

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAFAEL CEA Y GUERRERO, APPELLANT.*G.R. Nos. 146462-63. January 14, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-146462-63/>**PER CURIAM:**

For automatic review is a decision rendered by the Regional Trial Court of Kalibo, Aklan, Branch 2, imposing the penalty of death on appellant Rafael Cea y Guerrero alias “Paeng” for two counts of rape committed against his twelve-year-old daughter Marilou Cea.

The prosecution’s case is, as follows:

Marilou Cea was born to Excelsea Cea and appellant Rafael Cea on May 13, 1986. At around 12:00 o’clock noon on May 8, 1998, Marilou was in their house sleeping when she was awakened as she felt something heavy on top of her. She was shocked when she opened her eyes and saw her father lying on top of her. Marilou tried to resist and free herself from appellant’s clutches but he held her hands and threatened to kill her if she would not lie still. He proceeded to remove her underwear and his own underwear and succeeded in having carnal knowledge of her. After having forcible intercourse with her, appellant warned Marilou not to tell anyone about the incident. Her ordeal at the hands of her father was repeated for several months. She was raped several times in the month of October 1998. Appellant sexually abused her five more times in December 1998 although Marilou could no longer recall the exact dates of the incidents. In January of 1999, her father sexually abused her almost every night when her mother was asleep, and during daytime when her mother was away. Each time appellant would sexually abuse her, Marilou would resist but it was to no avail because of appellant’s threats. Finally, Marilou found the strength to reveal appellant’s sexual abuses to her mother who promised to report the matter to the barangay captain at the soonest possible time.[1]

Consequently, on January 19, 1999, at around 3:00 o’clock in the afternoon,[2] Marilou, accompanied by her mother, reported the rape incidents to their barangay captain, Cesar Nedic. Marilou alleged that she was not the only one in her family who her father had abused. Appellant allegedly raped Marilou’s elder sister, Rosemarie, who bore appellant two children. The second child was purportedly buried alive by appellant to avoid scandal.[3]

The dastardly incidents, however, continued thereafter. In the evening of January 19, 1999, while Marilou was sleeping, appellant removed her clothing, touched the different parts of her body and had sexual intercourse with her. Appellant again threatened Marilou at that time.[4]

On January 21, 1999, two informations for rape were filed against appellant. The information in Criminal Case No. 5319 reads:

The undersigned Third Assistant Provincial Prosecutor of Aklan hereby accuses RAFAEL CEA y GUERRERO alias “Paeng” at the Madalag Municipal Jail, Madalag, Aklan, of the crime of RAPE, committed as follows:

That on or about the 19[th] day of January, 1999, in the evening, in Barangay Alaminos, Municipality of

Madalag, Province of Aklan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused while armed with a knife, with lewd designs and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter, MARILOU G. CEA, a 12 year old minor girl, against her will and without her consent, thereby inflicting upon the latter physical injuries, to wit:

PE: (-) Hematoma (-) laceration on External Genitalia

HYMEN: (+) Multiple Old Laceration

VAGINA: Admits two (2) fingers with ease

As per Medico-Legal Report on Physical Injuries issued by Dr. Liwayway B. Guadalquiver, Medical Officer IV, Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached as an integral part of this information.

That by reason of the criminal acts of the accused, the private offended party suffered actual and compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00)

CONTRARY TO LAW.[5]

The information in Criminal Case No. 5320 reads:

The undersigned Third Assistant Provincial Prosecutor of Albay hereby accuses RAFAEL CEA y GUERRERO alias "Paeng" of Brangay Alminos, Madalag, Aklan, of the crime of RAPE, committed as follows:

That on or about the 20[th] day of January 1999, in the early morning, in Barangay Alaminos, Municipality of Madalag, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while armed with a knife, with lewd designs and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, MARILOU G. CEA, a 12 year old minor girl, against her will and without her consent, thereby inflicting upon the latter physical injuries, to wit:

PE: (-) Hematoma (-) laceration on external Genitalia

HYMEN: (+) Multiple Old Laceration

VAGINA: Admits two (2) fingers with ease

As per Medico-Legal Report on Physical Injuries issued by Dr. Liwayway B. Guadalquiver, Medical Officer IV, Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached as an integral part of this information.

