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the separate crime of rape committed against Vanelyn Flores in Criminal Case No. C-16(91), the victim is entitled to another ₱50,000 as civil indemnity *ex delicto*, ₱50,000 as moral damages, and ₱25,000 as exemplary damages, in addition to his conviction for rape and his sentence to one more term of *reclusion perpetua*. Costs against appellant.

Finally, the conviction of Appellant Caraang for acts of lasciviousness in Criminal Case No. C-17(91) is hereby ***REVERSED*** and ***SET ASIDE*** for insufficiency of evidence.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

EN BANC

[G.R. Nos. 148869-74. December 11, 2003]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REMARIO PALMA *Y* ROMERA *alias* "MARIO,"** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of two counts of rape and three counts of acts of lasciviousness perpetrated against his own daughter, a girl below ten years of age. He was sentenced to suffer the penalty of death for each count of rape. In this automatic review, appellant alleged that the prosecution failed to prove his guilt beyond reasonable doubt and that the trial court erred in imposing upon him the penalty of death.

The Supreme Court ruled that except in Criminal Cases No. 8176 and No. 8177, the trial court correctly found appellant guilty

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of the crimes with which he was charged. In Criminal Case No. 8176, the crime of rape was not committed because the victim merely stated that she was carried around the sala with appellant's penis touching her vagina. With this bare statement, it would not be right to conclude that the act of the penis touching the vagina was an entry or penetration, even slightly, of the labia majora or the labia minora of the pudendum. Rape is not committed in the absence of convincing proof of penile penetration. In Criminal Case No. 8177, the first incident of insertion of appellant's finger into the victim's vagina during the second week of October 1997 could only render appellant guilty of an act of lasciviousness. The second incident of the insertion of appellant's middle finger, however, during the first week of November 1997, constituted consummated rape through sexual assault under Republic Act No. 8353, or The Anti-Rape Law of 1997, which took effect on October 22, 1997.

The Court likewise held that the death penalty cannot be imposed on appellant in case at bar. Being qualifying circumstances, it is essential that the age of the victim and her filiation or kinship with the appellant are properly alleged and duly proven for the death penalty to be imposed. While the age of the victim was alleged in the information, the records are bereft of evidence that would substantiate the age of the victim. Nor could the qualifying circumstance of relationship be considered. Appellant was alleged in the information to be the biological father of the victim but, during the trial, it was established the he actually was just the victim's uncle by affinity.

SYLLABUS

1. CRIMINAL LAW; RAPE; NEGATED BY THE ABSENCE OF CONVINCING PROOF OF SOME DEGREE OF PENILE PENETRATION.— In Criminal Case No. 8176, the crime of rape was not committed. In *People v. Arce, Jr.,* the victim asserted that the man had touched her or *"idinidikit yung ari niya*;" there, the Court refused to hold, in the absence of convincing proof that the penis had slid into the female organ, that rape was committed. In *People v. Francisco,* the Court also declined to convict an accused of consummated rape when it had failed to discern from the testimony of the complainant that some degree of penile penetration was attained even when he made

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pumping motions. Marife, in case at bar, merely stated that she was carried around the sala with appellant's penis "touching" her vagina. With this bare statement, it would not be right to conclude that the act of the penis "touching" the vagina was an entry or penetration, even slightly, of the *labia majora* or the *labia minora* of the *pudendum.*

2. ID.; ID.; REPUBLIC ACT NO. 8353 (THE ANTI-RAPE LAW OF 1989); WHEN AND HOW COMMITTED.— In Criminal Case No. 8177, the first incident of insertion of appellant's finger into the victim's vagina during the second week of October 1997 could only render appellant guilty of an act of lasciviousness. The second incident of the insertion of apellant's middle finger, however, during the first week of November 1997, constituted consummated *rape through sexual assault* under Republic Act No. 8353 or "The Anti-Rape Law of 1997," which took effect on 22 October 1997; this law, in part provides: "Art. 266-A. *Rape*; *when and how committed.*— Rape is committed. "1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: "a) Through force, threat, or intimidation; "b) When the offended party is deprived of reason or otherwise unconscious; "c) By means of fraudulent machination of grave abuse of authority; and "d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. "2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." In consonance with paragraph 1, above, the contact of the male penis with the woman's vagina is referred to as "rape by sexual intercourse," while the sexual abuse under paragraph 2 is categorized as "rape through sexual assault."

