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Atty. Roberto Tuquero is found guilty of simple negligence and hereby *REPRIMANDED*.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Callejo, Sr., Azcuna and *Tinga, JJ.*, concur.

EN BANC

[G.R. Nos. 135844-45. November 24, 2003]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DOMINADOR ILUIS *y* JANDOC**, *appellant.*

SYNOPSIS

Two minor daughters of Dominador Iluis charged him of three counts of rape that was contained in two Informations docketed as Criminal Cases Nos. V-0730 and V-0731. He interposed denial as a defense. The trial court, however, convicted him of the crimes charged and imposed upon him the penalty of death in each count. Hence, this automatic review.

The Court found appellant's alibi, as well as his denial of the charges, as deserving of scant consideration. Denial is merely self-serving negative evidence. Like alibi, the appellant's denial of the crimes charged is a weak defense and cannot prevail over the positive and straightforward testimonies of Donna and Noemi. The defense of alibi is considered with suspicion because it is not only inherently weak and unreliable, but also because it can easily be fabricated and is difficult to disprove.

Although the prosecution proved beyond reasonable doubt the minority of the victims and their filiation with the appellant, the Information, however, in Criminal Case No. V-0730 did

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not allege the minority of private complainant Noemi and her filiation with the appellant; and although the Information in Criminal Case No. V-0731 alleged Donna's minority, it did not allege her filiation with the appellant. Thus, the appellant cannot be convicted of qualified rape in both cases.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF THE VICTIM'S MOTHER CANNOT PREVAIL OVER THE COLLECTIVE TESTIMONIES OF THE VICTIMS; CASE AT BAR.**— Saturnina did not testify that her daughters were raped in the house of her parents-in-law. She is incompetent to testify on the matter as she was then residing in Angeles City with her paramour. Saturnina's testimony cannot prevail over the collective testimonies of Noemi and Donna that they were raped by the appellant in their house. The appellant even testified that he built a house for himself and his two daughters after Saturnina had abandoned them.

2. **CRIMINAL LAW; RAPE; NOT INCREDIBLE THAT THE ACCUSED USED A BOLO TO INTIMIDATE HER DAUGHTER.**— Noemi's testimony that the appellant used a bolo to intimidate her, and tied Donna's hands together before forcing the latter to open her legs to facilitate the entry of his penis are not exaggerations. With Donna's hands tied, it was easier for the appellant to force her to open her legs and thus consummate the rape. Neither is it incredible that the appellant used a bolo to intimidate her daughter. It bears stressing that Donna was sleeping when the appellant raped her. The appellant had to use a bolo to intimidate her into submitting herself to his lust, so as not to give her any opportunity to awaken her sister Noemi. It is indeed incomprehensible that a father would be capable of doing such a fiendish act to his own daughters. But this Court has held that rape is an act of depravity and lust. There is no rhyme or reason for such beastly act.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AN UNCOMMON OCCURRENCE FOR YOUNG AND INNOCENT GIRLS TO CONCEAL FOR A TIME THE RAPE COMMITTED ON THEM.**— Donna was barely 9 years old when the appellant raped her for the first

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time on October 2, 1995; she was 10 years old when the appellant again raped her on August 2, 1996. Noemi, on the other hand, was 12 years old when the appellant raped her. The girls lived with their father in Barangay Amamperez, Villasis, Pangasinan, while their mother was in far away Angeles City, with her paramour. The two young victims could not possibly possess the courage to take the proper and immediate course of action against their father. Moreover, this Court has held that the filing of complaints for rape several months or even years after the commission of the offense may be justified. It is not an uncommon occurrence for young and innocent girls to conceal for a time the rape committed on them because of fear of public humiliation or simply because of lack of courage. The delay in revealing the rape incidents to their mother does not imply that the charges are false. This Court has taken judicial notice that most victims of sex crimes, especially Filipinos, are reluctant to reveal to the world their harrowing experience and prefer to bear the ignominy and the pain silently, rather than expose their shame. Even after joining their mother in late 1996 in Angeles City, Saturnina noted that her daughters were not their usual selves, prompting her to inquire if something was wrong. The victims did not tell the truth at the time, because, in their words, "they did not want their mother to become a criminal."

4. **ID.; ID.; ID.; UNNATURAL FOR A PARENT TO USE HER OFFSPRING AS AN ENGINE OF MALICE.**— The appellant's contention that Saturnina instigated her daughters to charge him with rape because she wanted to get even with him for his refusal to sell their property deserves scant consideration. It is unnatural for a parent to use her offspring as an engine of malice, especially if it would subject a daughter to embarrassment, ridicule and stigma. No parent in her right mind would possibly stoop so low as to subject a daughter to shame and tribulation concomitant to a rape persecution just to assuage her own hurt feelings.

5. **ID.; ID.; ID.; UNNATURAL FOR THE DAUGHTERS TO CONCOCT A STORY OF RAPE AGAINST THEIR OWN FATHER.**— We find it unnatural for the private complainants Noemi and Donna to concoct a story of rape against their own father which would consign themselves to a lifetime shame, allow their private parts to be examined and face public trial.

