICE INVESTIGATION AND TO UNDERGO THE TROUBLE AND HUMILIATION OF A PUBLIC TRIAL IS ELOQUENT TESTIMONY OF THE TRUTH OF THEIR COMPLAINTS.— Indeed, the revelation of young innocent

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girls, aged barely eight, ten and thirteen, deserves full credit. The willingness of complainants to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of their complaints. In short, it is most improbable for innocent and guileless girls such as complainants to brazenly impute a crime so serious as rape to any man, let alone their father, if it were not true.

6. **ID.; CRIMINAL PROCEDURE; APPEAL; REVIEWING TRIBUNAL MAY CORRECT ERRORS IN THE JUDGMENT EVEN IF NOT SPECIFICALLY ASSIGNED IF THEIR CONSIDERATION IS NECESSARY IN ARRIVING AT A JUST RESOLUTION THEREOF.**— In stark contrast to the clear and categorical declarations of the private complainants, accused-appellant interposes the defense of mental incapacity and argues that at the time of the commission of the offenses, he was bordering on insanity. While this issue is being raised for the first time in this appeal, the same will be addressed consistent with the dictum that an appeal in a criminal case throws the whole case open for review and the reviewing tribunal may correct such errors it may find in the appealed judgment even if they have not been specifically assigned if their consideration, as in this case, is necessary in arriving at a just resolution thereof.

7. **CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; INSANITY; ACCUSED MUST PROVE BEYOND REASONABLE DOUBT THAT HE WAS INSANE BEFORE THE COMMISSION OF THE CRIME OR AT THE VERY MOMENT OF ITS EXECUTION.**— The defense of insanity is in the nature of confession and avoidance. Like the justifying circumstance of self-defense, the burden is on the defense to prove beyond reasonable doubt that accused-appellant was insane immediately before the commission of the crime or at the very moment of its execution. In other words, a defendant in a criminal case who interposes the defense of mental incapacity has the burden of establishing the fact that he was insane at the very moment when the crime committed. There must be complete deprivation of reason in the commission of the act, or that the accused acted without discernment, which must be proven by clear and positive evidence. The mere abnormality of his mental faculties does not preclude imputability. Indeed, a man may act crazy but it does not necessarily and conclusively prove that he is legally so. The non-medical opinion of defense counsel that accused-

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appellant was bordering on insanity hardly measures up to the foregoing yardsticks. In the light of the positive testimony of the victim proving accused-appellant's criminal accountability, this bare and unsubstantiated defense must perforce fail.

8. ID.; RAPE; DEATH PENALTY; IMPOSITION THEREOF UNWARRANTED IN CASE AT BAR.— Nevertheless, while accused-appellant's guilt was proved beyond reasonable doubt, we find the imposition of the three death penalties against him excessive and unwarranted. In imposing upon accused-appellant the supreme penalty of death, the trial court erroneously cited Article 266-A (formerly Article 335), as well as Article 266-B, (1), of the Revised Penal Code, as amended by Republic Act No. 8353. Considering that the crimes were committed prior to the effectivity of R.A. No. 8353 on October 22, 1997, the provisions of R.A. No. 7659, which was the law in effect at the time the rapes were committed should have been applied.

9. ID.; ID.; ID.; WHEN IMPOSABLE.— The pertinent provisions of Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, read as follows: x x x. ART. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances: x x x The death penalty shall also be imposed if the crime is committed with any of the following attendant circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. x x x. However, the fact that rape was committed with the foregoing attendant circumstance does not automatically merit the imposition of the death penalty. As held in *People v. Echegaray*: x x x. The elements that call for the imposition of the supreme penalty of death in these crimes would only be relevant when the trial court, given the prerogative to impose *reclusion perpetua,* instead actually imposes the death penalty because it has, in appreciating the evidence proffered before it, found the attendance of certain circumstances in the manner by which the crime was committed, or in the person of the accused on his own or in relation to the victim, or in any other matter of significance to the commission of the crime or its effects on the victim or in society, which circumstances characterize the criminal act as grievous, odious or hateful or inherently or

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manifestly wicked, vicious, atrocious or perverse as to be repugnant and outrageous to the common standards and norms of decency and morality in a just and civilized and ordered society.

