

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARTEMIO SORIANO, ACCUSED-APPELLANT.***G.R. No. 135027. July 03, 2002*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-135027/>**PER CURIAM:**

This case is here for automatic review of the decision of the Regional Trial Court, Branch 67, Bauang, La Union,[1] finding accused-appellant Artemio Soriano, alias “Iniong”, guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of death and to indemnify the offended party, May Ann N. Fontillas, in the amount of P100,000.00 without subsidiary imprisonment in case of insolvency.

The information against accused-appellant Artemio Soriano alleged —

“That on or about and sometime in the month of May, 1995, in the Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously ha[d] sexual intercourse with one MAY ANN FONTILLAS, 6 years old, daughter of Mr. and Mrs. Antonio Fontillas, against her will and consent, to the damage and prejudice of the offended party.

“CONTRARY TO LAW.”[2]

Upon being arraigned, accused-appellant pleaded not guilty, whereupon he was tried.

Four (4) witnesses were presented by the prosecution against him, namely, Antonio and Mirasol Nadua Fontillas, parents of May Ann; Dr. Marida Poligrates, the physician who examined May Ann; and May Ann herself.

Complainant May Ann Fontillas is the daughter of spouses Antonio and Mirasol Fontillas. She was six (6) years old and in Grade 1 at the time of the incident. At the time she took the witness stand, she was seven (7) years old. She testified that she was a resident of Barangay Buy-otan in Bauang, La Union. Sometime in May 1995, after watching television with her brothers Mark and Marvin in the house of their grandfather Ileodoro Nadua, she went home, but her brothers stayed behind. The house of her grandfather was about 300 meters away from theirs. On her way home, May Ann met accused-appellant Artemio Soriano, whom she called “Manong Iniong.” But instead of accompanying her home, accused-appellant took her to a dry creek, made her lie down, and then removed her shorts and underwear. He then applied saliva on May Ann’s private parts and had sexual intercourse with her. May Ann said she felt pain as accused-appellant forced himself upon her. Afterwards, he took her home.

May Ann claimed that accused-appellant raped her several times more in his house, enticing her to go there by giving her candies and lollipops. She said that accused-appellant had warned her not to tell her mother or she would be harmed. May Ann said she had difficulty urinating as a result of her sexual molestation. She said she was afraid to report these incidents to her mother because she might whip her. Nonetheless, May Ann said, her mother came to know about her misfortune because on one occasion she (May Ann) had a quarrel with Baby Cake, accused-appellant’s five-year old sister. Her mother overheard Baby Cake say to May Ann, “Sika ngay iniyot na ka ni Manong ko.” (“How about you? My brother had sexual intercourse with you.”) When confronted by her mother, May Ann said she confirmed what Baby Cake had said.[3]

May Ann's parents, Antonio and Mirasol, both knew accused-appellant, who was called "Iniong" in their barangay, having been their neighbor for 10 years, whose house was only 20 meters from their house. Mirasol testified that May Ann is her daughter and that she was turning seven years old at the time Mirasol testified on July 9, 1996. Mirasol said that on August 23, 1995, while she was doing some household work, she overheard Baby Cake tell May Ann "Sika ngay iniyot na ka ni Manong ko." ("How about you? My brother had sexual intercourse with you.") Upon hearing this, Mirasol said, she talked with May Ann and the latter admitted that she had indeed been raped by accused-appellant. According to Mirasol, she asked Baby Cake what had happened and the latter told her that she saw accused-appellant and May Ann having sexual intercourse in accused-appellant's house. May Ann told her mother that she had been raped by accused-appellant near the creek and many times in his house.[4]

Testifying in his turn, Antonio said that when he arrived home from work at about 5 o'clock in the afternoon, his wife Mirasol told him what had happened to May Ann. May Ann herself told him that accused-appellant had molested her, the first time near the creek and the second time in accused-appellant's house. Antonio therefore set out to look for accused-appellant, but he failed to locate him. Accused-appellant's parents expressed surprise when told about the rapes committed by their son and said that the latter could not do such a thing. Antonio said that he and his wife Mirasol have five children: Mark Anthony, Marvin, May Ann, Madel and Daniel. May Ann was six years old. From May to August of 1995, Antonio said he noticed that May Ann was having vaginal pains and difficulty sleeping. But, he said, he did not ask May Ann as he thought that she was merely having some urinary problems.[5]

The following day, August 24, 1995, Antonio narrated the matter to Richard Mitre, a barangay kagawad, whereupon Mitre accompanied May Ann and Antonio to the Bauang Police Station where they gave their sworn statements.[6] Later, they proceeded to the Naguilian District Hospital in Naguilian, La Union where May Ann was examined. On August 25, 1995, Antonio C. Fontillas filed, in behalf of his daughter, a complaint[7] for rape against accused-appellant before the Regional Trial Court of Bauang, La Union.

