

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSELITO ALMENDRAL Y ALCASABAS, ACCUSED-APPELLANT.

G.R. No. 126025. July 06, 2004

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TINGA, J.:

In this case of incestuous rape, the victim claims she was defiled by her own father about forty (40) times. Moral justice demands that the father be punished for each and every despicable act on his minor daughter, but the law, restricted by the requirements of procedure, allows his conviction only for two counts of simple rape.

This is an appeal from the Decision[1] in Criminal Case No. 9116-B of the Regional Trial Court of San Pedro, Laguna, Branch 31, finding appellant Joselito Almendral y Alcasabas guilty beyond reasonable doubt of the crime of Rape and imposing upon him the penalty of reclusion perpetua and the payment to the complainant, his daughter Ma. Jessica Almendral, of the amounts of fifty thousand pesos (P50,000.00) as civil indemnity and one hundred thousand pesos (P100,000.00) as moral damages.

The Information that spawned the Decision states:

That on or about sometime (sic) 1987, prior and subsequent thereto, in the Municipality of Biñan, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Joselito Almendral y Alcasabas, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said Maria Jessica Estrada y Almendral against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[2]

Appellant pleaded not guilty to the charge.[3] Trial proceeded in accordance with the Rules. The prosecution presented two (2) witnesses, namely: Ma. Jessica Almendral, the complaining witness, and Diosalinda Alcaraz, sister-in-law of the appellant.

Maria Jessica Estrada was born on December 27, 1976 to appellant and his wife, Emelinda. The other children born to the couple were Richelle (or Rachel), Michael, Joselito and Sarah Jane. They lived in Barrio Tubigan, Biñan, Laguna.

Sometime in 1987 when Jessica was eleven (11) years old and there were no other persons in the house, appellant summoned her to the room. He made her sit on the papag and touched her breast and her “private organ.” As she was seated, he undressed her. Not knowing what was going on, Jessica allowed appellant to undress her completely. Then he made her lie down and placed himself on top of her. He forcibly inserted his penis into her “private organ.” At first, he failed to penetrate her but he tried to do it again and succeeded. Later, appellant dressed, told Jessica not to tell her mother about what happened, and left the house. It was then that Jessica noticed that her private part was bloody. Afraid that appellant might harm her should she tell her mother, she kept mum about the incident.[4]

Appellant did the same sex act to her around twenty (20) more times before she reached the age of thirteen (13)

and twenty (20) more times after that, all in their house in Tubigan.[5]

The last time appellant sexually violated her was in 1992 when she was fifteen (15) years old and in third year high school. He was lying down on the bed in the room that she shared with her sister Richelle when appellant called her, “Jessica, halika.” Jessica was not surprised to find her father in that room because that was the only bedroom in the house; her parents slept in the sala. They were alone then and when Jessica approached appellant, he held her breast, made her lie down, and placed himself on top of her. Jessica did not resist. She was afraid that should she reveal to anyone what happened, it would be communicated to other people and should he hear of it, appellant would pinpoint her as the source of “bad talks” about him.[6]

After her marriage on June 30, 1994, her husband, Analito Estrada (Anton), asked her “who was ahead of him” in deflowering her. Jessica told her husband about the sexual incidents with her father. Later, she revealed the same incidents to her aunt, her cousins and some friends. Her mother learned that she and her sister Richelle had been raped by their father only through a subpoena. Jessica and her mother had a confrontation and her mother told Jessica to withdraw the complaint.[7]

Sometime in October 1994, Jessica and Richelle accompanied by their aunt Diosalinda Alcaraz filed their respective complaints for rape against appellant before the CIS at Camp Vicente Lim. Richelle had narrated to Jessica that she was asleep when their father raped her under threat of a firearm he carried. Richelle later withdrew her complaint and asked Jessica to do likewise through a letter she sent Jessica through their mother.[8]