10. ID.; ID.; ID.; WHEN MAY BE REDUCED TO *RECLUSION PERPETUA;* COURT HAS A GUIDED DISCRETION IN THE IMPOSITION OF CAPITAL PUNISHMENT.— We pointed out in the *Echegaray* case that the imposition of the death penalty in those cases where the law provides for a penalty ranging from *reclusion perpetua* to death does not give the trial court an unfettered but, rather, a *guided* discretion in the imposition of capital punishment. Particularly enlightening on how such discretion is to be exercised is the recent case of *People v. Antonio Roque,* where the accused was likewise sentenced by the trial court to death for raping his two daughters aged nine and eleven. In the said case, we reduced the penalties from death to *reclusion perpetua*, to wit: The death penalty could thus be decreed; nevertheless, Section 22 of Republic Act No. 7659, amending Article 47 of the Revised Penal Code, recognizes that in death penalty cases the High Tribunal puts to a vote not only the issue of guilt of an appellant but also the question on the imposition of the death penalty itself. The law provides thusly: x x x. *The Court heretofore acknowledged that circumstances could exist to warrant an exercise of such forbearance.* In *People v. Santos,* the Court considered the acts of the deceased victim, a former municipal mayor, in clearing and working on the land claimed by the *Ilongots* which could have been seen by the accused as an act of oppression and abuse of authority which he felt morally bound to forestall, *as well as the limited schooling of the accused,* as justification to reduce the penalty of death to *reclusion perpetua.* In *People v. De la Cruz*, the Court took into account in lowering the penalty to *reclusion perpetua* on the accused most of whom were already death row convicts, the deplorable sub-human conditions of the National Penitentiary where the crime was committed. In *People v. Marcos, the failure of appellant to realize the gravity of his offense* was held to justify the reduction of the penalty to *reclusion perpetua.* Where, as in the above-mentioned *Santos* case, accused-appellant's *limited schooling* was taken into consideration to reduce his penalty to *reclusion perpetua,* we can do no less herein considering that accused-appellant is an unlettered fisherman.

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11. ID.; ID.; ID.; REDUCED TO *RECLUSION PERPETUA* IN CASE AT BAR.— We are convinced of the guilt beyond reasonable doubt of accused-appellant for two counts of rape committed against his daughters, Dorivie and Deborrah. But given the circumstances attendant to this case, there is sufficient justification in imposing on accused-appellant the reduced penalty of *reclusion perpetua* for each count of rape.

12. CIVIL LAW; DAMAGES; INDEMNITY *EX DELICTO*; AWARD THEREOF REDUCED TO ₱50,000.00 CONSISTENT WITH CONTROLLING JURISPRUDENCE IN CASE AT BAR; MORAL AND EXEMPLARY DAMAGES, AWARDED.— The indemnity *ex delicto* awarded is hereby reduced to ₱50,000.00 consistent with controlling jurisprudence on the matter. The amount of moral damages will not be disturbed as they are in accord with case law thereon. However, the award of exemplary damages must be reduced to ₱25,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

YNARES-SANTIAGO, *J.*:

A woman's cherished chastity is hers alone to surrender of her own free will, and whoever violates that will descends to the level of an odious beast. The act becomes twice repulsive when the outrage is perpetrated on one's own flesh and blood for the culprit is reduced to a level lower than an animal, which yields only to biological impulses, unfettered by social inhibitions when it mates with its own kin. On the other hand, the man who rapes his daughter violates not only her purity and her trust but also the mores of society which he has scornfully defied. By inflicting his bestial instincts on her in a disgusting coercion of incestuous lust, he forfeits all respect as a human being and is justly spurned, not the least by the fruit of his own

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loins whose progeny he has forever stained with his shameful and shameless lechery.[1]

In the case at bar, the sexual depravity of the accused-appellant plumbs into hitherto unreached depths of the revolting for he satiated his lust not on one but *three* of his daughters. This case is their sordid story.