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6. **ID.; ID.; ID.; FINDINGS OF FACT OF THE TRIAL COURT ARE ACCORDED BY THE APPELLATE HIGH RESPECT IF NOT CONCLUSIVE EFFECT.**— The trial court found the testimonies of the private complainants straightforward and unwavering, and despite the opposing counsel's grueling cross-examination, they remained steadfast in their claim that the appellant raped them. Case law has it that the findings of facts of the trial court, the calibration of the evidence on record, the credibility and the probative weight of the testimonial evidence of the parties and its conclusions based on its findings are accorded by the appellate court high respect if not conclusive unless the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case. After a thorough review of the records, we find no basis to deviate from the trial court's conclusion that the appellant indeed raped his daughters.

7. **ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE AND STRAIGHTFORWARD TESTIMONIES OF THE COMPLAINANTS.**— The appellant's alibi, as well as his denial of the charges, deserves scant consideration. Denial is merely self-serving negative evidence. Like alibi, the appellant's denial of the crimes charged is a weak defense and cannot prevail over the positive and straightforward testimonies of Donna and Noemi. The defense of alibi is considered with suspicion because it is not only inherently weak and unreliable, but also because it can easily be fabricated and is difficult to disprove.

8. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST ADDUCE CLEAR AND CONVINCING EVIDENCE THAT AT THE TIME OF THE COMMISSION OF THE FELONIES, HE WAS IN A PLACE OTHER THAN THE *SITUS CRIMINIS*, SUCH THAT IT WAS IMPOSSIBLE FOR HIM TO HAVE COMMITTED THE SAME; NOT ESTABLISHED IN CASE AT BAR.**— To prove his alibi, the appellant must adduce clear and convincing evidence that at the time of the commission of the felonies, he was in a place other than the *situs criminis*, such that it was impossible for him to have committed the same. In this case, the only evidence the appellant adduced to prove his alibi was his testimony and that of his father, Igmidio Iluis, who cannot be considered a disinterested witness. The appellant failed to prove that because of the distance between his house

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and that of his brother, both located in Villasis, Pangasinan, it was physically impossible for him to have been in his house when his daughters were raped.

9. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; QUALIFYING CIRCUMSTANCES MUST BE ALLEGED IN THE INFORMATION.— The twin circumstances of relationship of the victims and the accused and the minority of the said victims are required to be duly proved beyond reasonable doubt. The same must also be alleged in the Information, as mandated by Section 8 of Rule 110 of the Revised Rules of Criminal Procedure[.] x x x Although this rule took effect only on December 1, 2000, long after the crimes charged were committed, it should nonetheless be applied retroactively, it being favorable to the appellant. Even if the prosecution proved beyond cavil the minority of the victims Noemi and Donna and their filiation with the appellant, if such circumstances were not alleged in the Information, the appellant cannot be convicted of qualified rape; otherwise, he would thereby be deprived of his constitutional right to be informed of the nature of the charges against him.

10. ID.; ID.; ID.; ID.; NOT COMPLIED WITH IN CASE AT BAR.— In this case, the prosecution proved beyond reasonable doubt the minority of the victims and their filiation with the appellant. However, the Information in Criminal Case No. V-0730 does not allege the minority of the private complainant Noemi and her filiation with the appellant; and although the Information in Criminal Case No. V-0731 alleges Donna's minority, it does not allege her filiation with the appellant. The appellant cannot thus be convicted of qualified rape in both cases.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Simplicio M. Sevilleja for accused-appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

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Before us on automatic appeal is the decision[1] of the Regional Trial Court of Villasis, Pangasinan, Branch 50, convicting the appellant of three (3) counts of rape, and sentencing him to suffer the death penalty for each count.

The Case for the Prosecution

The appellant Dominador Iluis and his wife Saturnina have two daughters, namely, Noemi who was born on February 24, 1983,[2] and Donna who was born on September 5, 1986.[3] Sometime in September 1993, the appellant and Saturnina parted ways. Saturnina found employment in Baguio City, and later resided in Barangay Pulong Cacutod, Angeles City, with her common-law husband, Sauro Notarte. The appellant and his two daughters resided in Barangay Amamperez, Villasis, Pangasinan, near the house of the appellant's parents.

On October 2, 1995, at 6:30 p.m. Donna, who was then nine years old, was sleeping beside the appellant and her sister Noemi. Donna suddenly awoke and was petrified when she saw her father tying her hands. He then forced Donna to spread her legs and got on top of her. The appellant inserted his penis into her vagina. Donna felt pain in her vagina.[4]

Sometime that same month, Noemi, her sister Donna and their father, the appellant, were sleeping side by side.[5] Noemi was wearing a pair of shorts and a t-shirt. She was shocked when she woke up and saw her father mashing her breasts and her private parts. He poked a bolo at her and threatened to kill her if she shouted.[6] She turned to her side, in an attempt to avoid being sexually abused by her father. However, the appellant forced Noemi to lie down on her back.[7] He then removed her shorts and her panties.[8] He also undressed himself, went on top of her and inserted his penis into her vagina. Noemi felt

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[1] Penned by Judge Rosario C. Cruz.

