

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, vs. AGUSTIN GOPIO, ACCUSED-APPELLANT.

G.R. No. 133925. November 29, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 12, Bulacan, finding accused-appellant Agustin Gopio guilty of statutory rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P3,727.00 as actual damages, P30,000.00, as moral damages, and to pay the costs of the suit.

The information against accused-appellant charged:[2]

That sometime in the year 1995, in the municipality of Obando, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Agustin Gopio y Arcillas, by means of violence, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said Ma. Princess Millano y San Diego, 11 years of age, against her will.

Contrary to law.

Trial proceeded as accused-appellant pleaded not guilty when arraigned on March 7, 1997. The prosecution presented as witnesses the victim, Ma. Princess Millano, her mother, Luzviminda Millano, and the Municipal Health Officer of Obando, Bulacan, Dr. Rufino Bautista.

The offense charged was committed by Agustin Gopio,[3] in Brgy. San Pascual, Obando, Bulacan sometime between the months of May and June 1995. At that time, the barangay was celebrating its fiesta. The victim stepped out of their house around 10:00 a.m. to buy cooking oil from accused-appellant's store. However, it was closed.[4] As she was about to leave the store, accused-appellant called her. When she came near him, he suddenly seized her and brought her inside the house. There was nobody inside the house when the victim was taken by accused-appellant to the bedroom. The victim resisted and screamed but accused-appellant threatened to hurt her and her family. Accused-appellant laid the victim on the bed in such a way that her feet were dangling on the floor. Then, he removed her underwear, bent over the victim, and started licking her vagina. Later on, accused-appellant removed his briefs, knelt on the floor, and placed his penis in the victim's vagina. The victim cried in pain as accused-appellant penetrated her. As the victim would not stop crying, accused-appellant let her go.[5]

The victim immediately went outside accused-appellant's house and rushed home. On the way to her house, she felt intense pain in her vagina and noticed that she was bleeding. As soon as she reached home, she changed her clothes. She was confused and afraid her mother would get angry because of what happened to her. When her mother saw her inside the house and asked her if she was able to buy cooking oil, the victim told her mother that the store was closed. So, she was again sent out to buy cooking oil from another store.

The victim related that on two other occasions after the incident, also in 1995, she was again molested by accused-appellant. On one occasion, the victim stated that she went to the house of her godsister, Rachel, also in San Pascual, Bulacan, to invite the latter to play, but Rachel was not around. Inside the house were several men playing tong-its. Among them was accused-appellant. When the victim was about to leave, she saw Rachel's younger brother inside the bedroom crying, so she went there and picked him up. To the victim's surprise, accused-appellant went to the bedroom and closed the door behind him. The victim tried to cry out for help but accused-appellant tightly covered her mouth and ordered her to put the child down. When she did so, he lowered her shorts and panty and started caressing her vagina. After more or less one month had elapsed, accused-appellant once again molested the victim when she went to her grandfather's abandoned house to get the pail requested by her aunt. She did not know that accused-appellant followed her to the house and she was too afraid to resist the sexual advances by accused-appellant.

The victim did not confide to her family about these incidents because she was very afraid of accused-appellant and of what her parents would do to her. Likewise, the victim was ashamed and worried that her friends would spread the news regarding her unfortunate experience.[6]

To corroborate the testimony of the victim, Luzviminda Millano initially testified that her daughter, who was born on February 7, 1985, was 10 years old at the time of the rape incident, as evidenced by the victim's birth certificate (Exh. D).[7] On cross-examination, Luzviminda recalled that when the victim came back from the store, she observed that her daughter looked pale and worried. She also noticed that her daughter had changed her clothes. However, Luzviminda did not bother to ask her daughter what happened to her because she had several things to do and was very busy preparing for lunch. The victim did not eat lunch on that day and ate supper ahead of them. Luzviminda added that since the time of the incident, the victim had become inattentive and withdrawn. She started getting noticeably low grades in school.[8]

In November 1996, Luzviminda brought the victim to the Municipal Health Center of Obando, Bulacan because the latter had been experiencing pain in her navel. The health officer of Obando, Dr. Rufino Bautista, conducted the physical examination of the victim and made the following findings in his report: [9]

On external examination of the genital organ -

Presence of irregular and hardened surface of both labia majora and labia minora, around the edges of both labia

On internal examination -

a) easily admits size of thumb without any resistant (sic)

b) ruptured hymen with hard edges (scar)

Medical Opinion:

Virginity was destroyed, sexual intercourse was consummated.