For ravishing his three daughters, Dorivie Galigao *y* Calderon, aged ten, Deborrah Galigao *y* Calderon, aged eight, and Daisy Galigao *y* Calderon, aged thirteen, Bobby Galigao was charged with Rape in three Informations,[2] similarly worded except for names and ages of the victims and the dates of commission of the crimes, filed before the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40, as Criminal Cases Nos. C-4974, C-4975 and C-4976. The indictments similarly aver –

> That on or about and sometime during the month of February 1996, in the evening, in Sitio Paho, Barangay Canubing 1, Municipality of Calapan, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, and by means of force and intimidation, willfully, unlawfully and feloniously did lie, and succeeded in having carnal knowledge of his own daughter DORIVIE GALIGAO *y* CALDERON, an eight-year old girl against the latter's will and consent, and in full view of the victim's brother and sisters.
>
> Contrary to law.

Deborrah was allegedly raped on March 17, 1996; while Daisy was allegedly raped on March 19, 1996.

Upon arraignment on July 24, 1996, accused-appellant pleaded not guilty to the charges.[3] Thereafter, the three cases were jointly tried on the merits.

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[1] *People v. Queigan,* 352 SCRA 150, 152 [2001], citing *People v. Ramos,* 165 SCRA 400 [1988].

[2] Docketed as Criminal Cases Nos. C-4974, Record, Vol. 1, p. 1; C-4975, Record, Vol. 2, p. 1; and C-4976, Record, Vol. 3, p. 1 of Branch 40, RTC of Oriental Mindoro sitting at Calapan City.

[3] Record, Vol. 1, pp. 25, 27.

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On October 13, 1999, the court *a quo* found accused guilty beyond reasonable doubt of Rape on three counts and was sentenced as follows:

> ACCORDINGLY, finding herein accused Bobby Galigao *y* Marcelino guilty beyond reasonable doubt, as principal, of the crimes of Rape (3 counts) with the qualifying circumstance that in all these cases, the victims were all under 18 years of age, and that the offender is the parent of the victims, the Court hereby sentences said accused to suffer THREE (3) DEATH PENALTIES together with all the accessory penalties imposed by law and to indemnify the victims: Dorivie Galigao *y* Calderon in Criminal Case No. C-4974, the amount of ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages; Deborrah Galigao *y* Calderon in Criminal Case No. C-4975, the amount of ₱75,000.00, as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages; and Daisy Galigao *y* Calderon in Criminal Case No. C-4976, the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> SO ORDERED.[4]

Before us on automatic review, pursuant to Article 47 of the Revised Penal Code, as amended, accused-appellant argues that the trial court erred –

I

IN BASING ITS DECISION ON THE UNCORROBORATED TESTIMONIES OF THE ALLEGED VICTIMS WITHOUT CONSIDERING THAT THE SAME WERE MERELY FORCED ON THEM BY THEIR MOTHER WITH THE EVIL INTENTION TO DECAPITATE (*sic*) THE DEFENDANT-APPELLANT WHO IS A HINDRANCE TO HER ILLICIT RELATIONSHIP WITH HER PARAMOUR.

II

IN NOT BELIEVING THE TESTIMONY OF THE ACCUSED-APPELLANT.

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[4] *Ibid.*, pp. 153-154; penned by Judge Tomas C. Leynes.

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III

IN FAILING TO CONSIDER THAT ACCUSED-APPELLANT IS UNLETTERED AND LACKS EVEN THE INSTINCTIVE DECENCY AND UPRIGHT MANNER TANTAMOUNT TO INSANITY SUFFICIENT TO EXEMPT HIM FROM ANY CRIMINAL LIABILITY.