On the other hand, Mirasol said that she was disturbed by what had happened to her daughter, who could hardly sleep at night and had difficulty urinating. According to Mirasol, the rape incident caused her family untold misery as they had become the talk of the town. Mirasol also said that from February to May of 1995, accused-appellant would usually fetch her daughter. She said that she could not believe that accused-appellant could commit such dastardly acts because her family considered him a relative. From April to May, Mirasol said she noticed that May Ann had vaginal pains and difficulty urinating. She did not ask May Ann about it, thinking that it was just a natural experience for children.[8]

Dr. Marida R. Poligrates of the Naguilian District Hospital in Naguilian, La Union examined May Ann on August 24, 1995. She found healed lacerations on May Ann's vagina. She issued a medical certificate (Exh. "A") [9] which states that the victim had a "vaginal tear, healed, 3, 6, 9 o'clock positions, [and that the] introitus admits [the] 5[th] finger with ease." In addition, she made an illustration (Exh. "C") [10] of May Ann's vaginal lacerations at the 3, 6, and 9 o'clock positions (Exhs. "C-1", "C-2", "C-3", respectively). According to her, she submitted semen sample for analysis, but the hospital had no facilities for examining it. She said that the healed lacerations could have been caused by the insertion of a blunt instrument or an erect penis about two weeks before the examination. She explained that the vagina of a child is normally firm but there would be lacerations and bleeding the moment any insertion with force was applied to it. The usual healing period for vaginal lacerations is from two to three days and complete healing occurs in ten days. May Ann's vaginal lacerations had completely healed as there was no more inflammation and the color had become pinkish at the time of the examination.[11]

Accused-appellant Artemio Soriano, 26 years old, single, and a resident of Buy-otan in Bauang, La Union,

anchored his defense on denial and alibi. According to him, he was a stay-in househelp of Clarita Tezano from January 1993 up to August 1995. In addition to household work, he said he planted tobacco as Tezano was engaged in buying and selling of tobacco. He admitted he has a sister, then aged 5, named Baby Cake, but he denied having raped May Ann. He also denied he was close to her or that he gave her candies and guavas. He denied having seen May Ann go to his house and play with his younger sister Baby Cake, claiming he was then in the house of Clarita Tezano. He denied further that he had been investigated by the barangay chief and tanods in the house of Ileodoro Nadua or that he had been confronted by the Fontillas about the rape of their daughter May Ann. He claimed that it was only in 1992 that he watched television in the house of Ileodoro Nadua. He also admitted that there was a creek between the house of Ileodoro Nadua and the Fontillas.

Three other witnesses testified for the defense, namely, Arcadio Marzo, chief barangay tanod of Barangay Buy-otan in Bauang, La Union; Pio Ramos, President of SUNA Zone 4 and a barangay tanod in said barangay; and Clarita Tezano, accused-appellant's employer.

Arcadio Marzo, 57 years old, a resident of Buy-otan and the chief barangay tanod since 1991, testified that Antonio Fontillas and Ileodoro Nadua (Antonio's father-in-law who was also a barangay tanod) invited him to Nadua's house where he was informed that May Ann had been raped by accused-appellant. When May Ann and her mother arrived in the house, he asked May Ann what had happened to her, but she kept quiet. Only her mother answered his questions. Marzo said he stayed for an hour in Nadua's house, during which he and Pio Ramos repeatedly asked May Ann what had happened to her but she just remained silent.[12]

Pio Ramos, 45 years old, a resident of Buy-otan and a barangay tanod, testified that on August 24, 1995, tanod chief Arcadio Marzo, Antonio Fontillas, barangay kagawad Richard Metri, and Ileodoro Nadua went to see him in his house and asked him to join them in Nadua's house. There, he learned of what had happened to May Ann through her mother Mirasol. May Ann was asked thrice by Arcadio Marzo, "My child, why, did Iniong [do] anything to you?" But May Ann allegedly did not say anything.[13]

Clarita Tezano, 52 years old, married, and a resident of Buy-otan, testified that she knew accused-appellant because he was her neighbor. She was engaged in the business of buying and selling tobacco. Accused-appellant was employed by her family as a househelp from January 1993 to August 18, 1995. She said that, during the period of two years that he was with her family, accused-appellant did not go home to his house. She said accused-appellant was a good man and that he had done nothing wrong against her family or anyone in the barangay.[14]

Mirasol Fontillas was presented to rebut the testimony of accused-appellant.[15]

On July 23, 1998, the trial court rendered a decision finding accused-appellant guilty of the crime of statutory rape as follows:

"WHEREFORE, judgment is hereby rendered finding the accused ARTEMIO SORIANO guilty of the crime of rape under Art. 335, par. 3 of the Revised Penal Code, as amended, in conjunction with sub-par. 4 thereto, and consequently sentencing him the penalty of DEATH by lethal injection and [to] indemnify the private complainant the sum of P100,000.00 without subsidiary imprisonment in case of insolvency.