Dr. Bautista's findings showed that the victim's hymen had been ruptured, caused possibly by the insertion of a male organ. He concluded that the victim had already lost her virginity and explained that the looseness of the vaginal canal could not have been caused by strenuous physical activities or accidental falling.[10]

Based on the result of the physical examination, Luzviminda, with the help of her brother-in-law, asked her daughter if something happened to her. At first, the victim was hesitant but, later on, she finally told them that she was raped by their neighbor, accused-appellant Agustin Gopio.[11] Thereafter, on November 25, 1996, Luzviminda filed a criminal complaint in behalf of the victim charging accused-appellant with rape. The

information for rape was formally filed on February 12, 1997.

Luzviminda presented several receipts covering medical, transportation, food, and other expenses which she allegedly incurred on account of the incident.[12]

The defense, on the other hand, presented accused-appellant Agustin Gopio and his wife, Susita Gopio, as witnesses. Accused-appellant testified that he knew the victim and her family because they were neighbors in Obando, Bulacan. He testified that it was impossible for him to commit the crime of rape against the victim in May and June of 1995 because he was then in Novaliches, Quezon City. Accused-appellant explained that he has been selling fish there almost everyday since 1994. He said that he usually left his house at 1:00 a.m. to buy fish from the "pondohan" and sell them in the market from 7:00 a.m. until 11:00 a.m. Accused-appellant would then go home and reach his house between 12:00 noon to 1:00 p.m. Afterwards he would usually go to the cockpit between 1:00 p.m. to 2:00 p.m. Moreover, accused-appellant alleged that the victim's father told him that, sometime in 1995, the victim and the other members of her family were in Quezon. Accused-appellant stated that he last saw the victim in 1994 although he admitted that she used to go to their store either to buy food or play with one of his daughters.

Accused-appellant further declared that at one time he failed to bring along the victim's mother to the market to sell fish and his failure to do so started the animosity between their families. Accused-appellant testified that it could be why the victim's family filed a case against him.

Accused-appellant's wife, Susita Gopio, testified that they had a retail store at home. She opened the store at around 7:00 a.m. and closes it at 10:00 p.m. everyday. Hence, it was unlikely that there was nobody in the house at the time of the alleged incident.[13]

On November 23, 1996, several policemen came looking for accused-appellant in his house. When accused-appellant arrived and learned about this, he went to their barangay captain for assistance. Thereafter, the barangay captain accompanied accused-appellant to the police station to clear his name. However, when they arrived at the police station, accused-appellant was informed of the charges against him. He was then placed in jail despite his protests. Moreover, while he was imprisoned, accused-appellant executed a sworn statement denying the charges against him.[14]

After trial, the court a quo rendered its decision, dated April 6, 1998, finding accused-appellant guilty of rape. The dispositive portion of its decision reads:[15]

WHEREFORE, finding accused Agustin Gopio y Arcillas guilty as principal beyond reasonable doubt of the crime of statutory rape as charged in the information, there being no aggravating or mitigating circumstance attending the commission of said crime, he is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the private offended party in the amount of P3,727.00 as actual damage, and in the further sum of P30,000.00 as moral damages, and pay the costs of the proceedings.

In the award of the above moral damages the filing fee corresponding thereto shall constitute a first lien on said judgment.

In the service of his sentence the accused who is a detention prisoner shall be credited with the time during which he has undergone preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.

SO ORDERED.

Hence this appeal. Accused-appellant assigns the following errors as having been allegedly committed by the trial court:

I.

THE TRIAL COURT ERRED IN NOT FINDING THAT THE INFORMATION IS INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS FAILURE TO STATE THE PRECISE DATE OF THE OFFENSE CHARGED.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

In the prosecution for rape cases, this Court has been guided by the following principles in its review of trial court decisions: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[16]

In the case at bar, our review of the evidence confirms the finding of the trial court that accused-appellant is guilty of statutory rape. The two elements that must be established to hold the accused guilty of statutory rape are: (1) that the accused had carnal knowledge of a woman, and (2) that the woman is below 12 years of age. Thus, the age of the victim, as an essential element for the conviction thereof, must unquestionably be proved by the prosecution.[17]

The evidence presented by the prosecution shows that accused-appellant had carnal knowledge of the victim. In the sworn statement, dated November 23, 1996, which the victim executed and properly identified during the trial, she stated:[18]

T: Ano ba ang ginawa sa yo ni Jhun Gopio at gusto mong makulong ito?