IV

IN SENTENCING THE ACCUSED-APPELLANT WITH DEATH PENALTY EACH (*sic*) FOR THE THREE (3) RAPES WHEN IN FACT RAPE AS A HEINOUS CRIME WAS NOT YET PUNISHABLE BY DEATH WHEN THE SAME WERE COMMITTED BY HIM SOMETIME IN FEBRUARY 1996, ON 17 MARCH 1996 AND ON 19 MARCH 1996 AGAINST DIFFERENT VICTIMS.[5]

The details of their ravishment is graphically narrated by the victims themselves.

Dorivie Galigao, who was twelve years old when she took the witness stand, testified that sometime in the night of February 1996, her sisters Deborrah and Daisy, together with their brother Dexter, were sleeping in their house at Canubing 1, Calapan, Oriental Mindoro. They slept in the living room because it was hot. Their mother, Lourdes Calderon-Galigao, had left for Manila. Dorivie was roused from her sleep when she felt someone taking off her panties. She woke up and saw that it was her father, accused-appellant Bobby Galigao. Accused-appellant took off his briefs and lay on top of her. He inserted his penis into Dorivie's vagina. She felt pain but could not do anything because accused-appellant threatened her with bodily harm if she reported the incident to anybody.[6]

After satisfying his lust, accused-appellant went to the bathroom to wash himself. Then, he put on his briefs and told Dorivie to wash herself, which she did. She put on her panties and went back to sleep. Meanwhile, accused-appellant went to his room. Dorivie revealed that prior to the incident, her

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[5] *Rollo*, pp. 168-169.

[6] TSN, 26 February 1998, pp. 9-13.

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father had raped her several times beginning when she was nine years old.[7]

Dorivie also narrated how Deborrah and Daisy were ravished by her father. At one time, she saw accused-appellant crawling towards Deborrah and lay under the blanket beside her. Dorivie, who was only one meter away, noticed that there was movement underneath the covers. Dorivie further testified that she saw her father rape Daisy, her eldest sister. However, she did not do anything for fear that accused-appellant will kill her. As in Deborrah's case, Dorivie was only a meter away when she witnessed Daisy's sexual abuse in the hands of their father.[8]

Deborrah Galigao was ten years old when she took the witness stand. She corroborated Dorivie's testimony that accused-appellant raped Dorivie and Daisy several times at night in the living room of their house.[9] More importantly, she testified that in the evening of March 17, 1996, while she was sleeping with her siblings in the living room of their house, accused-appellant removed her panties and his briefs, inserted his penis into her private parts, and made thrusting motions. After a while, he went to the comfort room to wash. Deborrah also washed herself.[10]

In his defense, accused-appellant admitted having raped Daisy, but claimed he did so to get back at her mother who left him for a man with whom she already had a child. He denied having raped Dorivie and Deborrah and argued that the charges against him were filed at the instigation of his wife. When asked why he did not file the appropriate charges against his wife for her alleged infidelity, accused-appellant claimed that nobody was willing to help him because she had a brother who was a policeman.[11]

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[7] *Ibid.*, pp. 9, 13-16, 28.

[8] *Id.*, pp. 16-20.

[9] TSN, 13 April 1998, pp. 3-8.

[10] *Ibid.*, pp. 8-20.

[11] TSN, 16 June 1999, pp. 5-12.

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On cross-examination, accused-appellant admitted that he raped his three daughters because he suspected that his wife was carrying an illicit affair with another man:

COURT:

Q Do you still confirm your testimony during your direct examination that the reason you raped Daisy Galigao was because it was a revenge against your wife who according to you went away with her paramour?

A ***Yes, Your Honor.***

Q So that is the only reason why you committed the crime of rape against your daughter?

A ***Yes. But I have already asked for forgiveness for the acts that I have committed and I have already repented for what I have done, Your Honor.***

Q How about the charges against you by Deborrah and Dorivie, what can you say about that?

A *They are the only ones who can tell the truth of the matter, Your Honor.*

Q Is it not a fact that it is sad to say that you might have done what you did to Daisy Galigao with respect to Deborrah and Dorivie because of your revenge with your wife who according to you went away with her paramour?