Diosalinda Alcaraz, elder sister of appellant’s wife Emelinda, was in her house on June 1, 1994 when Richelle and Jessica asked for help in reporting to the authorities the rapes committed against them by their father. Diosalinda told Jessica to think first before filing a complaint against appellant. It took four months before the two decided to report the crimes to the authorities and when they did, Diosalinda accompanied them to Camp Vicente Lim because Jessica and Richelle asked that their complaints be filed with the CIS. They did not want to report to the barangay captain because appellant was then the barangay secretary. Because she helped Jessica and Richelle in lodging the complaints, Emelinda stopped talking to Diosalinda.[9]

After the prosecution had rested its case, the defense presented evidence consisting of the testimonies of appellant’s wife Emelinda, his daughter Richelle, Rene Maravillas, and appellant himself.

Emelinda denied that her husband ever raped their daughters. She believed that the charges of rape were prompted by her sister Diosalinda Alcaraz. According to Emelinda, Diosalinda was mad at her and they did not talk to each other because Diosalinda believed that she (Emelinda) caused the demolition of Diosalinda’s house, which was erected on Emelinda and appellant’s lot.[10] Emelinda testified that appellant could not have committed the offenses because in 1987, appellant had left Biñan, Laguna to work as the private driver of Mayor Feliciano Bautista of Sta. Barbara, Pangasinan. In fact, because he was employed by the mayor for two years, appellant maintained a savings account with the Rural Bank of Sta. Barbara with the last entry therein being dated September 9, 1988. Because of his job, appellant seldom went home. He would only do so once a month although there were times when Emelinda herself would go to Sta. Barbara to get money.[11]

Emelinda also believed that Jessica’s husband, Anton Estrada, had encouraged Jessica to file the complaint. Anton was allegedly mad at her and appellant because appellant confronted him about the story Anton banded around that he was forced to marry Jessica. Emelinda even claims that Jessica admitted to her that the filing of the case was her husband’s decision and she would do whatever her husband would tell her.[12]

Richelle, testifying in favor of appellant, admitted that she filed a complaint for rape against her father but she did so only because she was mad at him. When Richelle saw him detained at Camp Vicente Lim, her conscience

bothered her. She did not tell the authorities that there was no basis for her complaint; neither did she do anything while her father languished at the detention center for a year. It was only when she testified in the case filed by Jessica that Richelle claimed that there was no truth to her complaint against her father.[13]

Eventually, on February 14, 1995, Richelle filed an affidavit of desistance with respect to her own case, stating that she filed the complaint for rape because she had a grudge against her father and after thinking deeply, realized that filing the complaint was a mistake. Richelle claimed that since childhood, appellant had been cruel to them and Richelle resented him for this. When she found out that Jessica had filed the complaint against their father, she also filed the same charge against him.[14]

Rene Maravillas testified that he recommended appellant to his brother-in-law, Mayor Bautista, as the latter's personal driver. As the "personal agent" of Mayor Bautista, Rene was with appellant from 1986 to 1988 and they would go home to Biñan, Laguna once a month.[15]

Testifying in his own defense, appellant denied Jessica's allegations of rape. Appellant claimed that as a father he loved and took care of his children. He tried his best to discipline them. However, when Jessica was about thirteen years old, she left the house and got hooked on vices such as taking drugs. To discipline her, appellant would hit and tie her down. He would discipline all his children but he scolded, hit and tied down only Jessica and Richelle who, like Jessica, also learned to take drugs.[16]

Appellant validated his wife Emelinda's testimony as to his whereabouts during the years that the crimes were committed, and his wife's theory that the rape charge was instigated by Emelinda's sister and Jessica's husband.

