

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO SAYAO, JR. Y DE LEON, ACCUSED-APPELLANT.

G.R. No. 124297. February 21, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case is here on automatic review of the decision,[1] dated October 30, 1995, of the Regional Trial Court, Branch 31, San Pedro, Laguna, finding accused-appellant Antonio Sayao, Jr. y de Leon guilty of rape and sentencing him to suffer the death penalty and to pay complainant Jenny Sayao P50,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and the costs.[2]

The information against accused-appellant, charging him with rape, alleged ³/₄

That on or about sometimes from 1987 up to the first week of February 1994, in the Municipality of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Antonio Sayao, Jr. y de Leon, with lewd design and by means of force, violence, and intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of said Jenny Sayao y Endrinal against her will and consent, to her damage and prejudice.[3]

When arraigned on March 6, 1995, accused-appellant pleaded not guilty.[4]

At the pre-trial conference held March 28, 1995, the prosecution and the defense stipulated on the following matters:

- The existence of the following documents, to wit:

a)

the sworn statement of Teresa Endrinal-Sayao dated November 7, 1994 as Exhibit "A" and her signature appearing therein as Exhibit "A-1;"

b)

the sworn statement of Jenny Sayao dated November 7, 1994 consisting of two (2) pages of Exhibits B and B-1 and her signature therein as Exhibit "B-2;"

c)

the medico-genital examination dated November 4, 1994 issued by Dr. Rolando Poblete as Exhibit C, the findings as Exhibit "C-1," and the signature of the doctor as Exhibit "C-2;"

- the identity of the accused; and

- the jurisdiction of this Court.[5]

Trial was then held during which the prosecution presented evidence showing the following:

Complainant Jenny Sayao is the fourth of five children of accused-appellant Antonio Sayao, Jr. and his wife Teresa Sayao.[6] The family lived in Barangay Ibaba, Santa Rosa, Laguna. Jenny testified that accused-appellant had been sexually molesting her since she was in Grade I. It began with accused-appellant fondling her private parts, but, in 1987, when she was in Grade II and was eight years of age,[7] accused-appellant started having sexual intercourse with her.

The first incident of rape took place at around 3 o'clock in the afternoon of June 15, 1987. Jenny said she arrived home from school and found accused-appellant alone. Her mother, who was a manicurist, had gone to work, while her other brothers and sisters had not yet arrived from school.

Jenny testified that accused-appellant called her, but she hesitated because of fear that she would be subjected to immoral acts by her father. Because she did not want to come near him, accused-appellant pulled her towards a bed. As he undressed her, Jenny said her father muttered what sounded as Latin incantations. Then accused-appellant tried to insert his penis into her vagina, but, as Jenny cried in pain, accused-appellant applied baby oil to his penis and succeeded in penetrating her.

Afterwards, according to Jenny, accused-appellant raped her several times. She estimated that she must have been raped by her father at least 30 times, the last time being in February 1994, when she was a third year high school student and 16 years of age. Jenny said she kept quiet about her misfortune because she was afraid of her father, a big man who threatened to kill her if she told anyone what he was doing to her. But, after she had been raped in February 1994, Jenny finally told her mother what accused-appellant had done to her.[8]

Teresa Sayao testified that she did not believe her daughter's story at first. Eventually, however, she came to believe that Jenny was telling the truth. She remembered the unusual interest shown by accused-appellant towards Jenny, at times taking her to school and being overly protective of her. There were times, according to Teresa, when during intimate moments accused-appellant referred to her as Jenny.[9]

Convinced that her husband had been molesting their daughter, Teresa brought Jenny on November 7, 1994 to the police station at Sta. Rosa, Laguna where both of them gave their statements (Exhs. A and B).[10]

Earlier, Jenny underwent a medico-genital examination on November 4, 1994 conducted by the municipal health officer, Dr. Rolando A. Poblete, who found the following (Exh. C):

Genitalia - normal external genitalia; no bleeding nor tenderness; with multiple hymenal lacerations (healed);
I.E. - cervix small, non-tender; no bleeding noted; admits two fingers with ease.

Inj.: There is an evidence [sic] of multiple vaginal penetration.