A No, Your Honor.

Q ***So it is clear now that you are admitting the rape charges to Daisy Galigao and so with Deborrah and Dorivie Galigao?***

A ***Yes, Your Honor.***[12]

Daisy was presented as a defense witness however, she only made matters worse for accused-appellant because, while she admitted to her ravishment and her plans to forgive him, she later turned hostile upon learning that she was raped out of revenge:

DIRECT EXAMINATION

ATTY. GARING:

With the kind permission of this Honorable Court.

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[12] TSN, 26 July 1999, pp. 4-5; emphasis and italics ours.

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Q Your father admitted the rape charges against your person, what can you say about that?
A What he said is true that he raped me, sir.

Q When you take the witness stand, what is your purpose?
A A while ago when my father sat down on the witness stand my sister and I were planning to forgive him. But when I heard that the reason he raped me was because he wanted to take revenge because my mother left us with her paramour, I would like to say that my mother did not leave us because she left with her paramour, but she left us in order to work.

Q It was our understanding. Actually I advised your sister before the hearing of this case that you will pardon your father for the crime of rape, but is seems that your testimony is going to [be] different now and that you are now pursuing with the case against your father. Was there anybody who coerced to tell the contrary in this case?
A ***Nobody threatened me, sir. I only changed my mind because of what he testified this morning, I also witnessed what he did to my sister. If he only admitted to me what he did to my sister, I can forgive him, but he did not admit it to me, sir.***

Q Why did you tell it to me this morning?

PROS. SEÑOREN:
Objection, Your Honor.

COURT:
Don't ask leading questions.

ATTY. GARING:
Q Considering that he is your father, can you not possibly reconsider your statement that you are continuing with the prosecution of this case?
A What you mean is you want me to forgive him?

Q What I want to emphasize is to forgive your father and let the law take its course.

PROS. SEÑOREN:
To prevent any complications later, may we suggest that the line of questioning be changed, Your Honor.

COURT:
Reform. Do not ask leading questions.

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ATTY. GARING:
We believe we are withdrawing this witness, Your Honor.

COURT:
You are not yet through with your direct examination.

ATTY. GARING:
We are withdrawing the witness from further testifying, Your Honor.

COURT:

Q You stated that you and your other sisters Deborrah and Dorivie came to an agreement that you will already pardon your father for what he had done to all of you. But upon hearing the testimony of your father during the cross examination that the reason why your father abused you is because your mother went away with her paramour and that your father made that as a revenge against your mother. Did you say that?

A ***Yes, Your Honor.***

Q And you stated also during the direct examination that you were present and a witness during the time that you[r] father was abusing your two sisters Dorivie and Deborrah, is that correct?

A ***Yes, Your Honor.***

Q ***And so you confirmed the testimony given by your two sisters Deborah and Dorivie that they were really abused by your father?***

A ***Yes, Your Honor.***

Q During the presentation of the evidence for the prosecution, why did you not testify with respect to these cases when according to you you were present and a witness when your sisters Dorivie and Deborrah were abused by your father and also with respect to the rape case filed by you against your father?

A Because my uncle told me not to testify anymore because I am already grown up, Your Honor.

COURT (to Atty. Garing)
So you are asking to defer the testimony of this witness?

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ATTY. GARING:

The total withdrawal of the testimony of this witness, Your Honor.

COURT:

She has already testified and the Court will not allow that anymore. Any more questions Fiscal?

PROS. SEÑOREN:

On the basis of the testimony during the direct examination and also on the basis of the follow-up questions, we have no cross-examination.[13]

Suffice it to state that the testimonies of the victims bear the hallmarks of truth. They are consistent in their material points. When a victim's testimony is straightforward, candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[14]

Established is the rule that testimonies of rape victims, especially child victims, are given full weight and credit. [15] In the case at bar, the victims were barely eight, ten and thirteen years old when they were raped. In a litany of cases, we have ruled that when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed.[16] Youth and immaturity are generally badges of truth.[17] Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, particularly in cases of incestuous rape, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing

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[13] TSN, 26 July 1999, pp. 8-12.