"SO ORDERED." [16]

Hence, this appeal.

First. Findings of facts of the trial courts carry great weight and will not be disturbed on appeal unless shown to be contrary to facts or circumstances of weight and substance in the record. For, generally, the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by trial courts, because of their unique

opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination.[17] In this case, we find no reason to depart from this settled rule. The evidence fully sustains the trial court's findings and its conclusions.

May Ann was six years old at the time she was raped. At such a tender age, she could not have concocted or invented a tale of sexual assault perpetrated by accused-appellant if this was not true.[18] She positively identified accused-appellant as the person who had sexually molested her. To appreciate her testimony, it is helpful to quote from her testimony below:

“Q

Do you know the accused Artemio Soriano?

A

Yes, sir.

Q

Now, do you know how is he called or his nickname?

A

Iniong, sir.

Q

Now, how long have you known Artemio Soriano or Iniong?

A

Long time, sir.

xx xx xx xx

Q

How do you call him?

A

I call him Manong Iniong, sir.

xx xx xx xx

Q

By the way, if that Artemio Soriano is in the courtroom could you point to him?

A

Yes, sir.

Q

Where is he?

A

(Witness pointing to a man in blue and yellow T-shirt who answered by the name Artemio Soriano)

xx xx xx xx

Q

Now, when you were watching TV, by the way, do you watch TV?

A

Yes, sir.

Q

Where do you watch TV?

A

In the house of Lolo Ileodoro, sir.

Q

Where is the house of your Tatang Ileodoro?

A

Near our house, sir.

Q

Do you often watch TV in the house of your Tatang or Lolo Ileodoro?

A

Yes, sir.

Q

Now, last year, do you remember having watched TV together with your brothers and sisters? In the house of Lolo Ileodoro?

A

Yes, sir.

Q

And do you remember that time you were with your brothers and sister that watched TV?

A

Mark and Marvin, sir.

xx xx xx xx

Pros. Datlag:

After watching TV when you went home...

Court:

The question should be like this.

Q

After watching TV in the house of your Lolo Ileodoro, did you go home immediately after that?

A

Yes, sir.

Court:

All right Fiscal.

Pros. Datlag:

Q

At that night that you watched TV when you went home, did you see Artemio Soriano?

A

Yes, sir.

Court:

Where?

Pros. Datlag:

Where did you see him?

A

I saw him outside, sir.

Q

Now, did you go home that night immediately that night after watching TV?

A

I like to go home but Iniong insisted that I should not go home yet, sir.

Q

So, you did not go home immediately because Artemio Soriano insisted that you don't have to go home yet?

A

Yes, sir.

Q

When you went home, who was your companion, was Artemio Soriano with you?

A

Yes, sir.

Q

And you were only two (2) who went home because he told you that he will bring you home?

A

Yes, sir.

Q

Now, on your way home together with Artemio Soriano, do you still remember something that he did to you?

A

There was, sir.

Q

Now, will you please tell us what did Artemio Soriano do to you?

A

He brought me to the creek where the sleds pass by, sir.

Q

When you were there at that place, what did Artemio Soriano do?

A

He undressed me, sir.

Q

By the way, what were you wearing at that time?

A

Pawad (Sando), sir.

Q

How about your lower wear?

A

Panty and short pants, sir.

Q

You said that Artemio Soriano undressed you, now, were you totally undressed?

A

Only my shorts and panty, sir.

Q

After he removed your panty and shorts, what did he do?

A

He spat at my vagina, sir.

Q

Now, will you demonstrate how did he spat on your vagina?

A

He put first on his hand and then applied it to my vagina, sir.

Q

What was your position at that time that Artemio Soriano put his saliva at his hand and then applied it in your vagina?

A

I was lying, sir.

Q

Now, after Artemio Soriano put his saliva at his hand and then applied it to your vagina, what did he do after that?

A

He inserted his penis in my vagina, sir.

Q

Now, how did he put his penis in your vagina?

A

I was lying, sir.

Q

How about Artemio Soriano?

A

He was sitting, sir.

Q

When he put his penis and you were lying down, did he go on top of you?

A

Yes, sir.

Q

And did he spread your legs?

A

Yes, sir.

Q

Now, what did you feel when his penis was inside your vagina?

A

It was painful, sir.

Q

Was that the first time Artemio Soriano did that to you?

A

Yes, sir.