[2] TSN, 10 December 1997, p. 6.

[3] *Ibid.*

[4] TSN, 17 September 1997, pp. 18-20.

[5] TSN, 3 September 1997, p. 7.

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intense pain as the appellant made push-and-pull motions.[9] Satiated, the appellant dismounted and slept.[10] Donna was so distraught and so angry at her father that she was unable to sleep. She could not understand why her own father would sexually abuse her. She only managed to sleep at around 5:00 a.m. When she woke up barely an hour later, the appellant was no longer in their house.[11] Noemi went to the house of her aunt, her mother's cousin Adoracion Viray, and told the latter that her father had mashed her breasts and her private parts. Noemi's vagina was so painful that she walked in a "bow-legged manner."[12] She did not tell her aunt that her father raped her because Noemi feared that the appellant would kill her if she did so.[13]

On August 2, 1996, at 3:00 p.m., Noemi was in the house of their neighbor viewing television. Donna was in their house resting.[14] Momentarily, the appellant threw a ball at Donna. Feeling suddenly afraid, she tried to run away from the house but the appellant immediately closed the door.[15] He ordered Donna to remove her dress but she refused. He then removed her clothes himself and forced her to lie down on the floor. He undressed himself and inserted his penis into her vagina. Donna felt excruciating pain. She opted to keep the incident to herself because she was afraid that her father might kill her.[16]

On August 29, 1996, Donna left her father and lived with her mother in Angeles City. Noemi followed suit on September

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[6] *Id.* at 5.

[7] *Id.* at 6.

[8] *Id.* at 8.

[9] TSN, 17 September 1997, p. 9.

[10] TSN, 3 September 1997, p. 8.

[11] TSN, 17 September 1997, p. 11.

[12] TSN, 3 September 1997, pp. 13-14.

[13] *Id.* at 10.

[14] TSN, 17 September 1997, p. 21.

[15] *Ibid.*

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21, 1996.[17] Saturnina noticed that her daughters were disoriented (*tulala*).[18] Sensing that there was something wrong, she asked them what their problems were, but the children denied that they had any. When Saturnina persisted and asked her daughters anew, the latter merely cried and gave the same reply. Donna and Noemi later told their mother that "they did not want her to be a criminal."[19]

On September 30, 1996, Saturnina heard Donna muttering in her sleep, "You are a pig, you are a useless father," "Painful! Painful!" She saw Donna place her pillow on top of her private parts.[20] When Saturnina asked her about it, Donna finally told her mother that her father had raped her. Noemi also revealed that her father had mashed her breasts and tried to insert his penis into her vagina.[21]

On October 4, 1996, Saturnina, with the help of a friend, brought her two daughters to Atty. Alfredo V. Ferrer, the Legal Officer of the Commission on Human Rights, Region III. Atty. Ferrer directed Investigators Joel Bon Harris Ocampo and Ernesto Enolpe to conduct an investigation on the rape incident. The two victims gave their sworn statements to Atty. Ferrer.[22]

Dr. Mildred M. Mariano of the Jose B. Lingad Memorial Regional Hospital, conducted genitalia examinations on Noemi and Donna on October 7, 1996, and issued Medical Certificates thereon. Her findings on her examination of Donna are as follows:

EXTERNAL GENITALIA & PERINEUM:

LABIA MAJORA:

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[16] *Id.* at 22.

[17] TSN, 10 December 1997, p. 11.

[18] *Id.* at 11-13.

[19] *Id.* at 13-14.

[20] *Id.* at 15.

[21] *Id.* at 15-16.

[22] Exhibits "A" & "A-1" (Crim. Case No. V-0730 & Crim. Case No. V-0731).

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LABIA MINORA:

HYMEN: Laceration, incomplete, superficial, healed at 9 o'clock position.

LABORATORY REQUEST:

Pregnancy test — negative
Smear for Spermatozoa — negative[23]

. . . . . .

On her examination of Noemi's genitalia, the doctor made the following findings:

. . . . . .

HYMEN: Laceration, incomplete, superficial, healed at 5, 7 & 9 o'clock positions.

PELVIC EXAM:

Cervix firm, closed, uterus small, adnexae negative, no bleeding.

LABORATORY REQUEST:

Pregnancy test — Negative
Smear for Spermatozoa — Negative.[24]

On October 28, 1996, Donna and Noemi filed separate criminal complaints for rape against the appellant with the Municipal Circuit Trial Court of Villasis-Sto. Tomas.[25]

On May 17, 1997, an Information docketed as Criminal Case No. V-0730 was filed charging the appellant with rape, the accusatory portion of which reads:

That during the month of October 1995, at Barangay Amamperez Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named

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[23] Exhibit "H", Records, p. 12.

[24] Exhibit "G", Records, p. 8.

[25] Records, p. 1 (Criminal Case No. V-0731 & Criminal Case No V-0730).