[14] *People v. Caratay*, 316 SCRA 251 [1999], citing *People v. Bonghanoy*, 308 SCRA 383 [1999].

[15] *People v. Lusa*, 288 SCRA 296, 303 [1998].

[16] *People v. Mariño*, G.R. No. 132550, 19 February 2001.

[17] *People v. Nardo*, G.R. No. 133888, 1 March 2001.

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her own degradation were it not to condemn an injustice and to have the offender apprehended and punished.[18]

The embarrassment and stigma of allowing an examination of their private parts and testifying in open court on the painfully intimate details of their ravishment effectively rule out the possibility of false accusations of rape[19] by the private complainants. Indeed, it would be most unnatural for young and immature girls to fabricate a story of rape by their father; allow a medical examination of their genitalia, subject themselves to a public trial and expose themselves to public ridicule at the instigation of their mother in order that the mother can carry on an alleged illicit relation with a paramour.[20] Verily –

> Ill motive is never an essential element of a crime. It becomes inconsequential where there are affirmative, nay, categorical declarations towards the accused-appellant's accountability for the felony.[21]

In stark contrast to the clear and categorical declarations of the private complainants, accused-appellant interposes the defense of mental incapacity and argues that at the time of the commission of the offenses, he was bordering on insanity.

While this issue is being raised for the first time in this appeal, the same will be addressed consistent with the dictum that an appeal in a criminal case throws the whole case open for review and the reviewing tribunal may correct such errors it may find in the appealed judgment even if they have not been specifically assigned[22] if their consideration, as in this case, is necessary in arriving at a just resolution thereof.[23]

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[18] *People v. Adora*, 275 SCRA 441, 467 [1997].

[19] *People v. Pontilar*, 275 SCRA 338, 350 [1997].

[20] See *People v. Perez*, G.R. No. 113265, 5 March 2001.

[21] *People v. Segundo*, 228 SCRA 691 [1993].

[22] *People v. Taño*, 331 SCRA 449 [2000]; *People v. Castillo*, 325 SCRA 613 [2000].

[23] *People v. Cleopas*, 327 SCRA 552 [2000].

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The defense of insanity is in the nature of confession and avoidance. Like the justifying circumstance of self-defense, the burden is on the defense to prove beyond reasonable doubt that accused-appellant was insane immediately before the commission of the crime or at the very moment of its execution.[24] In other words, a defendant in a criminal case who interposes the defense of mental incapacity has the burden of establishing the fact that he was insane at the very moment when the crime committed.[25] There must be complete deprivation of reason in the commission of the act, or that the accused acted without discernment,[26] which must be proven by clear and positive evidence.[27] The mere abnormality of his mental faculties does not preclude imputability.[28] Indeed, a man may act crazy but it does not necessarily and conclusively prove that he is legally so.[29] The non-medical opinion of defense counsel that accused-appellant was bordering on insanity hardly measures up to the foregoing yardsticks. In the light of the positive testimony of the victim proving accused-appellant's criminal accountability, this bare and unsubstantiated defense must perforce fail.

The evaluation of the credibility of witnesses and their testimonies is a matter that is best undertaken by the trial court because of its unique opportunity to observe the witnesses and their demeanor, conduct and attitude, especially under cross-examination. Appellate courts are bound by the findings of the trial court in this respect, unless it is shown that it has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the

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[24] *People v. Bañez*, 301 SCRA 248, 261 [1999].

[24] *People v. Bañez*, 301 SCRA 248, 261 [1999].

[25] *People v. Diaz*, 320 SCRA 168, 177 [1999].

[26] *People v. Cañeta*, 309 SCRA 199, 208 [1999].

[27] *People v. Espanola*, 271 SCRA 689 [1997].