3. ID.; PENALTIES; DEATH PENALTY; IMPOSED WHEN THE QUALIFYING CIRCUMSTANCES OF AGE OF RAPE VICTIM AND HER FILIATION OR KINSHIP WITH THE ACCUSED ARE PROPERLY ALLEGED AND DULY PROVEN.— Republic Act No. 7659 imposes the death penalty when the rape victim is under eighteen years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or

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affinity within the third civil degree or the common law spouse of the victim's parent. Being qualifying circumstances; it is essential that the age of the victim and her affiliation or kinship with the accused are properly alleged and duly proven. While the age of the victim was alleged in the information, the records are bereft, however, of testimonial or documentary evidence, such as a birth certificate, or even documents of less import, that would substantiate the age of the complainant. Nor could the qualifying circumstance of relationship be considered. Appellant was alleged in the informations to be the biological father of Marife but, during the trial, it was established that he actually was just Marife's uncle by affinity.

4. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— Relative to the amount of damages, the complainant is entitled in Criminal Case No. 8173 to ₱50,000.00 civil indemnity and ₱50,000.00 moral damages for rape through sexual intercourse, in Criminal Case No. 8177 to ₱30,000.00 civil indemnity and ₱30,000.00 moral damages for rape through sexual assault, and in Criminal Cases No. 8174, No. 8175 and No. 8176 to ₱20,000.00 civil indemnity and ₱20,000.00 moral damages in each of said criminal cases for acts of lasciviousness.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VITUG, *J.*:

Appellant REMARIO PALMA *y* ROMERA stood indicted before the court below for six (6) counts of qualified rape which, except for the week and month of commission, were similarly worded, *viz*:

In Criminal Case No. 8173

"That on or about the second week of October, 1997 in the morning, at Macasihi, Camagong, Nasipit, Agusan del Norte, Philippines, and

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within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter Marife B. Palma (a minor), a girl who is below 10 years of age, against her will."[1]

In Criminal Case No. 8174

"That on or about the second week of October, 1997 in the afternoon, at Macasihi, Camagong, Nasipit, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter Marife B. Palma (a minor), a girl who is below 10 years of age, against her will."[2]

In Criminal Case No. 8175

"That on or about the second week of October, 1997 in the evening, at Macasihi, Camagong, Nasipit, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter Marife B. Palma (a minor), a girl who is below 10 years of age, against her will."[3]

In Criminal Case No. 8176

"That on or about the first week of November, 1997 in the morning, at Macasihi, Camagong, Nasipit, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter Marife B. Palma (a minor), a girl who is below 10 years of age, against her will."[4]

In Criminal Case No. 8177

"That on or about the first week of November, 1997 in the afternoon at Macasihi, Nasipit, Agusan del Norte, Philippines, and within the

[1] *Rollo*, p. 17.

[2] *Rollo*, p. 18.

[3] *Ibid.*

[4] *Ibid.*

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jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter Marife B. Palma (a minor), a girl who is below 10 years of age, against her will."[5]

In Criminal Case No. 8178

"That on or about the first week of November 1997 in the evening, at Macasihi, Camagong, Nasipit, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter Marife B. Palma (a minor), a girl who is below 10 years of age, against her will."[6]

At his arraignment, appellant entered a plea of "not guilty" to the charges. During the trial that followed, the prosecution placed on the witness stand Marife B. Palma, the private complainant, and Dr. Zosima A. Padillo, the examining physician, while the defense presented appellant Remario R. Palma.

