PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DIONISIO BATALLER Y VARGAS, APPELLANT.

G.R. Nos. 134540-41. July 18, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

To justify the imposition of the capital punishment on a father accused of raping his own minor daughter, the prosecution must prove beyond reasonable doubt, not only that he committed the heinous act, but also that the victim was indeed below eighteen years of age when the dastardly deed took place.

The Case

For automatic review by this Court is the Joint Decision[1] dated June 4, 1998, promulgated by the Regional Trial Court of Ligao, Albay, Branch 13. The Decision found Dionisio Bataller y Vargas guilty beyond reasonable doubt of twice raping his 17-year-old daughter, acts for which the supreme penalty of death was meted out to him twice also. The decretal portion of the Decision is worded as follows:

> "WHEREFORE, in view of the foregoing consideration and finding the accused Dionisio Bataller y Vargas guilty beyond any reasonable doubt of the crime of rape against his 17-year old daughter, Precila B. Bataller, the Court hereby:
>
> "(a) In Criminal Case No. 3577 sentences said accused to suffer the penalty of DEATH; and
>
> "(b) In Criminal Case No. 3578 sentences said accused to suffer the penalty of DEATH.
>
> "The accused is ordered to inde[m]nify the offended party [in] the amount of P100,000.00 and to pay the costs.
>
> "In compliance with the existing constitutional provision the records of these cases together with all the exhibits and stenographic notes are hereby ordered immediately elevated to the Honorable Supreme Court for automatic review.
>
> "SO ORDERED."[2]

On the basis of a Complaint subscribed to by his daughter Precila Bataller, appellant was charged before the court a quo with two (2) counts of rape in two separate Informations (Criminal Case Nos. 3577 and 3578)[3] both dated June 25, 1997. Except as to the date of the commission of the crimes, both Informations are similarly worded as follows:

> "That at or about 12:00 o'clock midnight of March 2, 1997 at Sta. Ana Street, Barangay Tinago, Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and with grave abuse of his parental authority, did then and there wil[l]fully, unlawfully and feloniously ha[ve] sexual intercourse with his daughter, Precila B. Bataller, a 17 year old girl, against her will and consent, to her damage and prejudice."[4]

When arraigned on August 1, 1997, appellant, with the assistance of his counsel de oficio,[5] pleaded "not

guilty."[6] Thereafter ensued pretrial and trial on the merits, culminating in the conviction of appellant as earlier stated.

The Facts

Version of the Prosecution

The solicitor general summarizes the evidence for the prosecution in this wise:[7]

> "The victim Precila Bataller was 17 years old when she was raped by her own father, the appellant Dionisio Bataller. She was single, an out of school youth and a resident of Sta. Ana, Tinago, Ligao[,] Albay. Her highest educational attainment then was Grade IV. She did not know the date [on which] she was born or the number of months in a year. She did not also know the age of her brother Freddie.
>
> "On March 1, 1997, at about 12:00 o'clock in the evening, Precila Bataller was in their house sleeping together with her brothers Benedict and Jomar and sister Miche[l]le. Their bedroom was about 2½ meters in width and 7 meters in length. Their sleeping arrangement that night starting from her was as follows: Benedict to her right and to her left was Michel[l]e followed by Jomar. Her mother and her eldest brother Freddie were then in Manila. Appellant slept in the balcony, four (4) meters away from their room.
>
> "On said date and time, while they were sleeping, appellant [turned] off the light in their bedroom. Appellant then went up to their bedroom, ordered her to remove her clothes. Appellant also removed his clothes and then [lay] on top of her. He inserted his organ [into] her private part and had carnal knowledge [of] her. She felt pain. She cried but she did not shout or do anything because appellant threatened to kill them all. After[wards], appellant went to the toilet to urinate. She then put on her clothes.
>
> "The following day, March 2, 1997, at about 12:00 o'clock in the evening, the same thing happened. After [turning] off the light, appellant went to their bedroom. He ordered her to undress. Appellant also removed his clothes. After undressing, appellant had carnal knowledge [of] her. It was also painful. She cried but she did not shout because appellant threatened to kill them. After having carnal knowledge [of] her, appellant went to the comfort room. She put on her clothes and cried.
>
> "She revealed what happened to her Tia Glo who then informed her Tia Azon.
>
> "Her Tia Azon accompanied her to the police station where she prepared her criminal complaint. After going to the police station, they went to a doctor for medical examination.
>
> "Jomar Bataller, the nine (9) year old son of the appellant and a Grade II pupil corroborated his sister's story that at about midnight of March 1, 1997, he was suffering from asthma when his father [turned] off the light. His mother and elder brother were in Manila. Aside from him, the members of the family who were left at home were the appellant, his Ate Precila, Benedict and Michele.[8] After [turning] off the light, appellant removed his clothes. He told x x x Precila to undress too. After[wards], appellant had carnal knowledge [of] her x x x. [Jomar] heard a creaking sound in the bedroom and heard his sister crying.
>
> "The same incident happened on March 2, 1997 at about the same time. He was sleeping with his brother Benedict and sisters Precila and Michele. As in the previous night he slept beside his sister Precila. Appellant again [turned] off the light. He removed his clothes and made x x x Precila undress also. [Jomar] heard a creaking sound and his Ate Precila crying. Later, appellant went down.
>
> "Dr. Maria Nimfa Joji Quinones examined Precila. She found that Precila's labia majora was slightly gaping. The labia minora [had a] whitish discharge [and was] slightly gaping[,] exposing partly the hymenal caruncle, hymen healed, and la[c]erations at 11:00 and 6:00 o'clock with slight redness on both sides." (citations omitted)