That by reason of the criminal acts of the accused, the private offended party suffered actual and compensatory damages, in the amount of FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW.[6]

During the trial, PO2 Luzbella Isada testified that since 1995, she has been a member of the Philippine National Police (PNP) assigned at the Kalibo Police Station and concurrently as Women's Desk Investigator of Madalag Police Station. She recalled having investigated an incident wherein a certain Rafael Cea was being accused of raping his minor daughter, Marilou Cea. She, Isada, personally conducted an investigation on Marilou Cea, who was brought into her office on January 21, 1999. She prepared the affidavit of Marilou, who, between sobs, narrated that she was not the only one who was raped by appellant as appellant also raped Marilou's sister, Rosemarie, who bore appellant two children. The second baby was allegedly buried alive by appellant to conceal the offense. She tried to visit Marilou's sister in Kalibo but the latter's aunt and employer allegedly told Isada

that it was enough for Marilou to be the one to file a complaint against appellant.[7] Isada presented a copy of Marilou's baptismal certificate in court.[8] She explained that Marilou's birth was not registered in the Office of the Local Civil Registrar in Madalag because she was born in the hometown of appellant in Camarines Sur.[9]

Isada also conducted an investigation on the barangay captain of Alaminos, Madalag, Aklan who accompanied Marilou to her office on January 21, 1999. According to Isada, the barangay captain confirmed that Marilou and her mother went to his office on January 19, 1999 at 3:30 o'clock in the afternoon to report a rape incident. Isada clarified that even after Marilou reported the rape incident to the barangay captain, Marilou said that she was again ravished by appellant.[10] After personally conducting an investigation, Isada together with Msgr. Menez of Madalag, endorsed Marilou to the Missionary Sisters of Charity because Marilou wanted to stay away from her family for the time being.[11]

Cesar Nedic, the barangay captain of Alaminos, Madalag, Aklan testified that on January 19, 1999, Marilou Cea and her mother Excelsea came to his office at about 3:30 o'clock in the afternoon. Nedic had known Marilou, her mother and appellant for about five to six years already. Marilou was in Grade V and around 12 years old at the time she and her mother went to see Nedic in his office on January 19, 1999.[12] The two women told Nedic that Marilou could no longer bear the sexual abuses she was receiving from appellant. Appellant reportedly started to rape Marilou in May 1998. Nedic sent Marilou and her mother home after assuring them that he would request for police protection since the two women were afraid that appellant might hack them. Nedic then made a report regarding the complaint of the two women.[13]

Nedic said that Marilou admitted that appellant did not "use" her for three days prior to the January 19, 1999 rape incident. Marilou allegedly said that even while gathering firewood in the forest, appellant would make sexual advances, threatening to hack her to death if she would not give in to his demands.[14]

Another witness for the prosecution, Jovel Javier, testified that he has been a member of the PNP, Madalag Police Station since 1998. On January 20, 1999 at around 9:00 o'clock in the morning, the barangay captain of Alaminos went to the police station asking for police assistance in relation to a complaint of incestuous rape committed against Marilou Cea by appellant. Javier, together with the barangay captain, a brother-in-law of the victim, and an investigator, SPO1 Antonio Navarra, proceeded to the house of appellant. Appellant however was not at the house and was near the river cutting trees. Javier and his companions then went to appellant and invited him to go to the police station for questioning in connection with the complaint against him.[15]

SPO1 Antonio Navarra, the investigator assigned to handle Marilou's case, testified that he interviewed Marilou at the police station at around 10:00 o'clock in the morning of January 20, 1999. Marilou allegedly told him that her father sexually abused her in the evening of January 19, 1999. Marilou could not remember the exact time when she was sexually abused by appellant on January 19, 1999 but she told Navarra that appellant had been sexually molesting her for the previous months.[16]

Navarra further testified that he asked appellant whether the accusations of Marilou were true. Appellant allegedly admitted that he sexually molested Marilou.[17]

Dr. Liwayway Guadalquiver was presented by the prosecution as its last witness. Dr. Guadalquiver testified that she is employed at Dr. Rafael S. Tumbokon Memorial Hospital. On January 20, 1999 at around 3:50 o'clock in the afternoon, Dr. Guadalquiver examined Marilou Cea for an alleged rape incident.[18] The medical examination conducted on Marilou showed that her vagina admitted two fingers with ease and her hymen had multiple healed lacerations. Dr. Guadalquiver testified that it was possible that Marilou had sexual intercourse in the evening of January 19, 1999 and in the early morning of January 20, 1999.[19]

The defense, on the other hand, presents a different case.