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accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Noemi Iluis *y* Forbile, against the latter's will and consent, to the damage and prejudice of said Noemi Iluis *y* Forbile.

Contrary to Art. 335 of the Revised Penal Code.[26]

Another Information docketed as Criminal Case No. V-0731 was filed charging the appellant with two counts of rape. The accusatory portion reads, thus:

That on or about October 2, 1995 and August 2, 1996, at Barangay Amamperez, Villasis, Pangasinan, 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 sexual intercourse with one Donna Iluis *y* Forbile, being below twelve (12) years old, against the latter's will and consent, to the damage and prejudice of said Donna Iluis *y* Forbile.

Contrary to Art. 335 of the Revised Penal Code.[27]

The appellant was arraigned in the said cases, assisted by counsel and entered his respective pleas of not guilty. A joint trial of the cases ensued.

The Defense of the Appellant

The appellant denied raping her daughters. He testified that he finished only Grade I and, except for his name, did not know how to read and write.[28] After his marriage to Saturnina, they lived with the latter's parents in Tabor, Malasiqui, Pangasinan, for two years.[29] Thereafter, he built a house for his family in Barangay Amamperez, Villasis, Pangasinan, about 300 meters away from the house of his parents, the spouses Igmidio and Basilisa Iluis.[30] Sometime in January 1993, he and his wife parted ways. Saturnina worked for a time in Baguio City, but later became the paramour of Romeo Notarte.[31] Thereafter, his

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[26] *Id.* at 37.

[27] *Id.* at 40.

[28] TSN, 11 June 1998, p. 3.

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two daughters Donna and Noemi stayed with his parents.[32] He continued residing at his house because he worked in the farmland of his brother in Villasis, Pangasinan and could not take care of his daughters.[33] Every now and then, however, he visited his daughters at his parents' house and gave them money.[34]

Sometime in October 1996, Saturnina saw Barangay Captain Sergio C. Fernando, Sr. and casually told the latter about her marital problems. Saturnina apparently wanted to sell the land which she and her husband owned, but the latter had objected to this proposal.[35] The property had been mortgaged, but Saturnina wanted to sell the property so that she and her husband could divide the proceeds of the sale.[36] Fernando, Sr. called the couple to a conference. Also in attendance was Igmidio, the appellant's father, who talked to the appellant about the problem.[37] The appellant later told Fernando, Sr. that he had no objection to the sale, provided that it be done in May 1997 after the harvest of the tobacco planted on the land.[38] Saturnina was disheartened by the appellant's refusal to immediately sell the property.

Igmidio Iluis corroborated his son's testimony. He testified that the appellant stayed in the house of his brother in *Barangay* Aboridos, Villasis, Pangasinan, although the appellant also stayed in his own house on Sundays, from 8:00 a.m. to 1:00 p.m.[39]

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[29] *Id.* at 4.

[30] *Id.*

[31] *Id.* at 5-6; he is also known as Sauro Notarte.

[32] TSN, 1 April 1998, p. 6.

[33] TSN, 11 June 1998, pp. 14-17.

[34] *Id.* at 19.

[35] TSN, 13 May 1998, pp. 4-5.

[36] *Id.* at 5.

[37] TSN, 13 May 1998, p. 12.

[38] *Id.* at 6-10.

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After due trial, the trial court rendered judgment, the decretal portion of which reads:

> WHEREFORE, based on the foregoing, the accused is hereby found guilty beyond reasonable doubt of one (1) count of rape in Criminal Case No. V-0730 and two (2) counts of rape in Criminal Case No. V-0731, and is, accordingly, hereby sentenced to suffer for each count, the extreme penalty of death, with all its accessories.
>
> The accused is hereby further ordered to pay each of the complainants the amount of ₱50,000.00 for each count of rape as indemnification, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages.
>
> SO ORDERED.[40]

The appellant assails the decision of the trial court contending that:

> 1. The trial court, Regional Trial Court, First Judicial Region, Branch 50, Villasis, Pangasinan, erred in not acquitting accused-appellant for three (3) counts of the crime of rape for failure of the prosecution to establish the guilt of accused-appellant beyond reasonable doubt; and
>
> 2. The trial court erred in not giving weight and credence to the defenses of the accused-appellant.[41]

We shall delve into and resolve the issues raised by the appellant simultaneously, as they are interrelated.

The appellant avers that the testimonies of Donna and Noemi are inconsistent with that of their mother, Saturnina. Donna and Noemi testified that they were raped in the conjugal home of their parents, whereas, Saturnina testified that her daughters were, at the time, residing in the house of her parents-in-law, Igmidio and Basilisa Iluis. The appellant asserts that the allegation that he poked his bolo on Noemi before raping her is exaggerated; so is Donna's testimony that before she was raped, her hands

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[39] TSN, 1 April 1998, pp. 10-11.

[40] Records, p. 172.

[41] *Rollo*, p. 61.