[28] *People v. Tabugoca*, 285 SCRA 312 [1998]; *People v. Puno*, 105 SCRA 151 [1981]; *People v. Aldemita*, 145 SCRA 451 [1986].

[29] *People v. So*, 247 SCRA 708 [1995].

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case.[30] We find no reason to disturb the factual findings of the trial court in this case.

Indeed, the revelation of young innocent girls, aged barely eight, ten and thirteen, deserves full credit. The willingness of complainants to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of their complaints.[31] In short, it is most improbable for innocent and guileless girls such as complainants to brazenly impute a crime so serious as rape to any man, let alone their father, if it were not true.[32]

Nevertheless, while accused-appellant's guilt was proved beyond reasonable doubt, we find the imposition of the three death penalties against him excessive and unwarranted.

In imposing upon accused-appellant the supreme penalty of death, the trial court erroneously cited Article 266-A (formerly Article 335), as well as Article 266-B, (1),[33] of the Revised Penal Code, as amended by Republic Act No. 8353. Considering that the crimes were committed prior to the effectivity of R.A. No. 8353 on October 22, 1997,[34] the provisions of R.A. No.

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[30] *People v. Campos*, 340 SCRA 517 [2000].

[31] *People v. Bali-balita*, 340 SCRA 450 [2000]; *People v. Victor*, 292 SCRA 186 [1998].

[32] *People v. Marquez*, 347 SCRA 510 [2000]; see also *People v. Segovia*, G.R. No. 138794, 19 September 2002.

[33] ART. 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.

[34] See Section 5, R.A. No. 8353 stating that the Act shall take effect fifteen (15) days after completion of its publication in two newspapers of general circulation. Publication was in fact made in the *Malaya* newspaper on 7 October 1997 and, hence, took effect fifteen (15) days thereafter or on 22 October 1997.

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7659,[35] which was the law in effect at the time the rapes were committed should have been applied.

The pertinent provisions of Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, read as follows:

ART. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

xxx xxx xxx

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

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

However, the fact that rape was committed with the foregoing attendant circumstance does not automatically merit the imposition of the death penalty. As held in *People v. Echegaray*:[36]

x x x. The elements that call for the imposition of the supreme penalty of death in these crimes would only be relevant when the trial court, given the prerogative to impose *reclusion perpetua*, instead actually imposes the death penalty because it has, in appreciating the evidence proffered before it, found the attendance of certain circumstances in the manner by which the crime was committed, or in the person of the accused on his own or in relation to the victim, or in any other matter of significance to the commission of the crime or its effects on the victim or in society, which circumstances characterize the criminal act as grievous, odious or hateful or inherently or manifestly wicked, vicious, atrocious or perverse as to be repugnant and outrageous to the common standards and norms of decency and morality in a just and civilized and ordered society.

We pointed out in the *Echegaray* case that the imposition of the death penalty in those cases where the law provides for

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[35] Which took effect 31 December 1993.

[36] 267 SCRA 682 [1997].

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a penalty ranging from *reclusion perpetua* to death does not give the trial court an unfettered but, rather, a *guided* discretion in the imposition of capital punishment. Particularly enlightening on how such discretion is to be exercised is the recent case of *People v. Antonio Roque*,[37] where the accused was likewise sentenced by the trial court to death for raping his two daughters aged nine and eleven. In the said case, we reduced the penalties from death to *reclusion perpetua,* to wit:

> The death penalty could thus be decreed; nevertheless, Section 22 of Republic Act No. 7659, amending Article 47 of the Revised Penal Code, recognizes that in death penalty cases the High Tribunal puts to a vote not only the issue of guilt of an appellant but also the question on the imposition of the death penalty itself. The law provides thusly:
>
> Sec. 22. Article 47 of the same Code is hereby amended to read as follows:
>
> ART. 47. *In what cases the death penalty shall not be imposed; Automatic review of Death Penalty Cases.* – The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases, the penalty shall be *reclusion perpetua.*

The Court heretofore acknowledged that circumstances could exist to warrant an exercise of such forbearance. In *People v. Santos*,[38] the Court considered the acts of the deceased victim, a former municipal mayor, in clearing and working on the land claimed by the *Ilongots* which could have been seen by the accused as an act of oppression and abuse of authority which he felt morally bound to forestall, *as well as the limited schooling of the accused*, as justification to reduce the penalty of death to *reclusion perpetua.*

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[37] G.R. Nos. 130659 & 144002, 14 August 2002.