(Sgd.) ROLANDO A. POBLETE, M.D.
Municipal Health Officer
Santa Rosa, Laguna
Lic. No. 56029 [11]

Dr. Poblete testified that Jenny's multiple hymenal lacerations could have been caused by "penile penetration or instrumentation." He explained "instrumentation" as inserting into the vagina something "that resembles [the] size and shape of a penis." That the lacerations were healed, according to Dr. Poblete, could mean that complainant sustained the lacerations a year or years earlier from the time of the medico-genital examination, depending on Jenny's healing process. Dr. Poblete, however, does not discount the possibility that Jenny have had sexual intercourse in recent months despite the absence of fresh hymenal lacerations as her vagina could admit his two fingers ("around 3.5 cm. in size") with ease.[12]

Accused-appellant was the sole witness in his behalf. He denied that he was married to Teresa, claiming that she was merely his live-in partner, although he admitted that Jenny was his daughter. He denied also having ever raped Jenny. He claimed that Jenny accused him of rape because he had slapped and kicked her to punish her for going out with friends and coming home late.[13]

On November 13, 1995, the trial court rendered judgment convicting accused-appellant and sentencing him as already indicated. The trial court held:

Considering the evidence on hand, the Court finds that the prosecution thru Assistant Provincial Prosecutor Fernando V. Balinado has fully established and proven that herein accused had sexually abused his own daughter Jenny in February 1994 and on several occasions since 1987. Jenny's immediate and positive identification of her father as the one who ravished her many times since she was barely eight years old bespeaks of her spontaneity and veracity. Moreover, her answers to questions propounded to her during the trial on the identity of the accused as her rapist were straightforward and coherent which simply strengthen her credibility. As ruled by the Supreme Court in rape cases, it is difficult to believe that young [un]married women would tell a story of defloration, allow the examination of their parts, and thereafter permit themselves to be the subject of a public trial, if they were not instigated by an honest desire to seek justice (People vs. Selfaison, G.R. No. L-14732, January 28, 1961, 1 SCRA 235, People vs. Gan, G.R. No. L-33446, August 8, 1972, 4 SCRA 667, People vs. Guibao, 217 SCRA 64). In this case at bar, it is highly inconceivable that a sixteen-year old unmarried girl would reveal that she was raped and allow an embarrassing examination of her private parts if she was not motivated solely by her desire to have her father apprehended and punished for having done her wrong. The fact that accused had shown his cruelty to her thru slapping (which he admitted not to be hard and strong) and kicking is not sufficient motive for his daughter to make a false imputation against him and charge him with the beastly and heinous crime of rape. The absence of any sign of physical injury noted on her body except for the healed lacerations on her hymen at the time of her examination does not necessarily mean that the element of force which is essential to the crime of rape is lacking. It is important to note that Jenny clearly testified that she yielded to the carnal desires of her father whose strength she failed to overpower. She might be lacking tenacity or vigor in her resistance but that does not indicate consent. Moreover, accused's assertion of parental authority/influence and moral ascendancy over his daughter Jenny is sufficient intimidation or substitute for violence or intimidation (People vs. Matrimonio, 215 SCRA 613). The delay of eight (8) years in reporting the rapes committed from 1987 when she was only eight (8) years old to 1994 when she was already sixteen (16) years old by her father should not be taken against her considering her tender age (People vs. Coloma, 222 SCRA 255) and the death threat of her father that was hanging over her head (People vs. Joaquin, 225 SCRA 179).[14]

Hence this appeal. Accused-appellant contends that —

- THE LOWER COURT GRAVELY ERRED IN NOT FINDING THE INFORMATION INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS FAILURE TO STATE THE DATE OF THE ALLEGED COMMISSION OF RAPE, IT BEING AN ESSENTIAL ELEMENT OF THE CRIME CHARGED.
- ASSUMING ARGUENDO THAT THE INFORMATION IS SUFFICIENT, THE LOWER COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT'S GUILT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.
- ASSUMING ARGUENDO THAT HEREIN ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED, THE LOWER COURT GRAVELY ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH.[15]

These contentions are without merit.

First. Accused-appellant contends that the information in this case is void for being vague and ambiguous as to the date of the commission of the crime. As a consequence, he claims that he has been deprived of the opportunity to prepare his defense.

There may be inelegance in the way the information in this case had been drafted, but it is not defective for being vague. First, Rule 110, §11 provides that it is not necessary for the information to allege the exact date and the time of the commission of the crime if such is not an essential ingredient of the offense. In the crime of rape, the date of commission is not an essential element.[16] Second, even if the information fails to specify the date of commission of the crime, accused-appellant waived objection on this ground because he failed to file either a motion for a bill of particulars or a motion to quash the information.[17] Third, the vagueness of the information could not have prejudiced accused-appellant since his denial and alibi are so general that it cannot be said that his defense hinges on the date of commission.[18]

Second. Accused-appellant assails Jenny's credibility, pointing out that she filed a complaint against him only in 1994 when she testified that he had been abusing her since 1987. Furthermore, according to accused-appellant, Jenny's testimony that all the rape incidents were committed at 3 o'clock in the afternoon is an impossibility since her classes start at 8 o'clock in the morning and end at 5 o'clock in the afternoon. Accused-appellant raises the possibility that Jenny had been having sexual relations with other persons since she went out with her friends and stayed out late. Her mother in fact testified that Jenny had also run away from home once.