Version of the Defense

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On the other hand, appellant's version of the incident is as follows:[9]

> "DIONISIO BATALLER the accused-appellant in the case at bar admitted that he is the father of the private complainant[,] however, he denied the accusation that he raped his daughter, Precila Bataller on March 1 and 2, 1997. He submitted that the accusation was hurled against him because his sister-in-law, Corazon Omanga, who ha[d] a personal grudge [against] him, used her niece (Precila) and fabricated the stories of rape. Also, his son Jomar testified against him because he was instructed by the fiscal.
>
> "DOMINGO QUITO, testified that on September 8, 1997, Marta, accused-appellant's wife, went to his house and told him that she (Marta) wanted to reinvestigate Precila whether it was her father or another man who abused her. When Precila was asked whether it was her father or another man who abused her, Precila remained silent to the question which was posed [to] her thrice. However, after a while, Precila broke her silence and said that it was her brother (`Si Kuya man sana'), referring to Freddie. He (Domingo) told Marta he could not believe what Precila said but he [could] not do anything about it." (citations omitted)

Ruling of the Trial Court

After a full-blown trial, the court a quo found appellant guilty of incestuous rape on two (2) counts, for each of which he was sentenced to death. Wrote the trial judge:[10]

> "From the evidence adduced by the prosecution there is not an iota of doubt that Dionisio Bataller as charged sexually abused his own 17-year old daughter, Precila Bataller, in the evening about midnight successively on March 1 & 2, 1997, when his wife Marta was in Metro Manila employed as household help. Only 46 years old and deprived of his conjugal privil[e]ge over his wife who had to work in Manila, the accused went down [to] the level of a beast and turned to his own daughter to satisfy his carnal lust. No child would fabricate a charge so serious against his/her own father especially if that charge carried with it the maximum penalty of death unless such c[ha]rge is true. Against this serious accusation by his own daughter, Dionisio Bataller has only a denial to offer explaining that he cannot do such a thing to his own flesh and blood. Such denial cannot prevail over [or] against the positive testimony of Precila that it was her own father on both occasions who sexually attacked her. Beside[s] this bestial act was witnessed by no less than another child, 9-year old x x x asthmatic son, Jomar, who posit[i]vely declared he heard the bedroom [creak] as his father did the push and pull on his own flesh and blood. The Court can just imagine how pitiable the sight must have been [both] for x x x Jomar [who was] apparently pretending he was asleep and controlling his asthmatic attacks lest his father discover he was awake[;] and for Precila who, could do nothing but only cringe in fear and cry since the very person upon whom they [could] turn to for protection [was] blinded by lust [and had] all of a sudden turned out to be a monster.
>
> "The accused charges Corazon Omanga, his sister-in-law, [with] having fabricated the charges because they are business competitors. This Court is totally unconvinced. It is simply inconc[ei]vable that Corazon for that reason alone would invent and Precila, already 17 years old would willingly agree to be a party to such trump[ed]-up charges so serious that would merit no less than death [for] her brother-in-law and further x x x. But if Corazon did testify the way she did, it [was] because she found revolting her brother-in-law's acts.
>