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were tied together and her legs forced apart. The appellant, likewise, contends that the testimonies are incredible because although Donna claimed that her father raped her twice, first on October 2, 1995 and again on August 2, 1996, and Noemi claimed she was raped sometime in October 1995, the criminal complaints against him were filed only on October 28, 1996. The appellant further alleges that the inordinate delay in the filing of the two complaints belied his daughters' collective claims that he had raped them. According to the appellant, Saturnina was peeved by his obstinate refusal to sell their property. Because of this, Saturnina concocted the charges against him and forced her daughters to admit that their father had raped them.

The contention of the appellant does not persuade. Saturnina did not testify that her daughters were raped in the house of her parents-in-law. She is incompetent to testify on the matter as she was then residing in Angeles City with her paramour.[42] Saturnina's testimony cannot prevail over the collective testimonies of Noemi and Donna that they were raped by the appellant in their house. The appellant even testified that he built a house for himself and his two daughters after Saturnina had abandoned them.[43]

Noemi's testimony that the appellant used a bolo to intimidate her, and tied Donna's hands together before forcing the latter to open her legs to facilitate the entry of his penis are not exaggerations. With Donna's hands tied, it was easier for the appellant to force her to open her legs and thus consummate the rape. Neither is it incredible that the appellant used a bolo to intimidate her daughter. It bears stressing that Donna was sleeping when the appellant raped her. The appellant had to use a bolo to intimidate her into submitting herself to his lust, so as not to give her any opportunity to awaken her sister Noemi.

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[42] TSN, 3 September, 1997, pp. 3-4; TSN, 17 September 1997, pp. 15-16; TSN, 11 June 1998, pp. 5-6.

[43] TSN, 11 June 1998, p. 9.

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It is indeed incomprehensible that a father would be capable of doing such a fiendish act to his own daughters. But this Court has held that rape is an act of depravity and lust. There is no rhyme or reason for such beastly act.[44]

Donna and Noemi cannot be blamed for their failure to reveal their ordeal to their mother immediately or shortly after they were raped by their father. Saturnina was then living with her paramour in Angeles City. However, the very next morning, Noemi told her Aunt Adoracion Viray that the appellant had molested her. Noemi did not reveal that she was in fact raped by her father because the latter had threatened her. Noemi was afraid; in fact, she was trembling as she talked to her aunt.

Q Now before October 1995 when the incident happened, have you ever experienced having something inserted in your vagina?
A None yet, sir.

Q Do you know one by the name of Adoracion Viray?
A Yes, sir, she is the cousin of my mother.

Q Where is Adoracion Viray residing?
A At Amamperez, Villasis, Pangasinan, sir.

Q After that incident when it was already daytime, did you ever go somewhere else?
A Yes, sir, I went to that cousin of my mother.

Q Why did you go there?
A I told her about the smashing (sic) of my breast by my father. I did not tell her the whole truth because I was afraid to tell her the other things my father did to me, sir.

Q And what did Adoracion Viray do when you revealed to her what you have just stated?
A She asked me if my father was able to deflower me and I told her he did not, sir.

Q By the way, how far is the house of Adoracion Viray to your house at Amamperez, Villasis, Pangasinan?
A There is one house between our houses, sir.

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[44] *People v. Calimlim*, 364 SCRA 45 (2001).

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Q Now, when you told her what happened to you as you have stated, did you tell her the person who did that?
A Yes, sir.

Q And whom did you tell as the person who smashed (sic) your breast to Adoracion Viray?
A My father, sir.

Q At the time you went to Adoracion Viray, could you recall how you felt?
A I was afraid and I was trembling and she noticed that I was bow-legged (*sakang-sakang*), sir.

Q Now, you were walking bow-legged, is that the way you walk?
A No, sir.

Q Why were you then walking bow-legged?
A Because it was painful, sir.

Q What is painful?
A My vagina, sir.[45]

Donna was barely 9 years old when the appellant raped her for the first time on October 2, 1995; she was 10 years old when the appellant again raped her on August 2, 1996. Noemi, on the other hand, was 12 years old when the appellant raped her. The girls lived with their father in Barangay Amamperez, Villasis, Pangasinan, while their mother was in far away Angeles City, with her paramour. The two young victims could not possibly possess the courage to take the proper and immediate course of action against their father.[46] Moreover, this Court has held that the filing of complaints for rape several months or even years after the commission of the offense may be justified.[47] It is not an uncommon occurrence for young and innocent girls to conceal for a time the rape committed on them because of fear of public humiliation or simply because of lack of courage.[48] The delay in revealing the rape incidents to their mother does not imply that the charges are false. This Court

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[45] TSN, 3 September 1997, pp. 13-14. (Noemi)

[46] *People v. Media*, 359 SCRA 157 (2001).

[47] *Ibid.*

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has taken judicial notice that most victims of sex crimes, especially Filipinos, are reluctant to reveal to the world their harrowing experience and prefer to bear the ignominy and the pain silently, rather than expose their shame.[49] Even after joining their mother in late 1996 in Angeles City, Saturnina noted that her daughters were not their usual selves, prompting her to inquire if something was wrong. The victims did not tell the truth at the time, because, in their words, "they did not want their mother to become a criminal":

COURT:

And according to the witness she got custody of the children after August 26 and September 26, 1996.