To be sure, findings of the trial court as to the credibility of witnesses are entitled to respect as it had the opportunity to observe their demeanor on the witness stand.[19] The trial court's finding that Jenny's testimony is "clear and spontaneous" is borne out by the following excerpt from her testimony:

Q How were you able to say that your father raped you?

A On June 15, 1987, after I arrived home, he called for me, sir.

Q Where did you come from at that time?

A I came from school, sir.

Q Who was at your residence when you arrived home on that day?

A Only my father, sir.

Q Where is your mother at that time?

A She was doing her work as a manicurist, sir.

Q Do you have any other brothers and sisters?

A Yes, sir. [T]wo girls and two boys.

Q Where were your brothers and sisters at that time?

A They were in school, sir.

Q And it was only your father who was at home at the time you arrived home on June 15, 1987?

A Yes, sir.

Q Where was your father in relation to your house when you arrived home?

A He was by the sala, sir.

Q How long have you arrived home when your father called for you?

A For about five (5) minutes, sir.

Q When your father was calling for you, what was your attire?

A I was wearing t-shirt and shorts, sir.

Q When your father called for you, what did you do?

A I did not approach him because I know that I will be subjected to immoral touches, sir.

Q And what happened next when you did not approach him?

A He pulled me, sir.

Q Where?

A In my arms, sir.

Q And where did he bring you when he pulled you?

A In our wooden bed, sir.

Q And what happened in that bed?

A He undressed me, sir.

Q Did he tell you anything while undressing you?

A Yes, sir. He was whispering something which I cannot understand.

Q [Was] this in Tagalog or English? At this juncture, Your Honor, I will manifest that the witness is in tears.

A It's like Latin, sir.

COURT:

And you were merely 8 years old then?

A Yes, ma'am.

PROSECUTOR:

Q Were you completely undressed by your father?

A Yes, sir.

Q And what happened next?

A

After I was undressed completely, my father tried to insert his private part into mine, but I was in pain so what he did is he applied baby oil, sir.

Q What happened after the application of the baby oil?

A He was able to penetrate his private part to mine, sir.

Q What is your position then?

A I was lying, sir.

Q How many times did he do that to you on that day?

A Only once, sir.

Q Did you tell your mother of what happened to you (sic) on that day?

A No, sir. Because I was afraid, I do not have enough courage to tell her at that time.

Q And did your mother arrive on that day?

A

Yes, sir.

Q How about your brothers and sisters, did they also arrive on that day?

A Yes, sir.

Q And you never told them about that?

A Yes, sir.

Q

Why?

A Because I was afraid, sir.

Q Was that act of your father followed by another?

A Yes, sir.

Q How many times?

A Everytime I go home from school, he will do that to me, sir.

COURT:

And you were barely 8 years old then?

A Yes, ma'am.

PROSECUTOR:

Up to what time did it last?

A Until I was in third year high school, sir.

Q What was your age then?

A

16 years old, sir.

Q

When was the last time, if you could still recall, when was the last time your father took advantage or raped you?

A

The last time was on the last week of February, 1994, sir.[20]

The delay in reporting the rapes could be attributed to Jenny's tender age and accused-appellant's moral ascendancy over her, much more because of his threat to kill her if she told anyone what had been done to her.[21]

Indeed, a rape victim's actions are oftentimes moved by fear rather than by reason. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship. For these reasons, we have held that the failure of the victim to immediately report the rape is not indicative of fabrication.[22]

Accused-appellant's claim that Jenny testified that all the incidents of rape against her were committed at exactly 3 o'clock in the afternoon is not accurate. Jenny merely answered "yes" to the question of the defense counsel as to whether all the rapes against her were committed in the "vicinity of 3:00 o'clock in the afternoon." [23] In any case, a rape victim is not and cannot be expected to keep an accurate account of her traumatic experience. The details of rape are not usually remembered.[24]

Accused-appellant's claim that Jenny could have had sexual relations with other persons because there were times when she went out with boys and came home late at night is nothing more than an allegation which has not been proven. As for Teresa's admission that Jenny had once run away from home, suffice it to say that Teresa testified that when she asked Jenny why she had run away, she was told it was because accused-appellant had been abusing her.[25]