> "Devoid of defense, the accused attempted to show through Domingo Quito's testimony that Precila's attacker was in fact her own brother Freddie. Allegedly Precila told Boy Quito later that it was Freddie who sexually abused her. The testimony of Domingo Quito is total[l]y unreliable to sa[y] the least if not [preposterous]. No less than the accused himself and his wife corroborated Precila's and Jomar's testimon[ies] that on March 1 and 2, 1997 Freddie was in Cavite in the same household working as cook where Marta was herself employed. Twice Jomar was extensively cross-examined by two (2) different lawyers from the Public Attorney's Office, an oversight which x x x escaped the notice of [both] this Court as well as the Public Prosecutors, but on both [occasions] Jomar stuck to his testimony that when his sister was sexually abused by his father both his mother and his eldest brother were in Manila."

x x x x x x x x x"

Thus, this automatic review.[11]

Issue

In his Brief, appellant submits for our consideration this sole error:[12]

> "The lower court erred in convicting accused-appellant of the crime charged in the information despite insufficiency of evidence to prove his guilt beyond reasonable doubt."

The Court's Ruling

The conviction of appellant on two counts of rape is affirmed. However, due to the prosecution's failure to prove sufficiently that the victim was a minor when the rape acts were committed, reclusion perpetua, not death, is the proper penalty in each case.

Sole Issue:
Sufficiency of the Evidence

After a thorough review of the pleadings, transcript of stenographic notes and other records of the case, we are convinced that the court a quo did not err in giving credence to the testimonies of the victim and the other prosecution witnesses.

In prosecutions for rape, the Court is always guided by the following principles: (a) an accusation of rape can be made with facility, but to disprove it is difficult though the accused may be innocent; (b) in view of the nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and not be allowed to draw strength from the weakness of the evidence for the defense.[13]

The testimony of the victim, detailing how she was raped by her own father, was clear and convincing. We quote at length:

> "PROSECUTOR VASQUEZ:
>
> Q
>
> Where were you last March 1, 1997 at about 12:00 o'clock in the evening?
>
> A
>
> In the house.
>
> Q
>
> Where is your house situated?
>
> A
>
> In Sta. Ana.
>
> Q
>
> What barangay?
>
> A
>
> Tinago.

Q

What municipality?

A

Ligao.

Q

What were you doing on the said date and time in your house?

A

Sleeping.

Q

Where were you sleeping?

A

In the bedroom.

Q

Were you alone when you were sleeping on March 1, 1997?

A

No, sir.

Q

Who were your companions?

A

My siblings.

Q

Can you describe before this Honorable Court your sleeping arrangement on the said date and time? Do you still remember your sleeping arrangement?

A

Yes, sir.

Q

As you were sleeping who was on your right portion or right side portion?

A

Benedict.

Q

How about on your left side?

A

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Michele.

Q

Now, who followed Michele?

A

Jomar.

Q

And then who followed Jomar?

A

No one.

Q

You said on your right side [was] Benedict. Who followed Benedict?

A

No one.

Q

Now, how big is your room?

WITNESS:

From this wall to that corner.

COURT:

What is the stipulation?

PROSECUTOR:

It is about 2 ½ meters.

COURT:

What is that 2 ½ meters, is that the width or the length?

PROSECUTOR:

Is that the width or the length of your room?

Q

How about the length?

A

The width.

INTERPRETER:

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Witness is demonstrating the length.

COURT:

That is how many meters?

PROSECUTOR:

About seven (7) meters more or less your Honor.