S: Dahil po sa ginawang panghahalay niya sa akin.

T: Ano bang klaseng panghahalay ang ginawa sa iyo ni Jhun?

S: Ginahasa po niya ako.

T: Maaari mo bang sabihin sa pagsisiyasat na ito kung paano ka ginahasa ni Jhun?

S: Opo, hinubaran po ako ng panty, pinahiga po ako sa kama, dinila-dilaan po ang ari ko (kiki) at tapos po ay naghubad po siya ng short at brief pinasok po niya ang ari (titi) niya sa kiki ko.

T: Ano pa ang ginawa ni Jhun ng nakapasok na ang titi niya sa ari mo?

S: Hindi ko na po matandaan.

T: Ano ang ginawa mo ng nakapasok na ang titi ni Jhun sa ari mo?

S: Umiiyak po ako at sinasabi ko na "Huwag po, tama na po," pero hindi po siya nakikinig sa akin.

T: Ang ibig mo bang sabihin ng ikaw ay pinahiga sa kama ay pumatong ba ang katawan ni Jhun sa katawan mo?

S: Hindi po, nakaluhod po siya sa sahig at ang dalawa ko pong paa ay nasa sahig.

T: Ikaw ba ay nakakaintindi sa orasan?

S: Opo.

T: Humigit-kumulang, gaano ba katagal na ginawa sa iyo ni Jhun ang bagay na yun?

S: Humigit kumulang po sa isang (1) minuto.

T: Nang pinasok ni Jhun ang kanyang ari sa iyong ari ano ang naramdaman mo?

S: Masakit po ang ari ko.

T: Hindi ka ba sumigaw o humingi ng saklolo para matigil ang gingawa sa iyo ni Jhun?

S: Hindi po dahil natakot po ako sa kanya.

T: Hindi ka ba tinakot ni Jhun?

S: Tinakot po ako pagkatapos ng ginawa sa akin ng "Huwag daw po akong magsusumbong kahit kanino dahil may masamang mangyayari sa akin."

T: Papaanong natapos ang ginawa sa iyo ni Jhun?

S: Yun pong kahulihulihan ko pong sinabi sa kanya na "Tama na po" tapos saka lang po siya tumigil, pinagbihis po niya ako ng short ko at panty at tapos pinauwi na po ako.

T: Paano ka naman ba napunta sa bahay ni Jhun?

S: Bibili po ako sa tindahan nila at nakita ko po na sarado ang tindahan tapos po pauwi na po ako tinawag po ako ni Jhun at pinapasok ako sa bahay nila at may sasabihin daw po siya sa akin.

T: Natatandaan mo ba kung saan, kailan at kung anong oras nangyari ito?

S: Natatandaan ko po nangyari ito duon po sa bahay nila sa Brgy. San Pascual, Obando, Bulacan, hindi ko na po matandaan ang buwan, araw pero ang oras po ay alas 10:00 ng umaga noon pong 1995.

....

T: Minsan lang ba ito ginawa sa iyo ni Jhun Gopio?

S: Isang (1) beses lang po yun panghahalay sa akin pero dalawang (2) beses pong naulit ang panghihipo po sa ari ko (kiki).

The victim consistently testified:[19]

FISCAL:

Q: Madam witness, do you know of any unusual incident or any unusual thing that has been done to you by this accused if any?

A: Yes, Ma'am.

Q: What was that?

A: When he inserted his penis inside my vagina, Ma'am.

Q: Do you know as to when was this or when did this take place?

A: That was in 1995, Ma'am.

Q: Around what month?

A: Between the months of May and June, Ma'am.

Q: Why do you know that this incident took place between the months of May and June, 1995?

A: Because there was an occasion then, Ma'am.

Q: What occasion?

A: Our barangay fiesta, Ma'am.