Indeed, the repeated sexual assaults on Jenny were corroborated by the medico-legal examination which showed multiple hymenal lacerations and the fact that her vagina could admit two fingers, the total diameter of which is 3.5 cm., with ease.[26]

In sum, we hold that the trial court's finding that accused-appellant is guilty as charged is fully substantiated by the evidence on record. However, accused-appellant cannot be sentenced to death as the information against him failed to allege Jenny's minority and her relationship to accused-appellant. Under R.A. No. 7659, the following circumstances justify the imposition of the death penalty:

- 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
- 2) When the victim is under the custody of the police or military authorities.
- 3) When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third civil degree of consanguinity.
- 4) When the victim is a religious or a child below seven (7) years old.
- 5) When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- 6) When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- 7) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

Since these circumstances increase the range of the penalty and change the nature of the crime, they are special qualifying circumstances. Accordingly, consistent with accused-appellant's right to be informed of the nature and cause of the accusation against him, these circumstances must be specifically pleaded or alleged with certainty in the information and proven during the trial.[27] In this case, while accused-appellant admitted that Jenny is his

daughter,[28] the Court only has Jenny's bare testimony that she was born on February 9, 1978.[29] Her birth certificate was not presented in evidence. There is thus no sufficient evidence of her minority.[30]

Accordingly, accused-appellant should be found guilty of simple rape and sentenced to reclusion perpetua. He must also be held liable for the corresponding civil indemnity and moral damages in addition to exemplary damages as held by the trial court.[31]

WHEREFORE, the decision of the Regional Trial Court, Branch 31, San Pedro, Laguna is AFFIRMED with the MODIFICATION that accused-appellant Antonio Sayao, Jr. y de Leon is found guilty of thirty (30) counts of simple rape and is sentenced to suffer the penalty of reclusion perpetua for each count of rape, subject to the provisions of Art. 70 of the Revised Penal Code. He is further ordered to pay Jenny Sayao for each count of rape P50,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and the costs.

SO ORDERED.

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

[1] Per Judge Stella Cabuco-Andres.

[2] Records, pp. 93-97.

[3] Id., p. 1.

[4] Id., p. 22.

[5] Id., p. 27.

[6] TSN (Teresa Sayao), pp. 3, 7, May 15, 1995.

[7] Should be nine years of age, based on complainant's testimony that she was born on February 9, 1978. TSN, p. 17, April 19, 1995.

[8] TSN (Jenny Sayao), pp. 2-17, April 19, 1995; TSN, pp. 2-7, May 2, 1995.

[9] TSN (Teresa Sayao), pp. 2-11, May 15, 1995.

[10] Records, pp. 7, 11-12.

[11] Id., p. 6.

[12] TSN, pp. 2-13, Aug. 14, 1995.

[13] TSN, pp. 2-6, Oct. 3, 1995.

[14] RTC Decision, pp. 3-4; Records, pp. 95-96.

[15] Appellant's Brief, pp. 1-2; Rollo, pp. 90-91.

[16] E.g., *People v. Santos*, G.R. Nos. 131103 & 143472, June 29, 2000; *People v. Lim*, G.R. Nos. 131861-63, Aug. 17, 1999.

[17] *People v. Gianan*, G.R. Nos. 135288-93, Sept. 15, 2000.

[18] Id.

- [19] People v. Brondial, G.R. No. 135517, Oct. 18, 2000.
- [20] TSN, pp. 7-13, April 19, 1995.
- [21] TSN (Jenny Sayao), pp. 5-6, May 2, 1995.
- [22] People v. Alba, 305 SCRA 811 (1999); People v. Melivo, 253 SCRA 347 (1996); People v. Molero, 114 SCRA 397 (1986).
- [23] TSN, p. 3, May 2, 1995.
- [24] People v. Licanda, G.R. No. 134084, May 4, 2000; People v. Atuel, 261 SCRA 339 (1996).
- [25] TSN, p. 8, May 15, 1995.
- [26] Exh. C; Records, p. 6; TSN (Dr. Rolando A. Poblete), pp. 2-13, Aug. 14, 1995.
- [27] People v. Ramos, 296 SCRA 559 (1998).
- [28] TSN, p. 2, Oct. 3, 1995.
- [29] Her baptismal certificate is attached to the Records (p. 10), but it was not offered in evidence.
- [30] People v. Tundag, G.R. Nos. 135695-96, Oct. 12, 2000; People v. Bawang, G.R. No. 131942, Oct. 5, 2000; People v. Javier, 311 SCRA 122 (1999); People v. Maglente, 306 SCRA 546 (1999).
- [31] People v. Santos, G.R. Nos. 131103 & 143472, June 29, 2000.

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