The young Marife B. Palma testified that she was subjected to sexual abuse by Remario R. Palma on various occasions. She was then staying with appellant in Macasihi, Nasipit, Agusan del Norte, at a time when her "*nanay*" was working abroad for a living. One morning, in the second week of October 1997, appellant told Marife to lie down with her legs spread apart. He inserted his penis into her vagina, kissed her repeatedly, and licked her breast. In the afternoon of the same day, appellant again licked her vagina and inserted his thumb into the genital canal. When evening came, appellant arrived home drunk and, upon chancing on Marife, fondled her vagina until he fell asleep. The next round of sexual assault occurred in the morning of the first week of November 1997. Appellant took off her shorts and underwear. He also rid himself of his own shorts and briefs. He carried Marife to the living room and went around the room with his penis touching the latter's vagina. During one afternoon of the same week, appellant inserted his middle finger into her

[5] *Ibid.*

[6] *Ibid.*

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private part, withdrew his finger and licked it. In yet another occasion, appellant shed off Marife's panty and shorts. He was about to molest her when her brother arrived. He hastily put on his brief and shorts, telling her to do likewise.

Marife named Milagros Bitco to be her real mother and said that appellant was not her biological father. Marife explained that she would call appellant her "father" only because he happened to be the husband of her "*nanay*," Fe Palma, the sister of her mother Milagros Bitco.

Dr. Zosima A. Padillo, who had conducted a medical examination on Marife, testified that there was incomplete laceration on the victim's genital.

Appellant denied all the charges hurled against him, claiming that Marife was only coached by his wife. The couple had parted ways since before and had not been living together. Once, his wife visited him in jail and insinuated that the case could be dropped if he would agree to pay Marife ₱30,000.00. He added that the healed lacerations on the girl's genital could have been the result of her fondness to ride bicycles. He recounted that Marife would often climb trees and so sit on the branches as if she were riding a horse. When she was only one year and seven months old, Marife injured her vagina when she fell down the stairs of their house. The defense presented a hospital record from St. Christopher Hospital where an entry, dated 15 December 1989, indicated that Marife had indeed fallen down the stairs a week before the medical check-up. Finally, appellant claimed that, in March 1998, one Norman Marimon had fondled Marife and even attempted to rape her.

The trial court found the account of Marife to be credible, straightforward and trustworthy, thereby discrediting the asseverations made by appellant. In *Criminal Case No. 8173*, it found appellant guilty of rape.[7] In *Criminal Case No. 8174*,

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[7] Article 266-A. *Rape; When and How Committed — Rape is Committed.* —

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

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appellant was adjudged guilty of acts of lasciviousness when he inserted his thumb into the victim's vaginal orifice one afternoon during the second week of October 1997. In *Criminal Case No. 8175*, appellant was convicted of acts of lasciviousness for having fondled the vagina of the victim in the evening of the same day. In *Criminal Case No. 8176*, the trial court found appellant guilty of rape in carrying Marife around the room of their house with his penis "touching" her vagina during the first week of November 1997. In *Criminal Case No. 8177*, appellant was convicted of acts of lasciviousness when he inserted his middle finger into the vagina of the complainant at another time during the first week of November 1997. The trial court concluded:

"WHEREFORE, in view of the foregoing, judgment is rendered finding accused Remario Palma *y* Romera, *alias* 'Mario' GUILTY of two counts of rape and three counts of acts of lasciviousness perpetrated against one Marife Palma.

"As a consequence of this judgment and as provided for in Art. 266-B of the Revised Penal Code, accused Palma being the victim's guardian and uncle and therefore, a relative within the third degree of affinity, each count of rape committed by him is punishable by death, which penalty shall be enforced by way of lethal injection.

"For the counts of acts of lasciviousness, he shall serve the penalty of imprisonment for a period of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum for each count. He shall serve his sentence for these three crimes successively.