[38] 19 SCRA 445 [1967].

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In *People v. De la Cruz*,[39] the Court took into account in lowering the penalty to *reclusion perpetua* on the accused most of whom were already death row convicts, the deplorable sub-human conditions of the National Penitentiary where the crime was committed. In *People v. Marcos*,[40] *the failure of appellant to realize the gravity of his offense* was held to justify the reduction of the penalty to *reclusion perpetua.* (italics ours)

Where, as in the above-mentioned *Santos* case, accused-appellant's *limited schooling* was taken into consideration to reduce his penalty to *reclusion perpetua*, we can do no less herein considering that accused-appellant is an unlettered fisherman.[41]

Finally, the conviction of accused-appellant in Criminal Case No. 4976, as to the alleged rape of Daisy Galigao should be struck down. Although the Information in Criminal Case No. 4976 speaks of a "criminal complaint," none was ever presented.[42] Indeed, SPO4 Calderon, uncle of Daisy Galigao, testified that Daisy herself insisted in not pursuing the case against accused-appellant as she was already grown up and did not want to be the subject of gossip in the school where she was enrolled.[43]

Apparently, the trial court convicted accused-appellant of three counts of rape on the belief that he was being tried under the provisions of R.A. No. 8353. However, the crimes for which he was convicted were committed in 1996, before R.A. No. 8353 took effect in 1997. The said statute can not be made to apply retroactively for reasons earlier stated. Prior to its amendment by R.A. No. 8535, Article 335 of the Revised Penal Code required a criminal complaint before an Information is filed. There being no such complaint in Criminal Case No. C-4976, it was palpable error for the lower court to convict accused-

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[39] 122 SCRA 227 [1983].

[40] 147 SCRA 204 [1987].

[41] TSN, 16 June 1999, p. 4.

[42] Formal Offer of Exhibits, Record, pp. 128–130; italics ours.

[43] TSN, 11 November 1998, p. 11.

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appellant for the crime of rape on Daisy Galigao. Moreover, as earlier stated, no trial was ever conducted in the said case.

All told, we are convinced of the guilt beyond reasonable doubt of accused-appellant for two counts of rape committed against his daughters, Dorivie and Deborrah. But given the circumstances attendant to this case, there is sufficient justification in imposing on accused-appellant the reduced penalty of *reclusion perpetua* for each count of rape.

In view of the foregoing considerations, the indemnity *ex delicto* awarded is hereby reduced to ₱50,000.00 consistent with controlling jurisprudence on the matter.[44] The amount of moral damages will not be disturbed as they are in accord with case law thereon.[45] However, the award of exemplary damages must be reduced to ₱25,000.00.[46]

WHEREFORE, the judgment of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40, in Criminal Cases Nos. C-4974 and C-4975, finding accused-appellant guilty beyond reasonable doubt of the crime of rape, is *AFFIRMED* with the following *MODIFICATIONS*: accused-appellant is sentenced to suffer the penalty of *Reclusion Perpetua* for each count of rape; he is ordered to pay each of the offended parties the amount of ₱50,000.00 as indemnity *ex delicto*; ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

Accused-appellant is *ACQUITTED* in Criminal Case No. C-4976.

SO ORDERED.

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

Mendoza, J., in the result.

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[44] *People v. Gonzales*, G.R. No. 140676, 31 July 2002.

[45] See *People v. Pruna*, G.R. No. 138471, 10 October 2002.

[46] *People v. Puzon*, 339 SCRA 164 [2000].