Q

Now, aside from your siblings who were then sleeping on March 1, 1997, who were the other persons who were in your house at that time?

A

Papa.

Q

Where [did] your father sleep?

A

In the balcony.

Q

By the way, is your papa here in court?

A

Yes, sir.

Q

If he is here, will you please point to him?

A

Yes, sir.

Q

Please point to him[.]

INTERPRETER:

Witness pointed to a sole person in the courtroom and said person x x x upon asked answered to the name Dionisio Bataller.

PROSECUTOR:

Q

You said that your father was sleeping in a balcony[;] how far is this balcony where your father was sleeping to the room where you were then sleeping?

INTERPRETER:

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Witness is indicating the appearance, apparently the entire area which is about four (4) meters.

PROSECUTOR:

Q

Now, while sleeping do you remember whether there was an unusual incident that happened?

COURT:

Who was with your father in the balcony?

WITNESS:

No one your Honor.

PROSECUTOR:

Q

Now, how about your mother, where was she on March 1, 1997?

A

In Manila.

Q

How about your brother, Freddie, where was he at that time?

A

In Manila.

Q

While sleeping on March 1, 1997 at about 12:00 o'clock midnight, do your remember as to whether there was an unusual incident that happened?

A

Yes, sir.

Q

What was that incident?

A

Papa put out the light.

Q

And where was that light situated insofar as your father is concerned?

A

Up.

Q

In your room?

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A

Yes, sir.

Q

Now, after putting out the light, what happened next?

A

He went up.

Q

Went up where?

A

In the bedroom.

Q

In your bedroom where you were sleeping?

A

Yes, sir.

Q

And while inside your bedroom what did your father do if any?

A

He made me strip off my clothes.

Q

Specifically what clothes were you ordered to strip?

A

My pants.

Q

What else?

A

My panty.

Q

What else?

A

T-shirt.

Q

And then after undressing what followed next?

A

My Papa also strip[ped] off his clothes.

Q

And after that what happened next?

A

My father [lay] on top of me.

Q

After [lying] on top of you, what else did your father do?

A

He inserted.

Q

[W]hat did he insert?

A

Papa's organ.

Q

Where?

A

In my organ.

Q

And after inserting his organ into yours what did your father do if any?

A

He made the push and pull motion.

Q

For how long did your father [do] that to you?

A

Quite a time.

COURT:

What did you feel when your father inserted his organ into yours? What did you feel?

WITNESS:

Painful.

COURT:

And what did you feel when your father made the push and pull?

WITNESS:

Painful.

COURT:

So, what did you do when you felt pain?

WITNESS:

I cried.

PROSECUTOR:

Q

Aside from crying what did you do?

A

Nothing.

Q

You did not shout?

A

I did not.

Q

Why?

A

Because Papa threaten[ed] that he [would] kill us.

Q

Now, just before your father disengaged [from] you, what did you notice from his penis?

A

None.

COURT:

After your father disengaged from you where did he go?

A

To the bathroom.

Q

And what did he do there?

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A

He urinated.

Q

After that what happened next?

A

He sat in the balcony.

Q

How about you, what did you do after your father went to the toilet and urinated?

A

None.

Q

You just [lay] still without your panty and pants and T-shirt after your father left?

A

I put on my clothes.

Q

When did you put on all your clothes, was it when your father was on top of you or when your father went to the toilet to urinate x x x?

A

When he went to the comfort room.

PROSECUTOR:

Q

Aside from that, on March 2, 1997 in the evening where were you?

A

In the house.

Q

What were you doing at that time?

A

Sleeping.

Q

Who were with you while you were sleeping?

A

My brothers and sisters.

Q

And what was your sleeping arrangement, the same as that when you were sleeping last March 1, 1997?

A

Yes, sir.

Q

And how about your father, where was your father at that time?

A

Sleeping.

Q

Where?

A

In the balcony.

Q

How about your mother, where was your mother on March 2, 1997?

A

In Manila.

Q

How about your brother, Freddie, where was he [on] that date? and [at that] time?

A

In Manila.

Q

Now, while then sleeping, can you recall x x x any unusual incident that happened?