Now the question of the Fiscal is . . . interrupted.

ATTY. SEVILLEJA:

What did she observe? But she was not present at that time, your Honor.

COURT:

The children were staying with her.

ATTY. SEVILLEJA:

We submit, your Honor.

COURT:

Witness may answer.

A They were silent "*tulala*" and as if they were not in their usual selves.

Q What did you do when you noticed those unusual actuations of Noemi and Donna?
A I asked them, Madam.

Q Did they give you any answer?
A They lied the first time, Madam.

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[48] *People v. Mirafuente*, 347 SCRA 204 (2001).

[49] *People v. Jimenez*, 356 SCRA 508 (2001).

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Q How about the second time or the succeeding times that you asked them?
A Donna dreamed on September 30, 1996 [at] dawn.

Q Madam Witness, when I asked you earlier what were the answers of your children when you asked them why they were silent and the were not in their usual selves, you answered that the first time they lied to you. My next question is, "How about the second or succeeding times when you asked them, what were their answers to you?
A They lied and they told me, "Mother, we don't want you to become [a] criminal."

Q So what was your reaction when they continued lying to you and telling you that they don't want you to become [a] criminal?
A I thought of something, Madam.

Q And what did you do?
A I asked them "*kinulit*" persistently, Madam.

ATTY. SEVILLEJA:

We ask your Honor that the word "*kinulit*" be quoted before the word persistently.

COURT:

Noted.

PROS. VILLARIN:

Q So what was the result of your being persistent to know what really happened?
A They did not reveal the thing to me and they just cried, Madam.

Q When Noemi and Donna cried, what did you do?
A I consoled them and I bought them apples because I want them to reveal the truth, Madam.

Q And what was the result of your effort?
A Their only answer is, "We don't want you to become [a] criminal."[50]

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[50] TSN, 10 December 1992, pp. 13-14.

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The appellant's contention that Saturnina instigated her daughters to charge him with rape because she wanted to get even with him for his refusal to sell their property deserves scant consideration. It is unnatural for a parent to use her offspring as an engine of malice, especially if it would subject a daughter to embarrassment, ridicule and stigma. No parent in her right mind would possibly stoop so low as to subject a daughter to shame and tribulation concomitant to a rape persecution just to assuage her own hurt feelings.[51]

We find it unnatural for the private complainants Noemi and Donna to concoct a story of rape against their own father which would consign themselves to a lifetime shame, allow their private parts to be examined and face public trial.[52]

In this case, the private complainants related to the trial court how the appellant so brutally ravished them. Noemi testified how the appellant raped her, thus:

Q Do your recall Madam Witness of any unusual incident that happened to you in the October 1995?

A Yes, sir, there was, sir.

Q Will you please tell the Honorable Court what was this unusual thing that happened to you in the same year? of October 1995?

ATTY. SEVILLEJA:

May we make on record that the witness now is speaking in Tagalog. She was speaking then in Ilocano.

COURT:

Make on record the observation of the defense.

A When I was sleeping, I noticed somebody was smashing (sic) my breast and also my private part and somebody went on top of me, sir.

Q Now, you felt somebody was smashing your breast and touching your private parts and that somebody went on top of you. What happened next when you felt this?

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[51] *People v. Osing*, 349 SCRA 310 (2001).

[52] *People v. Supnad*, 362 SCRA 346 (2001).

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A That person who went on top of me poked his (sic) on me and then when I noticed that, I immediately turned on my side and then the person told me not to tell the incident to anybody or else he will kill me, sir.

Q Now, you said that that person poked his (sic) on you, what do you mean to tell the Court by that?
A The bolo, sir.

Q Now you said according to you, you turned sidewise, why did you turn sidewise?
A Because I do not want that he can get my womanhood, sir.

Q Now, you said that you turned sidewise because you do not want that person to get your womanhood, what happened next?
A He went back to the place where he was sleeping, sir, and then at that night I was not able to sleep.

Q Why were you not able to sleep?
A Because I don't want that to happen again, sir.

Q Will you please tell the Honorable Court what was that thing which you do not want to happen again?
A I don't want that the smashing of my breast and my vagina, be repeated again, sir.

Q Now, what did he do with your vagina?
A He inserted his penis, sir.

Q And when he inserted his penis in your vagina what did you feel?
A I felt pain, sir.

Q What part of your body was painful?
A My vagina, sir.

Q Now, could you tell the Honorable Court if you have recognized that person who inserted his penis in your vagina?
A Yes, sir, I know him.

Q Who was that?
A That person wearing a stripe t-shirt, sir. (Witness pointing is looking to the place where Dominador Iluis as earlier identified by the witness is sitting.)

Q Your father?

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A Yes, sir, he is my father.

Q Now, could you tell the Honorable Court Madam Witness the exact date on that month of October 1995 when your father the accused in this case inserted his penis in your vagina while you were then in the house?

A I only remember the month and the year, it was October 1995 but I do not remember the exact date, sir.