"Accused is also ordered to pay private complainant a civil indemnity of One Hundred Fifty Thousand (₱150,000.00) Pesos for

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a) Through force, threat, or intimidation;

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

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

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

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the two counts of rape committed by him; ₱30,000.00 for the three acts of lasciviousness and moral damages in the amount of Two Hundred Thousand (₱200,000.00) Pesos.

"Any period of detention served by accused shall be credited in his favor conformably with Art. 29 of the Revised Penal Code.

"He shall serve his sentence at the Bureau of Prisons facility at Muntinlupa City, Metro Manila."[8]

Appellant, in an automatic appeal of his case to this Court, would contend that —

"I

"THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES OF RAPE AND ACTS OF LASCIVIOUSNESS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

"II

"THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH TO ACCUSED-APPELLANT DESPITE THE INACCURATE DESIGNATION IN THE INFORMATION OF THE RELATIONSHIP BETWEEN THE VICTIM AND THE ACCUSED."[9]

According to appellant, the testimony of Marife Palma should not be given credence for it would be inconceivable, as well as contrary to human experience, for her to be able to accurately say that "only a part [two-thirds] of the penis [has been] inserted into her vagina." With respect to the second conviction for rape, appellant argues that the mere epidermal contact or a slight brush or a scrape of the penis on the vagina or *mons pubis of the victim* is not, and does not constitute, rape.[10] Appellant seeks, at all events, the reversal of his conviction in each of the six criminal cases, including the three counts for acts of lasciviousness, claiming that the charges against him

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[8] *Rollo*, pp. 38-39.

[9] *Rollo*, p. 73.

[10] *Rollo*, p. 84.

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have all been fabricated. Finally, appellant questions the imposition on him by the trial court of the death penalty.

Like the court *a quo*, this Court finds the testimony of Marife Palma to be forthright, spontaneous and unflawed in almost all material respects.

In open court, Marife testified:

"Q Now in the second week of October 1997, in the morning do you recall where you were at that time?

"A I remember, sir.

"Q Where were you?

"A I was in our house, sir.

"Q Where is this house of yours situated?

"A It is situated, sir, in Macasihi, Nasipit, Agusan del Norte.

"Q While you were there in your house Miss Palma, do you recall of any unusual incident?

"A I can recall, sir.

"Q What was the unusual incident about?

"A I was raped, sir.

"Q Who raped you?

"A Remario Palma.

"Q Remario Palma whom you pointed to a while ago?

"A Yes, sir.

"Q Where were you raped?

"A In the bedroom of our house, sir.

"Q How did the accused rape you?

"A He made me lie down with my legs separated.

"Q Where, what part of the house?

"A On the floor, sir.

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"Q You mean, there was no bed at that time?

"A There was none, sir.

"Q While he made you lie down, what did he do next if any?

"A He inserted his penis into my vagina.

"Q And what did you feel?

"A I felt pain, sir.

"Q Did the whole penis penetrate your vagina?

"A Only part of the penis of the accused was inserted into my vagina, sir. (Witness indicating about 2/3 of her middle finger.)

"Q Now after that, after he inserted his penis into your vagina what else if anything happened to you?

"A He kissed my lips repeatedly.

"Q What else, what other parts of your body was being touched?

"A He licked my neck and my upper chest.

"Q In the afternoon at that same week of October 1997, do you recall where [you were] at that time?

"A I was in the house, sir.

"Q And while you were there, in your house, what happened if any?

"A Again, he raped me, sir.

"Q Who raped you?

"A Remario Palma.

"Q This Remario Palma whom you pointed to a while ago?

"A Yes, sir.

"Q Where were you raped?

"A In the same bedroom, sir where he raped me in the morning of that day.

"Q How did he rape you in the afternoon on that same date?

"A He inserted his thumb into my vagina, sir.

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"Q After that what happened next?

"A He licked my vagina, sir.

"Q And after that, what happened next?

"A After that he stopped.

"Q In the evening of October 1997, second week of October 1997, do you recall where [you were]?