Appellant pleaded not guilty to the two informations filed against him and testified that in the evening of January 19, 1999, he was working at F. Quimpo Street in Kalibo, Aklan. He was a helper in the delivery truck of a certain Vic Chu for three weeks prior to January 19, 1999 and would return to their house in Alaminos, Madalag, Aklan only every Sunday. He would then report back to work every Monday in Kalibo. In the morning of January 20, 1999, appellant went home to Madalag because there was no work to be done in Kalibo and his sister-in-law requested him to do something for her. Appellant left Kalibo for Bulabod boarding a motorcycle for hire at past 6:00 o'clock in the morning. From Bulabod, he was able to catch a ride going to Madalag arriving at said place at 8:00 o'clock in the morning of the same day. Upon reaching Madalag, appellant proceeded directly to the place where he usually cuts trees. While working, the police arrived and arrested him.[20] Appellant had no idea why he was arrested until he was brought to the police station. Appellant then learned that a complaint for rape was filed against him by his daughter, Marilou Cea.[21]

Appellant testified that he did not have an opportunity to talk with Marilou nor to his wife. Appellant insisted that the police forced him to admit that he raped Marilou[22] and surmised that Marilou probably filed the complaint because in an altercation that appellant once had with his wife, appellant threatened to kill his family if they would not obey his order that they refrain from drinking liquor. Appellant said that one of his daughters, Rosemarie, was always drunk so he admonished his wife properly to advise their daughter against taking intoxicating substances. Appellant further testified that Rosemarie, the eldest of his six children, has a child but he does not know who the father of the child is because Rosemarie did not want to tell him. Appellant said he never had any problem with his second daughter, Marilou, but appellant once spanked her when she refused to obey his order to buy something for the family. Appellant admitted that he knew of no reason why Marilou filed the present cases against him except for the fact that on January 17, 1999, he threatened to kill all members of his family with an ax.[23]

Giovanie Gregorio, appellant's brother-in-law, corroborated appellant's story that the latter was working in F. Quimpo Street, Kalibo, Aklan at the time the supposed rape incidents took place. Gregorio testified that he was in Kalibo, Aklan on January 17, 19 and 20, 1999. In the afternoon of January 19, 1999, Gregorio saw appellant at the latter's hut. At around 4:30 o'clock in the afternoon, Gregorio took the last trip from Kalibo to Alaminos, Madalag, Aklan. Gregorio maintained that appellant could not have gone home to Alaminos, Madalag in the afternoon of January 19, 1999 because the last trip going to Madalag from Kalibo at that time was scheduled at 4:30 o'clock p.m. The last time he saw appellant was on January 21, 1999.[24]

Gregorio said during cross examination that he learned, a week after January 20, 1999, that appellant was being accused of raping Marilou Cea. When he saw appellant in the provincial jail, the latter asked for assistance and allegedly told Gregorio that he was surprised about his arrest since he had done nothing wrong.[25] When pressed why he did not tell the police that appellant did not commit the crime charged, Gregorio could offer no explanation.[26]

On October 19, 2000, the trial court rendered its decision, the dispositive portion of which reads, as follows:

WHEREFORE, the Court finds the accused RAFAEL CEA Y GUERRERO alias "Paeng", GUILTY beyond reasonable doubt of TWO COUNTS of Rape, and hereby imposes upon him the penalty of DEATH for each count.

Further, the Court hereby orders the aforementioned accused to pay the victim the following amounts:

- P75,000.00 for each case as civil indemnity ex delicto P50,00.00 for each case as moral damages;

- P30,000.00 for each case as exemplary damages, to deter other fathers with perverse tendencies and aberrant sexual behavior from sexually abusing their own daughters; and

To pay the COSTS.