Appellant testified that he was employed as the "personal security aid" of Mayor Feliciano Bautista of Sta. Barbara, Pangasinan from 1986 to 1988. He would go home to Biñan, Laguna once a month, and sometimes he would not go home at all.[17]

Appellant avers that there is no truth to Jessica's claim that appellant raped her around forty (40) times. If that were true, then Jessica should have filed the case against him as early as 1987. Jessica and Richelle filed the complaints only because they were influenced by other people like Diosalinda and Anton. Diosalinda had a grudge against him because his wife asked her and her family to vacate the place they were residing. There was bad blood between appellant and Anton. Appellant objected to Jessica and Anton's marriage because the latter was a drug addict but ultimately gave his consent because the two had eloped and were living together for three days when they asked to be wed. Whenever Anton was drunk, he would utter slanderous remarks against appellant and his wife. Anton was disrespectful towards appellant and his wife, to the point that Anton even boxed Emelinda. [18]

As stated at the outset, the trial court found appellant guilty of the charge filed against him. Through his counsel, Atty. Jose B. Alvarez, appellant appealed to this Court. For failure to comply with his duty as counsel for appellant, Atty. Alvarez was suspended from the practice of law for five months in the Resolution of December 4, 2000.[19] The Court then appointed the Public Attorneys' Office (PAO) as counsel de officio of appellant and required the PAO to file appellant's brief.

In this appeal, appellant imputes error to the trial court in convicting him based on the "improbable and incredible testimony of the private complainant." Jessica's testimony allegedly shows an inherent lack of credibility on crucial points, and disturbing improbabilities which cast doubt on the veracity of her story. Considering the implausible narration, the appellant believes that his guilt was not proven beyond reasonable doubt.[20]

The issue of credibility of the victim-witness is best addressed to the reasonable discretion of the trial court. As held by the Court a countless number of times, it is the trial court which has the unique opportunity to observe the

witness firsthand and note her demeanor, conduct, and attitude under grueling examination. Hence, on the issue of credibility of witnesses, findings of the trial court will not be disturbed on appeal unless the lower court overlooked, ignored, misapprehended, or misinterpreted certain facts or circumstances so material such as to affect the outcome of the case.[21] In this instance, the trial court said:

x x x In addition thereto, Ma. Jessica related in a clear, straightforward and natural manner how she was raped by accused since she was 11 years old. x x x Ma. Jessica went through all the shame and humiliation of appearing in court in a public trial in order to exact justice for the sexual abuse she suffered at the hands of her own father, the herein accused. In this regard, her testimony is entitled to full faith and credit x x x.[22]

There is thus no reason to deviate from the findings of the trial court on the issue of credibility of the victim as a witness.

Appellant contends that the victim's testimony that she was raped about forty (40) times is incredible because she could not even remember the approximate dates thereof. He alleges that the victim divulged her ordeal only after her husband discovered that he was not the first man in his wife's life and charging appellant with rape was "an easy way out indeed to appease the ire of her husband who ha(d) violent tendencies." [23]

The victim's failure to recall the exact dates of the sexual assault she experienced in the hands of appellant, a failure she frankly admitted in court,[24] does not necessarily puncture her credibility. Forcible sexual invasion committed by no less than one's own father is an agonizing and distressful experience that, by human nature, is better left buried in the deepest recesses of one's memory. Repeated forty (40) times, the experience may only result in the victim's subconscious effort to erase and blot out any details thereof. Thus, in *People v. Villar*, where the child victim claimed that the accused raped her more than a hundred times, the Court said:

Furthermore, the Court cannot impose the burden of exactness in the victim's recollection of her harrowing experience more so in the present case where the victim was an innocent and tender 9-year old lass when she was first raped. It is all the more understandable that the victim in the present case may have been confused as to the exact details of each and every rape incident, considering that she claimed she had been sexually ravished for more than 100 times in a span of one whole year. It is in fact expected that such a victim would rather wish and even purposely forget the abhorrent memories of every single occasion. This being the case, it would be exacting too much should the Court demand a very accurate, detailed, and flawless account of the two occasions now subject of her charges out of the 100 occasions of forcible intercourse. In *People vs. Sagucio* (277 SCRA 183 [1997], where this Court faced the same issue of alleged inconsistencies in the victim's narration, we held that errorless testimony cannot be expected especially when a witness is recounting details of a harrowing experience. A court cannot expect a rape victim to remember every detail of the appalling outrage.[25]

Under the circumstances, it is enough that the victim was able to recount the first and last of the around forty (40) bestial sexual attacks against her.