A

Yes, sir.

Q

What was that unusual incident that happened?

A

My Papa [turned] off the light.

Q

And after [turning] off the light what else happened?

A

Papa went inside my bedroom.

Q

After getting inside what did your father do?

A

Again, he made me undress.

Q

And after undressing, what else happened?

A

He also undressed himself.

Q

And after undressing himself what did he do?

A

He [lay] on top of me.

Q

And after lying on top of you, what did your father do?

A

He inserted his penis inside my vagina.

Q

And after inser[t]ing his penis inside your vagina what else did he do?

A

He again made the push and pull motion.

Q

For how long did your father do that push and pull motion?

A

Long.

Q

And what did you feel when your father inserted his penis inside your vagina?

A

Painful.

Q

And what did you do?

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A

I cried.

Q

Did you not shout?

A

I did not.

Q

Why?

A

Because Papa threatened that he [would kill] us.

Q

Now, you said that your father mounted on top of you and ha[d] sexual intercourse with you. What did you notice in his penis after he disengaged himself?

A

None.

Q

Now, after your father was through doing the sexual act, where did he go?

A

[To] the comfort room.

Q

How about you, what did you do?

A

I [p]ut on my clothes.

Q

And after putting on your clothes, what did you do next?

A

I cried.

Q

And after crying what else did you do?

A

No more.

x x x x x x x x x

Q

Now, do you remember having executed a sworn statement in connection [with] these cases?

A

Yes, sir.

Q

Attached to the record[,] page 2 of the record[,] is a sworn statement of one Precila Bataller. Will you please see x x x if this is the sworn statement you have executed?

A

Yes, sir.

Q

Do you know whose signature is this which appears above the type written name Precila Bataller?

A

Mine.

Q

Where was this taken?

A

At the other end.

Q

At the police station?

A

Yes, sir.

Q

There is also a signature above the type written name Precila Bataller appearing in the criminal complaint[;] do you know whose signature is this?

A

Mine.

Q

Now, there is here a signature above the typewritten name Corazon Omanga[;] do you know whose signature is this?

A

Tiya's signature.

Q

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You mean you were with her when this criminal complaint was prepared?

A

Yes, sir.

Q

She was also with you when this sworn statement of yours was taken by the police?

A

Yes, sir.

Q

Now after going to the police where else did you go?

A

To the doctor.

Q

Were you medically examined?

A

Yes, sir."[14]

For his defense, appellant relies on prosecution witnesses' alleged inconsistencies regarding how Precila was raped. But these purported inconsistencies pertain only to minor details and strengthen rather than weaken her credibility. Well-settled is the rule that little inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, their veracity or the weight of their testimony.[15] We note that the victim had an interpreter when she testified in open court. Translations from the vernacular are not always fully accurate.

Moreover, Precila's testimony was corroborated by her nine-year-old brother Jomar who, unable to sleep because of an asthma attack, witnessed how his elder sister had been sexually assaulted by their father for two consecutive nights. The boy testified in this wise:

"PROSECUTOR VASQUEZ:

Q

On March 1, 1997 at about 12:00 o'clock in the evening where were you?

A

Sleeping.

Q

Sleeping where?

A

In the bedroom.

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Q

Bedroom of your house?

A

Yes, sir.

Q

And where is your house situated?

A

In Sta. Ana, Ligao, Albay.

Q

Now, you said you were sleeping. Who were with you while you were sleeping?

A

Ate.

Q

When you said Ate, to whom [were] you referring?

A

(Witness pointed to the same girl who answered to the name of Precila Bataller)

Q

Aside from Precila, your Ate, do you have any brothers or sisters sleeping on that said date in question?

A

Yes, sir.

Q

Who?

A

Michelle.

Q

Who else?

A

Benedict.

Q

This Benedict, who is older[,] you or Benedict?

A

I.

Q

Do you know how old is Benedict?

A

I do not know.

Q

How about Michelle, who is older[,] Michelle or you?

A

I.

Q

Now, where was your mother at that time?

A

In Manila.

Q

How about your father, where was he at that time?

A

In the house.