Q You stated a while ago that after your father inserted his penis to your vagina he went back to the place where he was sleeping. At what part of the house was your father then sleeping when he went back to the place?

A We were sleeping in the same place, sir, side by side.

Q You said we, who are those persons that you were sleeping with side by side?

A I, Donna and my father, sir, in that order.

Q Now, at the time your father inserted his penis in your vagina, did you not awaken your sister Donna who was just sleeping beside you?

A I was not able to awaken my sister Donna because my father was poking the bolo at me and I was so afraid, sir.

Q How old is your sister Donna at that time?

A Nine (9) years old, sir.

Q When you slept that night, could you tell the Honorable Court what were you wearing then?

A Short and t-shirt, sir.

Q At the time your father inserted his penis in your vagina, where was then your shorts and your panty?

A He put down my short and my panty and it was placed on my knees, sir.

Q And could you tell the court what was then your position when your father inserted his penis in your vagina with your short and your panty on your knees?

A I was on my side, sir.

Q What about your father what was his position when he inserted his penis in your vagina?

A He placed me in a position where I was facing up and then he went on top of me, sir.

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Q When he went on top of you, what did you do?
A I was (not) able to do anything anymore, sir, because I was so afraid. He was poking the bolo at me and because I wanted to live, I did not shout and besides I was very nervous and frightened, sir.

Q Now, according to you after your father inserted his penis in your vagina he went back to the place where he was sleeping and you did not sleep anymore. Up to what time were you not able to sleep anymore?
A 1:00 o'clock up to 5:00 o'clock dawn, sir.[53]

For her part, Donna testified how the appellant raped her twice, to wit:

Q And do you recall Madam Witness where were you at around 6:30 o'clock in the evening of October 2, 1995?
A Yes, sir, I remember. It was about 6:30 o'clock in the evening when I was in our house sleeping beside my father.

Q Where was your sister then Noemi?
A She was also there, sir.

Q On October 2, 1995, your sister Noemi was there also?
A Yes, sir.

Q Now, you said you were sleeping with your father on this date and time, was there anything unusual that took place on this date and time?
A Yes, sir.

Q And will you please tell the Honorable Court what was that unusual incident that took place?
A I was awaken because I felt that somebody was on top of me, sir.

Q And what did this somebody on top of you do?
A He inserted his penis into my vagina, sir.

Q And who was that who went on top of you who inserted his penis into your vagina?
A My father, sir.

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[53] TSN, 3 September 1997, pp. 5-8 (Noemi).

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Q The person you pointed to a while ago who is in the courtroom Dominador Iluis?
A Yes, sir.

Q When your father Dominador Iluis inserted his penis into your vagina, what did you feel?
A I felt pain, sir.

Q And what did you do when you felt pain when your father inserted his penis in your vagina?
A I was not able to do anything, sir, because my father was strong.

Q Do you know Madam Witness how long did your father insert his penis in your vagina?
A I don't know, sir.

Q After inserting his penis in your vagina, what did he do next?
A He bound my arms and he opened my legs, sir.

Q What did he do when he opened your legs?
A He inserted his penis, sir.

Q Now, according to you a while ago, somebody went on top of you and inserted his penis, can you tell the Honorable Court if that penis was inserted when that person went on top of you?
A Yes, sir.

Q So, how many times, therefore, did your father insert his penis in your vagina on that date?
A Once, sir.

Q And when was this?
A On October 2, 1995, sir.

Q Now, you said that your hands were tied and your legs were spread out and then he inserted his penis, is that correct?
A Yes, sir.

Q You also said a while ago that somebody went on top of you when you woke up?
A Yes, sir.

Q And you said this person who went on top of you inserted his penis in your vagina'?
A Yes, sir.

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Q So it was at that instance then when you woke up when Dominador Iluis went on top of you and inserted his penis in your vagina?
A Yes, sir.

Q What did you do when your father inserted his penis in your vagina?
A I was not able to do anything because my father is so strong, sir.

Q Was that the only unusual incident that happened to you?
A There was another time, sir.

Q And when was that?
A That was on August 2, 1996, sir.

Q On August 2, 1996, at about 3:00 p.m., where were you then?
A I was in our house, sir.

Q And what about your sister Noemi?
A She was in our neighbor's house watching a t.v. program, sir.

Q So what was that, that happened to you on August 2, 1996?
A On August 2, 1996, I was in our house taking a rest when my father threw a ball at me, sir.

Q And what happened next?
A That was all, sir.

Q You said there was [an] unusual incident that happened to you on August 2, 1996, what was that?
A My father threw a ball at me, sir.

Q When he threw a ball at you, what did you do?
A I tried to run away but I was not able to run away because my father was so strong and he closed the door, sir.

Q What happened next?
A He raped me, sir.

Q Will you tell the Honorable Court how your father, Dominador Iluis, raped you on August 2, 1996?
A I don't know, sir, because I am so confused.

Q When you said raped, what did your father do?
A He told me to strip my clothes but I refused, sir.

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Q When you refused what did your father do?
A He removed my clothes forcibly, sir.

Q And when you were forcibly stripped off your clothes, what did he do next?
A That was all, sir.