The candid admission of the victim that her husband inquired about the "first man" in her sexual life attests to her credibility. It could have indeed been a factor that led her to divulge her ordeal to other people. However, the victim's refusal to divulge her harrowing sexual experience to anyone until her husband inquired about the man who took her virginity is explained by the victim's testimony that appellant, who exercised "ascendancy" over her, was a cruel man who maltreated her. The claim of maltreatment was in fact corroborated by defense witness Richelle.[26] Clearly, after her marriage, the victim found freedom from such "ascendancy" and an ally in her husband.

Hence, assuming that it was her husband who instigated the filing of the rape charge against appellant, it certainly strains credulity why the victim would fabricate a story against her own father even granting that he was cruel to

her, and agree to expose her ordeal to the public if she really did not want the truth to come out and justice to prevail. Incestuous sexual affairs are generally treated with disdain and stigma, a taboo in this family-oriented society that may haunt any family for generations. If it was not her father who took her virginity, human nature would dictate that she pinpoint the real culprit as the author of her defilement. Not even the most ungrateful and resentful of daughters would even push her own father to the wall as the fall guy in any crime, unless the accusation against him was true. In this case, the victim stood by her story notwithstanding the arduous cross-examination that she underwent.

Jessica was likewise able to sufficiently explain the long delay in the filing of the rape charge. Among the reasons considered sufficient to explain delay are fear of reprisal, social humiliation, familial considerations, and economic reasons.[27] Fear of maltreatment in the hands of appellant, who admitted to hitting and tying down the victim for the least of offenses, was a compelling reason that deterred her from revealing the sexual assaults. Only her marriage cut short her inaction. Even after her husband had inquired about the man who took her virginity, she could not immediately file the charge. Taking heed of her aunt's advice, the victim gave the matter deep thought. But once she decided to pursue the case, not even her mother and her sister could dissuade her from going through with prosecuting the case against her father.

Appellant interposed the defenses of denial and alibi, claiming that he could not have committed the crime because he was employed in Sta. Barbara, Pangasinan between 1986 and 1988. His alibi is supported by a certification[28] issued by Mayor Bautista that appellant was in his employ as his official driver from May 16, 1986 until its issuance on July 18, 1988. However, assuming the alibi to be true, the defense itself offered evidence that such alibi was not impregnable. Appellant admitted that he would go home to Biñan at least once a month during the two-year period. Noticeably, for the crimes committed between 1988 and 1992, there was no defense offered whatsoever; appellant did not lift a finger to rebut the prosecution evidence that subsequent to the victim's having reached the age of thirteen (13) in 1989, he still used her as a sex object.

It is noteworthy that appellant's claim that Jessica was a drug dependent is unsupported by evidence other than his own self-serving testimony. Neither his wife nor daughter Richelle testified on the alleged drug dependency of Jessica to warrant giving credence to appellant's claim thereon.

In this appeal, appellant further raises for the first time the issue of the sufficiency of the Information filed against him. He argues that the trial court erred in convicting him under a defective information. He contends that he should not be convicted on the basis of the Information simply alleging "that on or about sometime (sic) 1987, prior and subsequent thereto" because it does not specify the circumstances under which the crime was committed. The vague Information purportedly left the appellant unable to defend himself properly, as he had no opportunity to explain his whereabouts from 1989 to 1992.[29] He adds that the lack of an allegation of an approximate date or month or even a single specific date when the rapes were committed sorely affected the credibility of the alleged victim.[30]

The information filed against an accused is intended to inform him of the accusations against him in order that he could adequately prepare his defense. It is thus textbook doctrine that an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information.[31] To ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information must state the name of the accused, the designation given to the offense by the statute, a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense, and the place where the offense has been committed.[32] It must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused so that he can properly prepare for and undertake his defense.[33]