Q

Now, after Artemio Soriano has inserted his penis into your vagina, did you observe what he was doing?

A

Iyotennak (he is having sexual intercourse with me, sir, he was pumping).

Q

Did you feel pain while Artemio Soriano was on top of you and abusing you?

A

Yes, sir.

Q

After he went down, what transpired?

A

He brought me home, sir.

Q

Now, after that incident, do you recall if Artemio Soriano has repeated that again?

A

Yes, sir.

Q

And where did he do that again?

A

In their house, sir.

Q

What time was that, was [it] at night again?

A

Daytime, sir.

Q

Why were you in that house, who brought you there in their house?

A

Artemio Soriano, sir.

Q

What did he tell you when he brought you to their house?

A

He said you come with me, I will give you candies.

Q

When you were in their house, what did he do to you?

A

Iniyotnak (he sexually abused me, sir).

Q

[Were] there persons in their house at that time?

A

None, sir.

Q

And will you again tell us how did he rape you when you were [there] in their house?

A

He spat at my vagina again, sir.

Q

When you said he spat on your vagina, he spat on his hand and applied it in [your] vagina?

A

Yes, sir.

Q

Was there a room in their house where you went?

A

None, sir.

Q

Is it just at the floor of their house?

A

Yes, sir.

Q

And after he applied his saliva into your vagina, what did he do?

A

He spread my legs again, sir.

Q

And after spreading your legs, what did Artemio Soriano do?

A

He went on top of me, again, sir.

Q

And when he was on top of you, he again inserted his penis into your vagina?

A

Yes, sir.

Q

By the way, did he give you candies as he promised?

A

Yes, sir.

Q

After these two incidents, the first one at the pathway of the sleds near the creek and the second in his house, what did Artemio Soriano tell you?

A

He told me that I should not tell my mother.

Q

So, you did not tell your mother?

A

Yes, sir.

Q

Now, how many times did Artemio Soriano did all these things to you?

A

Many times, sir.

Q

And where [did] he do these to you?

A

In their house, sir.

Q

And everytime that he calls you to their house, what does he say?

A

He said, you come to our house and I will give you candy.

Q

And you always go also when he told you that?

A

He pulls me, sir.

Q

And everytime he pulls you to their house, he always rapes you?

A

Yes, sir.

Q

Was there any occasion that Artemio Soriano fetched you in your house?

A

Yes, sir.

Q

And what does he tell you when he fetch you to their house?

A

“You come and I will give you lollipop/candy”.

Q

And you always go?

A

No.

Q

You said, he did these to you many times, do you know how to count?

A

Yes, sir, I know.

Q

Was there ten (10) times? Was there ten times [that] he did these to you?

A

No, but many times, sir.

xx xx xx xx

Q

After going to the Police, you went to the Doctor of Naguilan and your vagina was examined? After Artemio Soriano had abused you, did you not complain of any pain to your father or to your mother?

A

I told them, sir.

Q

What part of your body was painful?

A

Here sir (witness pointing her vagina).”[19]

Accused-appellant presented the barangay tanods who claimed that they had repeatedly asked May Ann what

accused-appellant had done to her but May Ann never said a word. But then May Ann did not really tell anyone what had happened to her until Baby Cake in a quarrel said that she had seen her brother, accused-appellant, having sexual intercourse with complainant. The reason was that she was afraid to tell anyone about her harrowing experience.

Accused-appellant also points out discrepancies in the testimonies of the prosecution witnesses. It is said that Antonio Fontillas testified on cross-examination that May Ann told him that the first sexual assault took place near the creek at nighttime after she watched television in the house of a certain Adelina Cundran.[20] However, Mirasol Fontillas testified that her daughter told her that the first sexual assault happened in the house of accused-appellant, between 9 o'clock to 10 o'clock in the morning, after accused-appellant had fetched May Ann from their house.[21] On the other hand, May Ann testified that the first sexual assault took place near the creek (waig) after she watched television in the house of her grandfather Ileodoro.[22]

The inconsistencies pointed out refer, however, to minor collateral matters. They do not detract from May Ann's testimony that she had been raped by accused-appellant in May 1995. Antonio testified that before going to the police station, he asked May Ann about the incidents and the latter told him that the first rape was committed sometime in May of 1995 near the creek and the second took place in accused-appellant's house.[23] The discrepancy in Antonio's testimony as to the place where May Ann came from after watching television is insignificant. What is important is that it was proven that May Ann was raped near a creek.

On cross-examination, Mirasol was asked when and where the first sexual assault against May Ann actually took place — whether in the evening near the creek or in the morning in the house of the accused-appellant. She answered that the first was in accused-appellant's house but it also happened near the creek.[24] This inconsistency is insignificant because, as told to her, accused-appellant fetched May Ann and took her to his house where he raped her. May Ann testified that accused-appellant had been molesting her. The variance as to whether the rape that took place in the house was the first incident or whether it occurred on a later date is of no consequence as the fact is that May Ann was raped by accused-appellant.