Q

You said that you were sleeping together with your Ate, meaning, Precila and also Michelle and Benedict. While you were sleeping, what happened?

A

My father put off the light.

Q

Who is your father?

A

(Again witness pointed to a man who a while ago answered or identified himself as the accused Dionisio Bataller)

Q

Now, after your father [turned] off the light, what did he do?

A

He undressed himself.

Q

After undressing himself, what did he do?

A

He made Ate undress also.

Q

And after that, what happened next?

A

He [lay] on top of Ate.

Q

After [lying] on top of your Ate, meaning, Precila, what else did your father do?

A

After that Papa went down.

Q

Before your father went down, you said that your father [lay] on top of your sister[;] what else did you notice?

A

I heard a cr[ea]king sound [in] the bedroom.

Q

Aside from cr[ea]king sound, what else did you notice?

A

Papa went down.

Q

Before your father went down and you heard the cr[ea]king sound [in] the bedroom, what else did you hear if any?

A

That night I was suffering from asthma attack.

Q

What did you notice from your sister [--] according to you your father [lay] on top of her?

A

I heard my sister crying.

Q

And then can you estimate more or less how many minutes your father [lay] on top of your sister?

ATTY. DE JESUS:

Leading.

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COURT:

Allowed.

WITNESS:

A

It took a while.

PROSECUTOR:

A

And after that your father went down?

WITNESS:

A

Yes, sir.

Q

Now, on March 2, 1997 at about same time, where were you?

A

Sleeping.

Q

Who were with you at that time while you were sleeping?

A

Michelle, Benedict.

Q

Who else?

A

And Ate.

Q

When you said Ate you [were] referring to Precila?

A

Yes, sir.

x x x x x x x x x

PROSECUTOR:

Q

Now, you said that on March 2, 1997 about the same time, 12:00 o'clock in the evening you were sleeping and you already explained your sleeping arrangement. What happened when you were sleeping at that time?

WITNESS:

A

Papa [turned] off the light.

Q

After [turning] off the light, what did your father do?

A

He undressed himself.

Q

And then afterwards, what happened next?

A

Papa made Ate undress herself.

Q

And then after that what happened next?

A

Papa [lay] on top of Ate.

Q

After your father [lay] on top of your sister, Ate, what else did your father do if any?

A

I heard our bedroom cr[ea]king.

Q

For how long?

A

For quite a time.

Q

How about your sister, your Ate, what did she do, what did you notice from her?

A

Ate was crying.

Q

After that what happened next?

A

After that Papa went down."[16]

Jomar's straightforward and candid testimony lends credence to the charges that appellant really raped his own daughter.

The testimonies of the prosecution witnesses are further strengthened by the medical findings of Dr. Maria Nimfa Joji Quiñones, rural health physician of the Ligao Municipal Health Office. The medical examination of the rape victim yielded the following findings:

> "HEENT: L eye deformity
>
> "GENITALIA: LMP - February 1997
>
> Pregnancy test (-) negative
>
> Labia Majora slightly gaping
>
> Labia Minora with whitish discharge, slightly gaping exposing partly the hymenal caruncle
>
> Hymen - healed laceration at 11:00 and with slight redness on both sides
>
> Vaginal Orifice able to admit two examining [f]ingers, corrugations noted at the anterior and posterior wall"[17]

Clearly, the condition of the victim's genitalia supports the fact of sexual intercourse.

Appellant's denial cannot prevail over the positive testimony of the victim, who identified him as her malefactor. Elementary is the rule that "a bare denial is a negative declaration which deserves no consideration and cannot prevail over the affirmative testimony of the victim which is corroborated by more evidence. It cannot survive the positive identification of the malefactor by the victim. Affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness."[18]

Moreover, in cases of incestuous rape, this Court usually gives more weight to the testimonies of young rape victims, especially a barrio lass like private complainant. No woman would cry rape, undergo a public trial and relate the details of her defilement, unless motivated by her quest to right an injustice done to her.[19]

Time and time again the Court has held that appellate courts will not disturb the evaluation of the credibility of witnesses by the trial court because, having observed their deportment and manner of testifying, it was in a better position to weigh conflicting testimonies. This rule stands, unless the trial judge overlooked certain facts of substance and value which, if considered, might affect the result of the case.[20] We do not find any exceptions here to justify a deviation from the general rule.