However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless time is an essential ingredient of the offense.[34] Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The date or time of the commission of the rape is not a material ingredient of the said crime[35] because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission.[36] As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission. [37]

Moreover, appellant failed to raise the issue of the defective information before the trial court through a motion for bill of particulars or motion to quash the information. Such failure to object to the allegation in the information as to the time of commission of the rapes before appellant pleaded not guilty thereto amounted to a waiver of the defect in the information. Objections as to matters of form or substance in the information cannot be made for the first time on appeal. [38]

Appellant likewise never objected to the presentation of evidence by the prosecution to prove that the offenses were committed “on or about sometime (sic) 1987, prior and subsequent thereto.” He cannot now pretend that he was unable to defend himself in view of the vagueness of the allegation in the Information as to when the crimes were committed, as it was shown to the contrary that he participated in the trial and was even able to give an alibi in his defense.

The failure to allege in the same Information the relationship between appellant and Jessica is clearly the trial court’s reason in finding him guilty of simple rape and imposing on him the penalty of reclusion perpetua. While Jessica’s minority at the time of the commission of the offenses and her relationship to the offender were established by the prosecution beyond doubt, these qualifying circumstances were not specified in the Information. It would certainly be a denial of appellant’s right to be informed of the charges against him and to due process if he is charged with simple rape but convicted of its qualified form even if the attendant qualifying circumstances are not set forth in the Information.

However, the failure to plead these circumstances in the Information does not affect its sufficiency and validity as to the charge of simple rape, since the Information alleges facts which would warrant a conclusion that appellant sexually violated Jessica with its imputation therein of “carnal knowledge” “by means of force, violence and intimidation,” the gravamen of the crime of rape. Carnal knowledge has a definite meaning in law; it is synonymous with sexual intercourse.[39] There could not have been any mistaking the charge for any other offense and hence, the appellant was not deprived of due process by the manner by which the Information was crafted. An accused may be convicted of a crime and sentenced to a penalty prescribed therefor so long as the facts alleged in the information and proved at the trial shall constitute the crime for which he is convicted even though different from the crime designated and charted in the said information.[40]

The court can also convict the accused of as many offenses as are charged and proved, and impose on him the penalty for each and every one of them, especially where the accused has waived his objection to the defects in the information.[41] In *People v. Ramon*, [42] the trial court found therein guilty of three counts of simple rape based on the imputation in the criminal complaint the commission of the offenses “on or about the month of May, 1995, and prior thereto.” This Court affirmed the conviction of the accused for three counts of rape despite its finding that the complaint was indeed flawed, as it charged the accused with more than one count of rape by the bare added phrase “and prior thereto.” For the accused’s failure to timely question the defect through a motion to quash or a bill of particulars, he was deemed to have waived his objection to the multiplicity of charges.

Similarly, in *People v. Gianan*,^[43] accused contended that the information alleging execution of the crime “sometime in November 1995, and some occasions prior and/or subsequent thereto” was defective because it charged more than one offense. The trial court convicted accused of multiple rape without stating the number of counts of rape involved. This Court however maintained that the failure of the accused to question the validity of the information is deemed a waiver of his objection and convicted accused of four counts of rape and one count of acts of lasciviousness proven by the prosecution.

In this case, the trial court found appellant guilty of a single count of simple rape, penalized with the single indivisible penalty of reclusion perpetua under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. However, the Information charges the appellant with more than one count of rape, with its allegation that the acts were committed “on or about sometime (sic) 1987, prior and subsequent thereto,” which the prosecution was able to prove by presenting evidence of the first and the last incidents of rape committed by appellant against Jessica.

Appellant therefore should have been found guilty for two counts, each act of rape being considered separate and distinct from one another. The penalty to be imposed on appellant should thus be reclusion perpetua for each of the two (2) counts of rape.