In any event, the testimonies of the parents are merely corroborative and may even be dispensed with. May Ann's testimony is in itself sufficient to prove accused-appellant's guilt. It is true that May Ann failed to give the date she was first raped by the accused-appellant; the date when she and Baby Cake quarreled; the date when accused-appellant fetched her and took her to his house and raped her; and the date when she was questioned by Judge Romeo V. Perez of the Municipal Trial Court of Bauang, La Union concerning her sworn statement. She likewise failed to explain whether the contents of her sworn statements were translated in Ilocano and how her father is related to her Lolo Ileodoro, whose house is about 15 meters away from her house. However, these matters are not material and do not affect the veracity of her assertions.

More importantly, May Ann stood her ground after being subjected to rigorous cross-examination as she reiterated that she and her brothers watched television in the house of their Lolo Ileodoro; that the first sexual assault occurred near a creek and she was then alone with accused-appellant because her two brothers stayed behind in their grandfather's house; that after accused-appellant had abused her, she went home and tried to sleep but she could not sleep; that she did not play with her brother and sister the following day after she was abused; that accused-appellant used to fetch her from their house; that she narrated her ordeal to her parents in their house; that she did not discuss with her parents what matters she would testify to in court; and that after being shown a copy of her sworn statement, she admitted having affixed her signature on it. On re-direct examination, May Ann testified that she finally related the incident to her parents only after her mother overheard her quarrel with accused-appellant's sister. She also said that her mother did not tell her what to say when she took the witness stand as she would just narrate what she remembered and what actually happened.[25]

The failure of May Ann to give the specific date when the rape took place does not affect her credibility because the discrepancies refer to details which are not elements of the crime.[26] Moreover, May Ann had no motive to falsely testify against accused-appellant, who was a long time neighbor of and regarded as a relative by her family. As there is no evidence to show any improper motive for filing the rape case, May Ann's testimony must be accepted and given full faith and credit.[27]

Against complainant's testimony, as set forth before, and the testimonies of her parents, the bare denial of accused-appellant and his defense of alibi cannot prevail. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[28] For alibi to prosper, not only must accused-appellant prove that he was in another place at the time of the commission of the crime, but also that it was impossible for him to be at the crime scene at the appointed time.[29] In this case, accused-appellant claimed that from January 1993 to August 1995, he was employed as a househelp of Clarita Tezano. Tezano testified that the only time accused-appellant left her house was in August 18, 1995. But it was shown that Clarita Tezano's house was within the same barangay where the rape took place. Even assuming that he worked in Clarita Tezano's house for two years, it was not impossible for accused-appellant to commit the crime.

Second. Accused-appellant argues that the findings of hymenal lacerations on May Ann are not conclusive in proving that the same were caused by sexual intercourse.

This argument has no merit. While Dr. Poligartes testified that there are many reasons for the presence of hymenal lacerations, e.g., forcible sexual intercourse, insertion of a blunt object such as a ballpen, or a finger, or the fall from the stairs of a child without underwear,[30] May Ann's testimony is corroborated by the findings of healed hymenal lacerations at 3, 6, and 9 o'clock positions. In any case, a medical examination and a medical certificate are not indispensable elements for conviction in rape cases,[31] so long as the complainant's testimony is credible. In fact, the rupture of the hymen or vaginal lacerations are not necessary for rape to be consummated.[32]

Third. Accused-appellant likewise raises a number of legal issues. Under Sections 6 and 11 of Rule 110 of the Rules on Criminal Procedure, an information is sufficient if it states the statutory designation of the offense and the acts or omissions constituting the same, since, in rape cases, the time of the commission of the crime is not "a material ingredient of the offense." It is thus sufficient if it is alleged that the crime took place "as near to the actual date at which the offense(s) are committed as the information or complaint will permit." [33] Here, the information alleged that "on or about and sometime in the month of May, 1995," accused-appellant, "with lewd design and by means of force and intimidation x x x had sexual intercourse with May Ann."

However, as the trial court ruled, accused-appellant can only be held liable for the rape committed near the creek and not also for those which he allegedly committed in his house, even if the same were proven during the trial because no informations were filed against him for the latter crimes. The accused has a right to be informed of the nature and cause of the accusation against him. He cannot be convicted of a crime with which he has not been charged even if the evidence shows that he committed the same.[34]

Art. 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 (effective December 31, 1993), provides that the death penalty shall be imposed if the offender committed the crime of rape against a child below seven (7) years old. Accused-appellant contends, however, that the trial court erred in imposing the death penalty because, while the information alleged that May Ann was six years old at the time of the rape, the prosecution failed to prove her age during trial with certainty and clearness. Citing the cases of *People vs. Javier*[35] and *People vs. Liban*, [36] accused-appellant insists that the birth certificate of May Ann or any other documentary evidence to prove her age should have been presented.