"A Again I was in our house, sir.

"Q Where in your house?

"A In our bedroom, sir.

"Q Now, while you were there what happened, if any?

"A The accused was drunk at that time, I was already lying down sleeping, and then, I felt the accused fondling me starting from my legs upward to my vagina.

"Q After he touched you what did he do next, if any?

"A He fell asleep.

"Q Now in the first week of November 1997, do you recall where [you were]?

"A I remember, sir.

"Q Where were you?

"A I was in our house, sir.

"Q While you were there in your house, what happened, if any?

"A Again, the accused raped me.

"Q Who raped you?

"A Remario Palma, sir.

"Q Remario Palma whom you pointed to a while ago?

"A Yes, sir.

"Q Where were you raped?

"A Also in the bedroom, sir.

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"Q Now, how did he rape you?

"A He took off my shorts and underwear, and he also took off his shorts and brief then he carried me by raising me up with his two arms with my head on his shoulder.

"Q Now, after he carried you Miss Palma, what did he do next at that time?

"A He brought me to our living room, and while he was carrying me, going around our living room, my vagina and his penis were touching each other.

"Q After his penis touched your vagina, what did he do with his penis?

"A He let his penis touch my vagina.

"Q That was the only thing that he did?

"A Yes, sir.

"Q Now in the afternoon, in the first week of November 1997, do you recall where [you were]?

"A I was in the house, sir.

"Q While you were in your house, what happened?

"A Again he raped me, sir.

"Q Where did he rape you?

"A In the same bedroom where the previous incidents occurred.

"Q By the way, how many rooms are there in your house?

"A Only one bedroom, sir.

"Q As big as this chamber of the Honorable Court?

"A Our bedroom is as big as the chamber of the Honorable Court.

"Q How did your father rape you?

"A He took off my shorts and panty and he inserted his thumb into my vagina.

"Court:

Let's make of record that the witness is crying.

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"Q Now, what did he do with his finger?

"A (While the witness mentioned the word '*kumangko*' which in English is thumb she indicated her middle finger).

He just inserted his middle finger into my vagina.

"Q After he inserted his finger into your vagina, what did he do next, if any?

"A He licked his middle finger."[11]

It would be difficult to accept appellant's claim that the complaints were merely instigated by the victim's mother. No strong ill-motive was given to account for such a possibility. Neither was it shown that Marife herself could be so morally debased or psychologically wicked as to freely concoct unusual tales of sexual exploitation against appellant. Between the categorical testimony of the young girl and the bare denial of the appellant, there was scarcely any real contest.

Except in *Criminal Cases No. 8176* and *No. 8177*, the trial court correctly found appellant guilty of the crimes with which he was charged. In *Criminal Case No. 8176*, the crime of rape was not committed. In *People v. Arce, Jr.*,[12] the victim asserted that the man had touched her or "*idinidikit yung ari niya*;" there, the Court refused to hold, in the absence of convincing proof that the penis had slid into the female organ, that rape was committed. In *People v. Francisco*,[13] the Court also declined to convict an accused of consummated rape when it had failed to discern from the testimony of the complainant that some degree of penile penetration was attained even when he made pumping motions. Marife, in the case at bar, merely stated that she was carried around the sala with appellant's penis "touching" her vagina. With this bare statement, it would not be right to conclude that the act of the penis "touching" the vagina was an entry or penetration, even slightly, of the *labia*

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[11] TSN, 17 July 2000, pp. 15-20.

[12] G.R. No. 139064-66, 06 September 2001, 364 SCRA 550.

[13] G.R. No. 135201-02, 15 March 2001, 354 SCRA 475.

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majora or the *labia minora* of the *pudendum*. In *Criminal Case No. 8177*, the first incident of insertion of appellant's finger into the victim's vagina during the second week of October 1997 could only render appellant guilty of an act of lasciviousness. The second incident of the insertion of appellant's middle finger, however, during the first week of November 1997, constituted consummated *rape through sexual assault* under Republic Act No. 8353 or "The Anti-Rape Law of 1997,"[14] which took effect on 22 October 1997; this law, in part provides:

"Art. 266-A. *Rape; when and how committed.* — Rape is committed.