Proper Penalty

Although the prosecution was able to prove that appellant indeed raped his own daughter, we believe that its failure to prove sufficiently that she was a minor when the rape took place is fatal to the imposition of the capital punishment.

As held recently in various cases, the age of the victim at the time she was raped needs to be credibly proven with moral certainty. In People v. Javier,[21] the Court unanimously held as follows:

> "x x x Although the victim's age was not contested by the defense, proof of age of the victim is particularly, necessary in this case considering that the victim's age which was then 16-years old [was] just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young

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> looking 18-year old lady may pass [for] a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an[y] iota of doubt that the victim [was] indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld. x x x. Verily, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently establish the victim's age is fatal and consequently bars conviction for rape in its qualified form."

Ruling that the burden of proving the age of the victim fell on the prosecution, the Court in People v. Cula[22] said:

> "At all events, it is the burden of the prosecution to prove with certainty the fact that the victim was below 18 when the rape was committed in order to justify the imposition of the death penalty. The record of the case is bereft of any independent evidence, such as the victim's duly certified Certificate of Live Birth, accurately showing private complainant's age. The fact that accused-appellant Manuel has not denied the allegation in the complaint that Maricel was 16 years old when the crime was committed cannot make up for the failure of the prosecution to discharge its burden in this regard. Because of this lapse, as well as the corresponding failure of the trial court to make a categorical finding as to the minority of the victim, we hold that the qualifying circumstance of minority under Republic Act No. 7659 cannot be appreciated in this case, and accordingly the death penalty cannot be imposed."

In People v. Tabanggay,[23] the minority of the victims was not sufficiently proven by the bare testimonies, which they and their mother had given. The Court ruled thus:

> "x x x [W]e find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. We note that a photocopy of Genalyn's Birth Certificate is included in the records of the case. But it was neither duly certified nor formally offered in evidence. Therefore, no probative value can be given to it. Furthermore, we cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the rule that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed upon appellant."

In the instant case, the records are bereft of any birth certificate or any other authentic document or record establishing the exact age of the victim. Moreover, the victim herself did not even know the date she was born or the number of months in a year or the age of her eldest brother, Freddie, as shown by her testimony:

> "PROSECUTOR VASQUEZ:
>
> Q
>
> Do you know the accused in this case?
>
> A
>
> Yes, sir.
>
> Q
>
> What is the name of the accused in this case?
>
> A
>
> Dionisio Bataller.

Q

Are you in any way related to him?

A

He is my father.

Q

Your natural father?

A

Yes, sir.

Q

Your mother and father are legally married?

A

Yes, sir.

Q

Now, when were you born?

A

I do not know.

Q

Now, how many siblings do you have?

A

Six (6).

Q

Who is the eldest?

A

Freddie.

Q

Do you know how old Freddie was? Last March 1 & 2, 1997?

A

I do not know.

Q

Who is next to Freddie?

A

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I.

Q

And who followed you?

A

Michele.

Q

After Michele?

A

Benedict.

Q

After Jomar?

A

Jolina.

Q

Did you ever attend school or classes?

A

Yes, sir.

Q

What is your highest educational attainment?

A

Grade IV.

Q

Do you know how many months [there are] in a year?

A

I do not know.

Q

Do you know how many days are there in a month?

A

I do not know.

Q

Do you know how many days are there in a week?

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A

I do not know."[24]

Given this uncertainty as to the victim's age, the supreme penalty of death cannot be imposed on appellant, because the prosecution was not able to prove beyond reasonable doubt that the victim was indeed below 18 years when the defilement took place.