In the first case cited by accused-appellant, *People vs. Javier*,^[37] the accused was charged with three counts of incestuous rape. The information alleged the complainant was a minor 16 years of age and that the accused was her father. The prosecution did not present the birth certificate of the complainant. Although the victim's age was not denied by the defense, the Court ruled that the minority of the victim was not proven with certainty. In the second case invoked by accused-appellant, *People vs. Liban*,^[38] the accused was charged with two counts of incestuous rape. The information alleged that the complainant was 12 years old, the daughter of the accused. The bare testimony of the complainant that she was ten (10) years old at the time of the first rape was held to be insufficient to prove her age. In both cases, the death penalty was reduced to reclusion perpetua.

In its recent decisions, however, the Court affirmed the imposition of the death penalty for qualified rape based on the testimonies of the complainant and her mother which were considered as sufficient evidence of the complainant's minority. These constituted the necessary quantum of evidence even if independent proof of minority, such as a birth certificate, baptismal certificate, or any other documentary evidence, was not presented. In *People vs. Dela Cruz*,^[39] the testimony of the mother as proof of the minority of the complainants, aged 14 and 15 years, was accepted in affirming the accused's conviction for incestuous rape. The mother of the complainants testified as to their ages and the Court found no reason to doubt her testimony as she had personal knowledge, as a mother, of the ages of her children. In *People vs. Velasco*,^[40] the three informations alleged that the complainant was 12 years old and that the accused was her stepfather. The age of the complainant was established only by her own testimony. Citing the case of *People vs. Silvano*,^[41] the Court held that the testimony of a person as to her age is admissible, although hearsay, as an assertion of family tradition. It was held that the admission of the accused and the categorical finding of the trial court established the complainant's minority with certainty. The birth certificate or any other official document proving minority serves no other purpose than to corroborate the testimonies of competent witnesses and the categorical finding of the trial court. In *People vs. Padilla*,^[42] complainant declared that she was 10 years old when she was abused by her father. Her testimony was corroborated by her mother, who also testified that her daughter was 10 years old at the time she was raped. In such an instance, the trial court may take judicial notice of the victim's age and independent proof of minority may not be necessary. In *People vs. Pagdayawon*,^[43] the information alleged that the complainant was the 11-year old stepdaughter of the accused. The complainant and her mother testified that she was born on February 24, 1985. The accused himself testified that he was informed by the complainant's mother that the complainant's birthday was February 24, 1985 and that when he first met the complainant's mother in 1985, she already had a child (the complainant) who was then almost a year old. The prosecution also presented the complainant's baptismal certificate, stating that she was born on February 24, 1985, which constituted independent proof corroborating the testimony of the complainant and her mother.

In the recent case of *People vs. Llanita*,^[44] the information alleged that the accused, taking advantage of his superior strength over the person of the complainant, who was only five (5) years old, had carnal knowledge of the complainant. The Court ruled that the age of the complainant was sufficiently established to be below seven (7) years old notwithstanding the fact that the evidence was based solely on her own testimony. Thus:

"In the present case, although the only evidence presented by the prosecution to establish that CATHERINE was below seven (7) years old at the time of the commission of the rape was her own testimony, there is no reason to doubt the sufficiency of the said evidence. Her testimony as to her age was never questioned by the accused-appellant in the lower court and remained un rebutted at the trial. And such testimony regarding her age is admissible although hearsay, for she can have no personal knowledge of the date of her birth, as all knowledge as to one's age is acquired from whatever is told by the parents or relatives and such testimony constitutes an assertion of family tradition (citing *People vs. Velasco* (353 SCRA 138 (2001) and *People vs. Silvano* (309 SCRA 362, 400 (1999))). It is admissible under Section 40 of Rule 130 of the Rules of Court (Revised Rules on Evidence) which reads:

‘Sec. 40. - Family reputation or tradition regarding pedigree - The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity.’

“The above provision contains three requisites for its admissibility, namely: (1) that there is a controversy in respect to the pedigree of any of the members of a family; (2) that the reputation or tradition of the pedigree existed previous to the controversy; and (3) that the witness testifying to the reputation or tradition regarding the pedigree of the person must be a member of the family of said person. (Citing *People vs. Samillano*, 207 SCRA 50, 54 (1992); *People vs. Alegado*, 201 SCRA 37, 45 (1991)) The word “pedigree” under Section 39 of the same Rule includes relationship, family genealogy, birth, marriage, death, the dates when and places where these facts occurred and the names of relatives. (Id.) All three requisites are present in the case at bar.”