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

"a) Through force, threat, or intimidation;

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

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

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

"2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." (italics supplied)

In consonance with paragraph 1, above, the contact of the male penis with the woman's vagina is referred to as "rape by sexual intercourse," while the sexual abuse under paragraph 2 is categorized as "rape through sexual assault."[15]

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[14] Amended Title Eight of the Revised Penal Code; new provisions of RA 8353 are incorporated as Chapter Three of Title Eight.

[15] In *People v. Soriano*, G.R. No. 142779-95, 29 August 2002, 388 SCRA 140, it was ruled that the appellant is guilty of rape through sexual assault when he inserted his finger into the vagina of his victim. This is

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Appellant contends that the trial court has erred in imposing the death penalty. The argument has merit. Republic Act No.

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one of the significant amendments introduced by the new law, thus making the insertion of any instrument, object, or any part of the human body other than the sexual organ into the genital or anus of another person as rape and not merely acts of lasciviousness.

The Congressional deliberations on the bill could be helpful; here are some excerpts from Senate Deliberations of 24 July 1996 on Senate Bill No. 950 (now Republic Act 8353 or "The Anti-Rape Law" of 1997):

Senator Sotto: Mr. President, at the onset, may I state that I am in full support of this bill and its intentions x x x.

Having said that, may I now be allowed to ask a few questions x x x which pertains to the consummation of the crime of rape. Section 3, paragraph 2 (*referring to the senate bill draft*) states: The slightest contact of any part of his body other than the sexual organ or any object or instrument, or any part of the animal used by the offender with the genital or anus of the offended party under paragraphs (3) and (4) of Section 2 hereof shall consummate the crime of rape.

I am concerned, Mr. President, with the use of the phrase "slightest contact." May I know what is meant by this phrase and how this is to be construed? For instance, does this require skin-to-skin contact between the offender and the offended party?

x x x x x x x x x

Senator Shahani: Mr. President, before I answer that question, I just would like to inform our colleague from Quezon City that we are using the version of the bill of June 3, 1996 where we have left the gender-free approach to rape and we are just saying "a woman." So here, we say the "slightest contact of any part of the body of a man."

x x x x x x x x x

Yes, Mr. President the slightest contact of any part of the body of a man with the genital or anus of a woman under paragraphs (3) and (4) of Section 2 shall consummate the crime of rape.

x x x x x x x x x

Senator Santiago: Mr. President, when the principal sponsor and I were participating in the Committee deliberations, the principal author, Senator Shahani, already expressed concurrence to a possible amendment that will add the following clause to paragraph 3, which is now the subject of the distinguished Senators' comments. Section 3 redefines rape as committed by any person who shall *insert any part of his body* other than the sexual organ or who shall introduce any object or instrument into the genital or anus of another. (Italics supplied).

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7659[16] imposes the death penalty when the rape victim is under eighteen years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree or the common law spouse of the victim's parent. Being qualifying circumstances; it is essential that the age of the victim and her affiliation or kinship with the accused are properly alleged and duly proven.

While the age of the victim was alleged in the information, the records are bereft, however, of testimonial or documentary evidence, such as a birth certificate, or even documents of less import, that would substantiate the age of the complainant. Nor could the qualifying circumstance of relationship be considered. Appellant was alleged in the Informations to be the biological father of Marife but, during the trial, it was established that he actually was just Marife's uncle by affinity.