Damages

The trial court did not award moral or exemplary damages to the victim. This Court, in accordance with current jurisprudence,[25] deems it proper to grant both reliefs. Moral damages are awarded to rape victims without need of pleading or proof of the basis thereof.[26] Exemplary damages, on the other hand, are granted when an aggravating circumstance, which is not offset by a mitigating one, attended the commission of the crime. In several cases, we have held that the relationship between appellant and the rape victim justifies the award of exemplary damages, in order to deter fathers with perverse sexual behavior from sexually abusing their daughters.[27]

WHEREFORE, the Joint Decision dated June 4, 1998, issued by the Regional Trial Court of Ligao, Albay, Branch 13, is hereby AFFIRMED, with the following modifications: (1) appellant is found guilty of simple rape on two counts; and, (2) for each count, he is sentenced to reclusion perpetua and ordered to pay the victim P50,000 as indemnity ex delicto, P50,000 as moral damages and P25,000 as exemplary damages. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Quisumbing, J., on official business.
Sandoval-Gutierrez, J., on leave.

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[1] Penned by Judge Jose S. Sañez.

[2] Assailed Decision, pp.9-10; Rollo, pp. 32-33; records, Vol. 1, pp. 233-34; records, Vol. 2, pp. 95-96.

[3] Signed by Prosecutor II Luis R. Bocalbos Jr.; Rollo, pp. 9-10.

[4] Information dated June 25, 1997; Rollo, p. 9; records, Vol. 1, p. 21.

[5] Atty. Erlyn Baliwas of the Public Attorney's Office.

[6] Certificate of Arraignment dated May 7, 1997; records, Vol. 2, p. 28.

[7] Appellee's Brief, pp. 3-5; Rollo, pp. 83-85. The Brief was signed by then Solicitor General Ricardo P. Galvez, Asst. Solicitor General Rodolfo G. Urbiztondo and Solicitor Procolo M. Olaivar.

[8] Sometimes spelled "Michelle" in the transcript of stenographic notes.

[9] Appellant's Brief, pp. 5-6; Rollo, pp. 52-53. This Brief was signed Chief Public Atty. Carina J. Demaisip, Public Attorney IV Arceli A. Rubin, Public Attorney III Teresita S. De Guzman, and Public Attorney II Carolina N. Hacbang-Tagapan.

[10] Assailed Decision, pp. 8-9; Rollo, pp. 31-32; records, Vol. 1, pp. 232-33; records, Vol. 2, pp. 94-95.

[11] This case was deemed submitted for resolution on October 8, 1999, upon receipt by this Court of the Reply Brief.

[12] Appellant's Brief, p. 6; Rollo, p. 53.

[13] People v. Diasanta, GR No. 128108, July 6, 2000; People v. Tabanggay, GR No. 130504, June 29, 2000; People v. Tabion, 317 SCRA 126, October 20, 1999; People v. Quijada, 321 SCRA 426, December 22, 1999.

[14] TSN, February 24, 1998, pp. 5-16.

[15] People v. Antonio, GR No. 122474, June 8, 2000; People v. Alicante, GR Nos. 127026-27, May 31, 2000.

[16] TSN, October 27, 1997, pp. 22-28.

[17] Exhibit "A," records, Vol. 1, p. 4.

[18] People v. Diasanta, supra, per curiam; People v. Cambi, GR No. 127131, June 8, 2000.

[19] People v. Tundag, GR Nos. 135695-96, October 12, 2000; People v. Diasanta, supra.

[20] People v. Baybado, GR No. 132136, July 14, 2000; People v. Diasanta, supra; People v. Librando et al., GR No. 132251, July 6, 2000.

[21] 311 SCRA 122, 141, July 26, 1999, per Melo, J.

[22] 329 SCRA 101, 117, March 28, 2000, per Melo, J.

[23] GR No. 130504, June 29, 2000, per Panganiban, J.

[24] TSN, February 24, 1998, pp. 3-4.

[25] People v. Panganiban, GR Nos. 138439-41, June 25, 2001; People v. Galeno, GR Nos. 135976-80, June 20, 2001; People v. Sandoval, GR Nos. 132625-31, December 18, 2000.

[26] People v. Prades, 293 SCRA 411, July 30, 1998.

[27] People v. Bayona, GR Nos 133343-44, March 2, 2000; People v. Tabion, 317 SCRA 126, October 20, 1999.

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