In this case, the age of May Ann, who was six years old at the time the rape was committed, was alleged in the information and duly proven during the trial. The records^[45] show that a certified true copy of the certification from the Register of Births was issued by the Municipal Civil Registrar of Bauang, La Union, stating that the date of birth of May Ann was October 21, 1989. This, however, was not duly marked as an exhibit. However, May Ann’s age was nonetheless duly proven by her testimony and the testimony of both her parents. A year after the rape, May Ann testified that she was seven years old.^[46] Her father Antonio testified that he and Mirasol had five children, namely Mark Anthony, Marvin, May Ann, Madel, and Daniel. When asked about May Ann’s age, he said that May Ann was six (6) years old.^[47] On cross-examination, Antonio was again asked how old May Ann was and he answered that she was six (6) years old.^[48] A year after the rape, her mother Mirasol testified that May Ann was turning seven years old.^[49] Parents have personal knowledge of the age of their children. Moreover, judicial notice of May Ann’s age may be taken considering that she is below 10 years old.^[50]

Finally, accused-appellant argues that, in accordance with Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedures, he should not be meted the death penalty. He argues that the minority of May Ann must be specifically alleged in the information as a qualifying circumstance in order that it may be appreciated against him. Otherwise, the death penalty cannot be imposed upon him as he was not fully apprised of the charges against him.

This is error. The rules state that the specific qualifying or aggravating circumstances must be alleged in the information and duly proven during the trial. Otherwise, even if these were subsequently proven, the same cannot be appreciated in determining the proper penalty. However, it need not be alleged that the aggravating circumstance is qualifying. Thus, Rule 110 provides:

“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.

“SEC. 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.”

The case of *People vs. Mauricio*,^[51] cited by the accused-appellant, does not apply. In said case, the accused was convicted of incestuous rape and acquitted of attempted rape. In the information for incestuous rape, it was alleged that accused had carnal knowledge of the complainant, a girl 11 years of age. The Court modified the penalty from death to reclusion perpetua explaining that although the information properly alleged the

complainant's minority, it failed to specify the relationship between the complainant and the accused. It is not enough that the relationship was subsequently proved during the trial. Both relationship and minority must be alleged in the information to qualify the crime as punishable by death. To hold otherwise would lead to a denial of the accused's constitutional right to be informed of the nature and the cause of the accusation against him.

To the contrary, in the case at bar, the information alleged that May Ann was six years old at the time she was raped by accused-appellant. This qualifying circumstance was clearly established during the trial. Under Art. 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty of death shall be imposed upon the accused if the victim is a child below seven (7) years old. Hence, the trial court correctly imposed the death penalty on accused-appellant.[52]

Fourth. The trial court awarded P100,000.00 as indemnity to May Ann in view of the imposition of the penalty of death on accused-appellant. We find this to be error. As held in *People vs. Victor*,[53] if the rape is committed or qualified by any of the circumstances which authorize the imposition of the death penalty, the offended party is entitled to a civil indemnity of not less than P75,000.00. In addition to such indemnity, May Ann shall also be awarded moral damages in the amount of P50,000.00 pursuant to the decision in *People vs. Prades*[54] and Art. 2219 of the Civil Code, without the necessity of pleading or proving the basis thereof other than the fact of the commission of the offense. Moreover, under our ruling in *People vs. Catubig*,[55] if there is an aggravating circumstance, whether ordinary or qualifying, exemplary damages may be awarded to the offended party pursuant to Article 2230 of the Civil Code. Thus, an award of P25,000.00 as exemplary damages to the offended party is proper.

WHEREFORE, the decision of the Regional Trial Court, Branch 67, Bauang, La Union, finding accused-appellant Artemio Soriano guilty beyond reasonable doubt of the crime of qualified rape and imposing upon him the death penalty is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay the offended party May Ann Fontillas the sum of P75,000.00 as civil indemnity and the additional amounts of P50,000.00 as moral damages and P25,000.00 as exemplary damages.

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

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.
Quisumbing, J., on leave, abroad.

[1] Per Judge Jose G. Paneda.

[2] Rollo, p.8; RTC Records, p. 1.

[3] TSN, Aug. 6, 1996, pp. 3-21; TSN, Aug. 13, 1996, pp. 1-16.

[4] TSN (Mirasol Fontillas), July 9, 1996, pp. 3-23.

[5] TSN (Antonio Fontillas), July 3, 1996, pp. 3-25.