SO ORDERED.[27]

In rendering the decision, the trial court ruled that the version of the prosecution was more credible and in accord with the evidence on record. The trial court held that appellant's defenses of denial and alibi are not sufficient inasmuch as it was not physically impossible for appellant to be in Alaminos, Madalag, Aklan at the time of the alleged rape incidents. The trial court also dismissed appellant's claim that Marilou probably filed the charges of rape against him because of his previous threats to his family that he would kill them with an ax, for being flimsy and without any basis.

Appellant assigns errors, as follows:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

II.

THE COURT A QUO GRAVELY ERRED IN NOT GIVING CREDENCE TO THE EVIDENCE FOR THE DEFENSE

III.

THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE REAL AGE OF THE VICTIM

Appellant laments that in rendering a judgment of conviction for two counts of rape against him, the trial court relied merely on the testimony of Marilou. Appellant contends that the charges against him constitute an "orchestrated scheme" to bring him down inasmuch as Marilou had already reported the alleged sexual abuses to the barangay captain on January 19, 1999 at around 3:30 o'clock in the afternoon but the informations filed against him refer to alleged rape incidents which happened in the evening of January 19, 1999 and in the early morning of January 20, 1999.

Appellant's contentions are not meritorious. A careful examination of the records shows that at around 3:30 o'clock in the afternoon of January 19, 1999, Marilou and her mother reported to the barangay captain, Cesar Nedic, the sexual abuses that Marilou previously suffered at the hands of appellant. Marilou reported that appellant started raping her in May 1998 until January 1999. Marilou, however, admitted to Nedic that appellant "did not use [her] for three days before the rape incident". Hence, the last sexual assault against Marilou before she reported the rape incident to Nedic occurred between January 16-17, 1999. In the evening of January 19, 1999, however, Marilou was again sexually assaulted by her father. This is clear from her following testimony:

X X X

Q:

Let me bring your attention to the evening of January 19, 1999, you testified yesterday that your father sexually abused you, will you please tell this Honorable Court and describe what really happened on that date, January 19, 1999 in the evening?

A:

While we were sleeping, my father removed my clothing and he touched the sensitive parts of my body and had sexual intercourse with me.

Q:

When you said sexual intercourse, will you please be specific with what he did to you on January 19, 1999?

A:

After he removed my underwear and also removed his underwear, he inserted his penis inside my vagina.

Court: (To witness)

Q:

How did he do it? Basta na lang bang pinasok o may ginawa?

A:

He also did something.

Q:

May push and pull o wala?

A:

There was.

Q:

How long? How many minutes.

A:

I cannot remember if how many minutes.

Q:

About three (3) minutes?

A:

Yes, Your Honor, about three (3) minutes.

Atty. Ibutnande (Continuing)

Q:

During the time that it allegedly happened, is it not a fact that your mother and other siblings were sleeping beside you ?

A:

My father has a separate room and he often called me to come to him and if I refused he threatened me that I will not last until the morning.[28]

x x x

That Marilou claimed that she was again raped by appellant even after a report was made by the barangay captain to the police authorities is confirmed by the testimony of PO2 Isada who conducted an investigation on complainant on January 21, 1999 and prepared the latter's affidavit.[29] Isada said that Marilou herself told him that even after a report had been made to the barangay captain, appellant again raped her.[30] SPO1 Navarra, who interviewed Marilou before turning her over to the Women's Child's Desk Investigator, also corroborated Isada's testimony regarding Marilou's allegation that she was raped in the evening of January 19, 1999.

It is clear from the foregoing that appellant had forcible sexual intercourse with Marilou even after she and her mother lodged a complaint against appellant with the barangay captain. As to whether appellant raped Marilou not only once but twice after she reported his sexual abuses to the barangay captain, however, the same has not been sufficiently established. There is nothing in the records to show that appellant, after having raped Marilou on the night of January 19, 1999, woke her up and ravished her again in the early morning of January 20, 1999. In fact, when the defense counsel asked complainant about the January 20 rape incident, complainant corrected her saying, "It was on the 19[th]."[31]

The testimony of SPO1 Navarra, who interviewed Marilou on January 21, 1999 before turning her over to the Women and Child's Desk in fact indicates that Marilou only reported a single incident of rape which occurred after she had already filed the report with the barangay captain. According to SPO1 Navarra, Marilou told him that appellant raped her in the evening of January 19, 1999 but inasmuch as Marilou did not accurately specify the time, the rape incident could have happened in the early morning of January 20, 1999. SPO1 Navarra thus testified:

Q:

What are the matters that were gathered by you when you interviewed the victim?