....

Q: So what happened when he dragged you inside his bedroom?

A: He advised me to undress, Ma'am.

Q: When he advised you to undress, did you follow his order?

A: Yes, Ma'am, because he threatened me.

Q: What did he tell you as a means of threatening?

A: He told me not to tell that matter to anybody or else something bad would happen to my family, Ma'am.

Q: After he threatened you with those words and after ordering you to undress which according to you, you followed, what happened next?

A: He inserted his penis inside my vagina, Ma'am.

Q: What did you do when he inserted his penis inside you vagina?

A: I was then crying.

Q: Why were you crying?

A: Because it was painful, Ma'am.

Q: What happened next after that?

A: When I was then crying and told him to stop it, he stopped and he let me go outside his house, Ma'am.

....

Q: What happened to your vagina after the accused finished inserting his penis in your vagina?

A: There was blood, Ma'am.

The victim was unshaken by her cross-examination. She testified:[20]

ATTY. JOSON:

Q: Madam witness, you also stated that you are going to buy cooking oil and you saw that the house of the accused was closed. Now, why despite the fact that the house of the accused was closed then you still went there at his store?

A: I was about to go back home when he called me and when I came to him, he suddenly pulled me inside his house, sir.

Q: Miss witness, you said that the accused called you. Where was the accused then when he called you at that time?

A: By the door of his house, sir.

....

Q: Madam witness, you also stated that your vagina bled. Is it not a fact that you were very afraid at that time?

A: I became afraid because of his threat not to tell my family or bad things will happen to me and to my family, sir.

Q: What did you think of your blood coming from your vagina at that time, Madam witness?

A: I became very afraid worried that something might happen to me which was bad, sir.

....

Q: Madam witness, when you went back home and bought again another cooking oil as your mother have told you at that time, were you wearing the same clothes at that time - were you wearing the same clothes when you came from the house of Gopio back to your house and then went out again to buy cooking oil?

A: No, sir, I changed my clothes.

COURT:

Q: Why did you change your clothes?

A: My mother might notice the blood on my panty and she might scold me, your honor.

The age of the victim at the time was likewise proven by the prosecution. In fact, it has not been raised as an issue in this case.

The trial court in its decision observed:[21]

. . . . The penal code penalizes carnal knowledge by a man of a woman under twelve years of age, under any circumstance, whether force or intimidation is used or not, whether or not she is deprived of reason or consciousness, or even if the girl consented or herself was the one who initiated the act. She is presumed by law not in any position to give either consent or resistance because of her young age, and no man is allowed by law to have sex with her unpunished.

In *People v. Alegado*,[22] it was held that, under §§39 and 40 of the Revised Rules on Evidence, the reputation or tradition existing in a family previous to the controversy in respect to the pedigree of any of its members may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, and the dates when, the places where these facts occurred, and the names of the relatives. Hence, the testimonies of the victim and her mother are sufficient to prove the victim's age. In addition, aside from the testimonies of the victim and her mother that the former was born on February 7, 1985 and was 10 years old when the incident took place, the prosecution also presented the birth certificate of the victim.

Accused-appellant interposes a number of defenses.

First. Accused-appellant claims that in May and June of 1995, he was in Novaliches selling fish. This defense merits no consideration. Accused-appellant has not shown that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Moreover, other than the testimony of accused-appellant and his wife that the latter never leaves their house, no evidence was presented to substantiate his defense of alibi.

In contrast, the victim positively identified accused-appellant as the perpetrator of the crime and categorically testified that she had been raped by accused-appellant in the latter's house to which she was taken between the months of May and June 1995. It has been held that when a rape victim's testimony is straightforward and candid,

unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[23] Thus, this Court said in one case:[24]

Alibi as a means of defense is weak when not substantiated by the testimony of a credible witness. Courts have always looked upon the defense of alibi with suspicion and have always received it with caution not only because it is inherently weak and unreliable but also because it is easily fabricated. Alibi as basis for acquittal must be established with clear and convincing evidence. The accused must convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. And, where accused was positively identified by the victim herself who harbored no ill motive against the rapist, as in this case, the defense of alibi must fail.