Q You were forcibly stripped of your clothes and your father also removed his clothes?
A Yes, sir.

Q What did he do next?
A He laid me down and he inserted his penis into my vagina, sir.

Q And what have you felt?
A It was painful, sir.

Q What was painful?
A My vagina, sir.

Q Why was it painful?
A Because of the rape that he was doing, sir.[54]

The trial court found the testimonies of the private complainants straightforward and unwavering, and despite the opposing counsel's grueling cross-examination, they remained steadfast in their claim that the appellant raped them. Case law has it that the findings of facts of the trial court, the calibration of the evidence on record, the credibility and the probative weight of the testimonial evidence of the parties and its conclusions based on its findings are accorded by the appellate court high respect if not conclusive effect unless the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances which, if considered, would change the outcome of the case.[55] After a thorough review of the records, we find no basis to deviate from the trial court's conclusion that the appellant indeed raped his daughters.

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[54] TSN, 17 September 1997, pp. 20-22 (Donna).

[55] *People v. Delim*, G.R. No. 142773, January 28, 2003.

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The appellant's alibi, as well as his denial of the charges, deserves scant consideration. Denial is merely self-serving negative evidence. Like alibi, the appellant's denial of the crimes charged is a weak defense and cannot prevail over the positive and straightforward testimonies of Donna and Noemi. The defense of alibi is considered with suspicion because it is not only inherently weak and unreliable, but also because it can easily be fabricated and is difficult to disprove.[56] To prove his alibi, the appellant must adduce clear and convincing evidence that at the time of the commission of the felonies, he was in a place other than the *situs criminis* such that it was impossible for him to have committed the same.[57] In this case, the only evidence the appellant adduced to prove his alibi was his testimony and that of his father, Igmidio Iluis, who cannot be considered a disinterested witness.[58] The appellant failed to prove that because of the distance between his house and that of his brother, both located in Villasis, Pangasinan, it was physically impossible for him to have been in his house when his daughters were raped.

The Crimes Committed by the Appellant and the Correct Penalty Therefor

The trial court erred when it convicted the appellant of three counts of qualified rape under Article 335 of the Revised Penal Code, as amended by Republic Act 7689, and sentenced him to suffer the death penalty (three counts), on its finding that Donna and Noemi were under 18 years old when they were raped by their father, the appellant.

Under Article 335, of the Revised Penal Code, as amended by Rep. Act No. 7659, the accused may be convicted of qualified rape and sentenced to suffer the death penalty. Thus:

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[56] *People v. Paraiso*, 349 SCRA 337 (2001).

[57] *People v. Olivia*, 349 SCRA 435 (2001).

[58] *People v. Martinez*, 350 SCRA 537 (2001).

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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.

The twin circumstances of relationship of the victims and the accused and the minority of the said victims are required to be duly proved beyond reasonable doubt.[59] The same must also be alleged in the Information, as mandated by Section 8 of Rule 110 of the Revised Rules of Criminal Procedure which reads:

SEC. 8. *Designation of the offense.*— The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Although this rule took effect only on December 1, 2000, long after the crimes charged were committed, it should nonetheless be applied retroactively, it being favorable to the appellant.[60] Even if the prosecution proved beyond cavil the minority of the victims Noemi and Donna and their filiation with the appellant, if such circumstances were not alleged in the Information, the appellant cannot be convicted of qualified rape; otherwise, he would thereby be deprived of his constitutional right to be informed of the nature of the charges against him.[61]

In this case, the prosecution proved beyond reasonable doubt the minority of the victims and their filiation with the appellant. However, the Information in Criminal Case No. V-0730 does

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[59] *People v. Galeno*, 359 SCRA 180 (2001).

[60] *People v. Baldogo*, G.R. No. 128106-07, January 24, 2003.

[61] *People v. Francisco*, 351 SCRA 351 (2001).

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not allege the minority of the private complainant Noemi and her filiation with the appellant; and although the Information in Criminal Case No. V-0731 alleges Donna's minority, it does not allege her filiation with the appellant. The appellant cannot thus be convicted of qualified rape in both cases.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Villasis, Pangasinan, Branch 50, is *AFFIRMED WITH MODIFICATION.*

In *Criminal Case No. V-0730*, the appellant Dominador Iluis *y* Jandoc is found guilty of one count of simple rape under Article 335 of the Revised Penal Code, as amended by Rep. Act No. 7689, and is sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant Noemi Iluis *y* Forbile the amount of ₱50,000 as civil indemnity; ₱50,000 as moral damages; and, ₱25,000 as exemplary damages.

In *Criminal Case No. V-0731*, the appellant is found guilty of two counts of simple rape under Article 335 of the Revised Penal Code, as amended by Rep. Act No. 7689, and is sentenced to suffer the penalty of *reclusion perpetua* (two counts) and to pay private complainant Noemi Iluis *y* Forbile the amount of ₱50,000 as civil indemnity; ₱50,000 as moral damages; and, ₱25,000 as exemplary damages for each count.

SO ORDERED.

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