[6] Sworn statement and Supplemental Sworn Statement of Antonio Fontillas y Cidro dated August 24, 1995 (Exh. "B"), RTC Records, pp. 7-8; Sworn statement of May Ann Fontillas dated August 28, 1995 (Exh. "1"),

RTC Records, p. 11.

[7] RTC Records, p. 2.

[8] TSN (Mirasol Fontillas), July 9, 1996, pp. 12-15.

[9] RTC Records, p. 4.

[10] Id, p. 39.

[11] TSN, July 16, 1996, pp. 3-21.

[12] TSN, Dec. 10, 1996, pp. 3-30.

[13] TSN, May 6, 1997 pp. 3-26.

[14] TSN, July 29, 1997, pp. 2-5.

[15] TSN, Nov. 11, 1997, pp. 3-10.

[16] Rollo, p. 41.

[17] People vs. Napiot, 311 SCRA 772 (1999); People vs. Maglente, 306 SCRA 546 (1999); People vs. Banela, 301 SCRA 84 (1999).

[18] People vs. Thamsey, G.R. No. 144179, July 19, 2001; People vs. Baygar, 318 SCRA 360 (1999).

[19] TSN, Aug. 6, 1996, pp. 4-16.

[20] TSN, July 3, 1996, pp. 14-15.

[21] TSN, July 9, 1996, p. 13.

[22] TSN, Aug. 6, 1996, pp. 7-14.

[23] TSN, July 3, 1996, pp. 10-11.

[24] TSN, July 9, 1996, p. 19.

[25] TSN, Aug. 13, 1996, pp. 7-15.

[26] People vs. Sancha, 324 SCRA 646 (2000); People vs. Maglente, 306 SCRA 546 (1999).

[27] People vs. Carbonell, G.R. Nos. 140789-92, September 28, 2001.

[28] People vs. Maglente, 306 SCRA 546 (1999).

[29] People vs. Alvarado, G.R. No. 145730, March 19, 2002; People vs. Baid, 336 SCRA 656 (2000).

[30] TSN, July 16, 1996, pp. 11-12, 18-19.

[31] People vs. Lerio, 324 SCRA 76 (2000).

[32] Id.

[33] People vs. Pambid, 328 SCRA 158 (2000).

[34] People vs. Licanda, 331 SCRA 357 (2000); People vs. Antido, 278 SCRA 425 (1997); People vs. De Guzman, 265 SCRA 228 (1996).

[35] 311 SCRA 122 (1999).

[36] 345 SCRA 43 (2000).

[37] 311 SCRA 122 (1999).

[38] 345 SCRA 43 (2000).

[39] 338 SCRA 582 (2000).

[40] 353 SCRA 138 (2001).

[41] 309 SCRA 362 (1999).

[42] G.R. No. 137648, March 30, 2001.

[43] 351 SCRA 643 (2001).

[44] G.R. No. 134101, September 5, 2001.

[45] RTC Records, p. 10.

[46] TSN, Aug. 6, 1996, p. 3.

[47] TSN, July 3, 1996, p. 4.

[48] Id, p. 16.

[49] TSN, July 9, 1996, p. 6.

[50] People vs. Rivera, G.R. No. 139180, July 31, 2001; People vs. Tipay, 329 SCRA 52(2000).

[51] 353 SCRA 114 (2001).

[52] Three (3) members of the Court, although maintaining their adherence to the separate opinions expressed in People vs. Echegaray (267 SCRA 682 (1997)) that Republic Act No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

[53] 292 SCRA 186 (1998), cited in People vs. Escaño, G.R. Nos. 140218-23, February 13, 2002, People vs. Thamsey, G.R. No. 144179, July 19, 2001, People vs. Serrano, 353 SCRA 161 (2001), People vs. Brondial, 343 SCRA 600 (2000), People vs. Sancha, 324 SCRA 646 (2000), People vs. Alba, 305 SCRA 811(1999), People vs. Empante, 306 SCRA 250 (1999), People vs. Lim, 312 SCRA 550 (1999).

[54] 293 SCRA 411 (1998), cited in People vs. Escaño, G.R. Nos. 140218-23, February 13, 2002, People vs. Serrano, 353 SCRA 161 (2001), People vs. Navida, 346 SCRA 821 (2000), People vs. Bumidang, 346 SCRA 807 (2000), People vs. Brondial, 343 SCRA 600 (2000), People vs. Silvano, 309 SCRA 362 (1999), People vs. Medina, 300 SCRA 98 (1998), People vs. Mostrales, 294 SCRA 701 (1998).

[55] G.R. No. 137842, August 23, 2001, cited in People vs. Escaño, G.R. Nos. 140218-23, February 13, 2002, People vs. Nerio, G.R. No. 142564, September 26, 2001; People vs. Santos, G.R. Nos. 138308-10, September 26, 2001.

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