A:

When the victim was in our office, she alleged that on the 19[th] of January 1999, she was sexually abused by her father Rafael Cea.

Q:

What other information did you gather from her?

A:

She further alleged that she was sexually abused for the previous months.

Q:

The interview was inside your office?

A:

Yes, sir but the complainant was turned over to the Women's Desk Investigator, PO2 Luzbella Isada.

Q:

Do you remember having [been] informed by the victim that she was also raped in the early morning of January 20, 1999?

Atty. Ibutnande: Objection, Your Honor, leading.

Prosecutor Del Rosario

Q:

What other information did you gather from the victim?

A:

As alleged by the victim, January 19, 1999 in the evening.

x x x

Court:

Q:

What time of January 19?

A:

In the evening.

Q:

What time?

A:

The victim cannot explain the accurate time, Your Honor.

Q:

So it is possible that the rape was committed early morning instead?

A:

It is possible, Your Honor.

Q:

So that could be January 20, 1999?

A:

Yes, Your Honor.[32]

As aforesaid, appellant raped Marilou even after she reported the sexual abuses she had been receiving from appellant. Marilou was raped in the evening of January 19, 1999, or in the early morning of January 20, 1999. Whether there were two incidents and not just one incident of rape committed by appellant against her during the hours in question, however, has not been clearly established. Inasmuch the second incident of rape has not been sufficiently proven, appellant could not be held liable therefor. It is settled that every charge of rape is a separate and distinct crime and each must be proven beyond reasonable doubt.[33]

At this juncture, it should be noted that the informations filed against appellant alleged that he was armed with a knife and used force and intimidation when he had sexual intercourse with Marilou. Marilou, however, never testified that appellant was armed with a knife when he sexually abused her on the night of January 19, 1999. Consequently, the attendant circumstance of use of a deadly weapon may not be considered against appellant.

As regards force and intimidation employed by appellant against Marilou, the latter was steadfast in her declaration that every time she would try to resist appellant's advances, the latter would threaten her by saying she would not last until the morning. When she was sexually assaulted in the evening of January 19, 1999, appellant again threatened Marilou.[34] Appellant himself confirmed his violent tendencies when he said that he once threatened to hack his family to death. In any case, moral ascendancy may substitute for force and intimidation in cases of incestuous rape. In the recent case of *People v. Servano*,[35] we held:

x x x We have to bear in mind that in incestuous rape, the minor victim is at a great disadvantage because the assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary unlike where the accused is not an ascendant or blood relative of the victim. Thus, the failure of the victim to explicitly verbalize, as in this case, the use of force, threat, or intimidation by the accused should not adversely affect the case of the prosecution as long as there is adequate proof that sexual intercourse did take place, x x x

Appellant insists that Marilou's allegations were not corroborated by the medical examination conducted by Dr. Liwayway Guadalquiver on complainant which showed a negative result for hematoma and laceration on her external genitalia. The vaginal smear also showed a negative result for spermatozoa.

Dr. Guadalquiver explained during trial that when a woman has forcible sexual intercourse, there may or may not be lacerations in her genitalia depending on the elasticity of the vagina.[36] Although the medical examination conducted by Dr. Guadalquiver yielded negative results for hematoma and laceration on Marilou's external genitalia, the doctor also clarified that it was still possible that Marilou was subjected to forcible sexual intercourse on January 19-20, 1999. Moreover, the same examination showed that Marilou had old hymenal lacerations which corroborates Marilou's claim that appellant had been sexually molesting her for several months prior to January 19, 1999.[37]

Appellant insists that the court should have considered his claim that he was out of town at the time the alleged incidents of rape happened. Appellant stresses that his alibi was corroborated by his brother-in-law, Giovannie Gregorio. Appellant claims that Gregorio, who happens to be the maternal uncle of Marilou, has no reason to perjure himself, if his knowledge of appellant's whereabouts at the time the alleged rape incidents happened, were not true.