The indemnity to be paid by appellant to the offended party should likewise be modified to fifty thousand pesos (P50,000.00) for each count. Moral damages of fifty thousand pesos (P50,000.00) for each count should be awarded without need of showing that the rape victim suffered the trauma of mental, physical, and psychological suffering constituting the basis thereof, most especially where the prosecution was able to prove two counts of rape. Exemplary damages of twenty-five thousand pesos (P25,000.00) for each count of rape should similarly be awarded to deter fathers with perverse tendencies and aberrant sexual behaviors from sexually abusing their daughters.^[44]

WHEREFORE, the Decision of the Regional Trial Court of San Pedro, Laguna, Branch 31 is MODIFIED. Appellant Joselito Almendral is found guilty beyond reasonable doubt of two counts of simple rape and is sentenced to suffer the penalty of reclusion perpetua and to pay Ma. Jessica Almendral civil indemnity of fifty thousand pesos (P50,000.00), moral damages of fifty thousand pesos (P50,000.00), and exemplary damages of twenty-five thousand pesos (P25,000.00), for each count of rape.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Judge Stella Cabuco-Andres and promulgated on March 18, 1996; Rollo, pp. 149-154.

[2] Rollo, p. 9.

[3] Records, p. 19.

[4] TSN, May 23, 1995, pp. 6-7, 9-13.

[5] Ibid, p. 25; June 5, 1995, pp. 3-4.

[6] TSN, May 23, 1995, pp. 14, 17-21.

[7] Ibid, pp. 22-23.

[8] Id. at 24; June 5, 1995, pp. 9-12.

- [9]TSN, July 4, 1995, pp. 3-12.
- [10]TSN, August 21, 1995, p. 4.
- [11]Id. pp. 5-10.
- [12]Id. pp. 14-16.
- [13]TSN, September 26, 1995, pp. 3-7.
- [14]Id. at 7-8, 12-14.
- [15]TSN, December 6, 1995, pp. 4-7.
- [16]TSN, February 5, 1996, pp. 3-4.
- [17]Id. at 4-6.
- [18]Id. at 6-7.
- [19]Rollo, pp. 120-122.
- [20]Appellant's Brief, Rollo, pp. 134, 140-146.
- [21]People v. Awing, G.R. Nos. 133919-20, February 19, 2001, 352 SCRA 188, 204.
- [22]RTC Decision, Rollo, pp. 148-149.
- [23]Appellant's Brief, Rollo, pp. 142-143.
- [24]TSN, June 5, 1995, p. 6.
- [25]379 Phil. 417, 428 (2000).
- [26]TSN, September 26, 1995, p. 13.
- [27]People v. Awing, *supra* at 203.
- [28]Exhibit "1," RTC Records, p. 141.
- [29]Appellant's Brief, Rollo, p. 146.
- [30]Reply Brief, Rollo, p. 212.
- [31]People v. Pambid, 384 Phil. 702, 730 (2000) citing People v. Manalili, 355 Phil. 652 (1998).
- [32]People v. Quitlong, 354 Phil. 372, 388 (1998) citing Secs. 6 and 8, Rule 110 of the Rules of Court.
- [33]Ibid.
- [34]People v. Santos, 390 Phil. 150, 161 (2000).
- [35]People v. Dimapilis, G.R. Nos. 128619-21, December 17, 1998, 300 SCRA 279.
- [36]People v. Bugarin, G.R. Nos. 110817-22, June 13, 1997, 273 SCRA 384.
- [37]People v. Magbanua, 377 Phil. 750, 763 (1999).
- [38]People v. Razonable, 386 Phil. 771, 780 (2000).
- [39]6 WORDS AND PHRASES 271 citing State v. Croteau, 184 A.2d 683, 684, 158 Me. 360.

[40]People v. Demecillo, G.R. No. 83186, June 4, 1990, 186 SCRA 161, 173.

[41]People v. Ramon, G.R. No. 130407, December 15, 1999, 320 SCRA 775, 783.

[42]Ibid.

[43]G.R. Nos. 135288-93, September 15, 2000, 340 SCRA 477.

[44]People v. Docena, 379 Phil. 903, 918 (2000).

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