Under Article 266-B, conviction for the crime of rape through sexual intercourse (in *Criminal Case No. 8173*) is punished by *reclusion perpetua*; while, rape through sexual assault (in *Criminal Case No. 8177*) carries the penalty of *prision mayor*. The latter being a penalty composed of three periods, it shall be imposed in its medium period (8 years and 1 day to 10 years) since there is neither a mitigating nor an aggravating circumstance that can be appreciated.[17] Applying the Indeterminate Sentence Law, the minimum to be imposed is *prision correccional*, anywhere in its entire range, being the penalty next lower in degree prescribed by the Code, with *prision mayor*, anywhere within its medium period, as the maximum penalty. In *Criminal Cases No. 8174, No. 8175,* and *No. 8176*, Section 5 of Republic Act No. 7610,[18] a special law, imposes the penalty of *reclusion temporal* in its medium period, when the victim is below 12

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[16] "An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes."

[17] Article 64 of the Revised Penal Code.

[18] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination.

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years old, for an act of lasciviousness. The age of the victim not having been duly established, appellant shall instead be held accountable, conformably with the same statute, under Article 336 of the Revised Penal Code. The penalty for acts of lasciviousness under the Code is *prision correccional*. Applying the Indeterminate Sentence Law, the minimum penalty to be imposed is *arresto mayor*, in any of its period, being the penalty next lower in degree prescribed by the Code, with *prision correccional*, anywhere within the range of its medium period, as the maximum penalty.

Relative to the amount of damages, the complainant is entitled in Criminal Case No. 8173 to ₱50,000.00 civil indemnity and ₱50,000.00 moral damages for rape through sexual intercourse, in Criminal Case No. 8177 to ₱30,000.00 civil indemnity and ₱30,000.00 moral damages for rape through sexual assault, and in Criminal Cases No. 8174, No. 8175 and No. 8176 to ₱20,000.00 civil indemnity and ₱20,000.00 moral damages in each of said criminal cases for acts of lasciviousness.

WHEREFORE, the assailed decision of the trial court is AFFIRMED with MODIFICATION; appellant Remario Palma *y* Romero is hereby found GUILTY:

1. In *Criminal Case No. 8173,* of rape through sexual intercourse, and he is sentenced to suffer the penalty of *reclusion perpetua*;

2. In *Criminal Case No. 8174,* of acts of lasciviousness, and he is sentenced to suffer the indeterminate penalty of from 3 months and 1 day of *arresto mayor*, as minimum, to 3 years and 1 day of *prision correccional*, as maximum;

3. In *Criminal Case No. 8175,* of acts of lasciviousness, and he is sentenced to suffer the indeterminate penalty of from 3 months and 1 day of *arresto mayor*, as minimum, to 3 years and 1 day of *prision correccional*, as maximum;

4. In *Criminal Case No. 8176,* of acts of lasciviousness, and he is sentenced to suffer the indeterminate penalty of from 3 months and 1 day of *arresto mayor*, as minimum, to 3 years and 1 day of *prision correccional*, as maximum; and

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5. In *Criminal Case No. 8177,* of rape through sexual assault and to suffer the indeterminate penalty of 3 years, 3 months and 1 day of *prision correccional*, as minimum, to 8 years and 11 months and 1 day of *prision mayor*, as maximum.

Appellant is likewise ordered to pay complainant, as so heretofore explained, a total of ₱140,000.00 civil indemnity and ₱140,000.00 moral damages or a grand total of ₱280,000.00 for all the above criminal cases. Costs *de oficio*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 149227. December 11, 2003]

LA SALETTE COLLEGE, Represented by Its President, FR. ROMEO GONZALES, MS; and JESUS T. BAYAUA, Dean of Student Services, *petitioners, vs.* **VICTOR C. PILOTIN,** *respondent.*

SYNOPSIS

Respondent filed a complaint and asked for the issuance of a writ of preliminary mandatory injunction to compel petitioner College to re-admit him, as he was denied re-enrollment for the second semester of the school year 1993-1994 despite repeated pleas. An Order was issued directing petitioner College to admit respondent, but still it refused to re-admit the latter. Thus, respondent amended his complaint and concentrated on damages. The trial court ruled in favor of respondent. Petitioners