The rule is basic that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to highest respect and will not be disturbed on appeal, in the absence of any showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the results of the case. This is because the trial court, having seen and heard the witnesses themselves and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[38] It was observed by the trial court that Gregorio's demeanor while testifying disclosed flaws which betrayed his honesty and credibility. Noteworthy is the fact that although Gregorio claims that he only learned that appellant was accused of raping Marilou a week after January 20, 1999, Gregorio had earlier testified that he saw appellant on January 21, 1999 in Alaminos, Madalag. If Gregorio indeed saw appellant on January 21, 1999, then he would have known that appellant was being accused of raping Marilou because appellant was already detained at the provincial jail during that time.

In any case, even if we were to consider Gregorio's testimony that appellant was in Kalibo, Aklan on January 19-20, 1999, it would not have been physically impossible for appellant to have gone home during the aforesaid dates considering that, as noted by the trial court, Kalibo, Aklan could be easily negotiated by a motorcycle in two hours to and from the situs criminis.

Moreover, there is no showing that Marilou was impelled by improper motive in imputing the crime of rape against appellant who is her own father. Appellant admitted that he never had a problem with Marilou and the only reason he could think of why she filed the charges against him was because during an altercation with his wife, he threatened to hack to death the members of his family.[39] It strains credulity that complainant would concoct a tale of rape against her own father, allow an examination of her private parts and subject herself to a public trial simply because appellant during an altercation with his wife threatened to hack the members of his family to death.

Appellant insists that assuming that his guilt was proven beyond reasonable doubt, the trial court erred in imposing on him the death penalty, inasmuch as the minority of the complainant, Marilou Cea, was not proven during the trial. Appellant stresses that the baptismal certificate of Marilou should not have been admitted in evidence inasmuch as the mere allegation that her birth certificate was not available or did not exist would not suffice.

We do not agree. It is settled that the minority of the complainant may be established by the presentation of the birth certificate or other documentary evidence such as a baptismal certificate, school records and documents of similar nature. In *People v. Operario*, [40] we reiterated the following guidelines in appreciating age as an element of the crime or as a qualifying circumstance:

- The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
- In the absence of a certificate of live birth, similar authentic documents such as a baptismal certificate and school records which show the age of the birth of the victim would suffice to prove age.
- If the certificate of live birth or authentic document is shown to have been lost, destroyed or otherwise unavailable, the testimony if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules of Evidence shall be sufficient under the following circumstances:

A)

If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old

B)

If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

C)

If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

- In the absence of a certificate of live birth, authentic document or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly

and clearly admitted by the accused.

- It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
- The trial court should always make a categorical finding as to the age of the victim.

From the foregoing, it is clear that the age and minority of complainant Marilou was sufficiently established. Marilou's filiation to appellant was also sufficiently proven. It must be noted that generally, a baptismal certificate, by itself, is not considered as proof of filiation because it proves only the administration of the act of baptism on the day specified therein and does not prove the veracity of the statements made therein regarding the relatives or parents of the person baptized.[41] However, in the present case, not only did the baptismal certificate indicate appellant as Marilou's father, but appellant himself admitted on the stand that he is the father of Marilou.[42] In the case of *People v. Salvador*,[43] we accepted the baptismal certificate of the victim, together with the testimony of the victim, that of the victim's mother, as well as the admission of the accused that he is the father of the victim, as sufficient proof of filiation.

The minority and the relationship of complainant to appellant having been sufficiently established in this case, appellant is guilty of qualified rape which under Article 266-B of the Revised Penal Code is punishable with the death penalty.[44]

Three Justices of the Court maintain their position that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty can lawfully be imposed in the present case.

The sum of P75,000.00 by way of civil indemnity and P50,000 by way of moral damages in Criminal Case No. 5319 given by the trial to complainant Marilou Cea is affirmed. Complainant is entitled to P75,000.00 as compensatory damages in accordance with the established rulings in cases where the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law. Complainant is likewise entitled to moral damages without need of further proof in the sum of P50,000.00. The fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the basis for moral damages is too obvious to require the recital thereof at the trial by the victim since the court itself acknowledges such agony on her part as a gauge of her credibility.[45] Exemplary damages awarded by the trial court in Criminal Case No. 5319 in the sum of P30,000, however, is reduced to P25,000 in accordance with prevailing jurisprudence.

WHEREFORE, the decision of the Regional Trial Court of Kalibo, Aklan, Branch 2 is MODIFIED. Appellant Rafael Cea y Guerrero is found guilty beyond reasonable doubt of the crime of rape committed against his daughter Marilou Cea, in Criminal Case No. 5319 and is sentenced to suffer the penalty of DEATH. He is also ordered to pay the victim, Marilou Cea, the sum of P75,000 by way of civil indemnity, P50,000 by way of moral damages and P25,000 as exemplary damages. Appellant Rafael Cea y Guerrero is ACQUITTED in Criminal Case No. 5320, as his guilt thereunder has not been proven beyond reasonable doubt.

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 possible exercise of the pardoning power.

SO ORDERED.

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

[1] TSN, January 19, 2000, pp. 5-10.

[2] In her affidavit and on the witness stand, Marilou stated that she and her mother reported the rape incidents to the barangay captain at 3:00 o'clock in the afternoon of January 19, 1999. The barangay captain, however, testified that the report was made at 3:30 o'clock in the afternoon of January 19, 1999.

[3] TSN, January 19, 2000, pp. 10-11.

[4] TSN, January 20, 2000, pp. 3-4, 6.

[5] Rollo, p. 11.

[6] Rollo, p. 13.

[7] TSN, January 20, 2000, pp. 14-15.

[8] Exhibit "F", Records, p. 49.

[9] TSN, January 20, 2000, pp. 9-12.

[10] TSN, January 20, 2000, pp. 12-13.

[11] TSN, January 20, 2000, p. 13.

[12] TSN, January 24, 2000, p. 12.

[13] TSN, January 24, 2000, pp. 6.

[14] TSN, January 24, 2000, p. 9.

[15] TSN, January 24, 2000, pp. 13-15.

[16] TSN, January 25, 2000, pp. 3-4-A.

[17] TSN, January 25, 2000, p. 5.

[18] TSN, February 1, 2000, p. 4.

[19] TSN, February 1, 2000, pp. 5-6.

[20] TSN, March 22, 2000, pp. 4-8.

[21] TSN, April 13, 2000, pp. 4, 6.

[22] TSN, April 13, 2000, p. 8.

[23] TSN, April 13, 2000, pp. 10-14.

[24] TSN, October 2, 2000, pp. 5-7.

[25] TSN, October 2, 2000, pp. 8-9.

[26] TSN, October 2, 2000, pp. 10-11.

- [27] Rollo, pp.75-76.
- [28] TSN, January 20, 2000, pp. 3-4.
- [29] TSN, January 20, 2000, p. 10.
- [30] TSN, January 20, 2000, p. 13.
- [31] TSN, January 20, 2000, p. 6.
- [32] TSN, January 25, 2000, p.3-4-A.
- [33] *People v. Matugas*, 377 SCRA 434, 447 [2002]; *People v. Tagud*, 375 SCRA 291, 309 [2002]; *People v. Baring*, 374 SCRA 696, 712 [2002].
- [34] TSN, January 20, 2000, pp. 4, 6.
- [35] G.R. Nos. 143002-03, July 17, 2003.
- [36] TSN, February 1, 2000, p. 8.
- [37] TSN, January 20, 2000, pp. 3-4.
- [38] *People v. Pacina*, 338 SCRA 195, 207 [2000].
- [39] TSN, April 13, 2000, pp. 10,13.
- [40] G.R. 146590, July 17, 2003 citing *People v. Invencion*, G.R. 131636, March 5, 2003 which cited *People v. Pruna*, G.R. 138471, October 10, 2002.
- [41] *Macadangdang v. CA*, 100 SCRA 73, 83 [1980].
- [42] TSN, April 13, 2000, p. 11.

[43] 384 SCRA 253, 267 [2002].

[44] Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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

[45] *People vs. Prades*, 293 SCRA 411, 430-431 [1998].

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