Between the positive assertions of the prosecution witnesses and the negative averments of accused-appellant, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[25]

The defense further argues that accused-appellant could not have committed the crime in his house between those months because, as testified to by accused-appellant's wife, she was always there tending the store and taking care of their two small children. The trial court correctly gave credence to the victim's testimony that there was no one in accused-appellant's house when she was raped by the latter. As she testified:[26]

FISCAL:

....

Q: You said that he inserted his penis inside your vagina and you said that it took place between May and June. My question to you now is, where did this takes place?

A: In his house, Ma'am.

Q: And when you said in his house, where is his house? Where is this house located?

A: At Brgy. San Pascual, Obando, Bulacan, Ma'am.

Q: Now, how come that you were in his house at this time?

A: I was then going to his house because he has a store, Ma'am.

Q: And what will you suppose to do in that store?

A: I would buy something, Ma'am.

Q: And do you still remember what you were suppose to buy that time?

A: Yes, Ma'am.

Q: What will you suppose to buy?

A: Cooking oil, Ma'am.

Q: Were you able to buy this cooking oil?

A: No, Ma'am.

Q: Why were you not able to buy the cooking oil?

A: Because his house was then closed and nobody [was] inside, Ma'am.

Q: How were you able to go inside his house which according to you were just to buy from the store? (sic)

A: When I was about to leave the store, I did not see him but he immediately grabbed me inside the house, Ma'am.

Q: When you were immediately grabbed inside his house, to what part of his house were you brought to?

A: At his bedroom, Ma'am.

Q: Did you notice if there were other persons inside the house or in the bedroom?

A: Nobody, Ma'am.

The evaluation of testimonies rests primarily on trial courts. Our function is to review the testimonies only if it is shown that the trial court has overlooked a matter of substance which, if considered, is likely to result in a different conclusion. We have not been shown any such evidence in this case.

And even assuming that accused-appellant's family members were around at the time, this does not discount the possibility that a rape was perpetrated inside the house. It has time and again been said that rape is no respecter of time or place as it can be committed in small, confined places or in places which many would consider as unlikely and inappropriate, or even in the presence of other family members.[27]

Indeed, the testimony of Susita Gopio is rendered suspect because of her relationship to accused-appellant. In one case, it was contended that the trial court should have given more weight to the testimonies of the defense witnesses which uniformly provided them with convenient alibis. This Court held that these witnesses were either wives or mothers of the accused who, in almost all instances, would freely perjure themselves for the sake of their loved ones. The defense of alibi may not prosper if it is established mainly by the accused themselves and their relatives and not by credible persons.[28]

Second. Accused-appellant likewise questions the veracity of the victim's charges against him because of her failure to immediately report the incident to the authorities. This, too, deserves scant consideration. It has been ruled that the victim's delay in reporting the offense is not an indication of a fabricated charge.[29] In this case, it has not been established that the victim, of tender age, has any ill motive to falsely testify against accused-appellant.[30] As the records show, the victim had no intention at all to report the incident even to her parents for fear that accused-appellant would hurt her and her family and that her friends would spread the news about her plight. In fact, by reason of such immense fear on the part of the victim, accused-appellant succeeded in molesting her on two other occasions after the incident.

What accused-appellant did to complainant would not have been discovered by the latter's parents were it not for the fact that she complained of pains in her navel which prompted her mother to bring her to Dr. Bautista for a medical check-up. There it was found that the victim was no longer a virgin. Only then did the victim confess that she was raped by accused-appellant. Had it not been for that medical examination, the victim would not have told them about the rape committed by accused-appellant. This explains the delay in reporting the crime in this case.

Nor can this Court consider the victim's charges as purely fabricated or maliciously motivated. A young girl's revelation that she has been raped, coupled with her willingness to undergo public trial where she could be compelled to give out details of an assault on her dignity, cannot be easily dismissed as a mere concoction. For it is difficult to imagine that she would undergo the indignities and hardships concomitant to a prosecution for rape unless she was motivated by a desire to have the offender apprehended and punished.[31]

Neither can any ill motive be ascribed against the victim's mother based on accused-appellant's testimony that he was being charged because he failed to bring along the victim's mother at his place of business. No mother would sacrifice her own daughter, a child of tender years at that, and subject her to the rigors and humiliation of a public

trial for rape if she was not driven by an honest desire to have her daughter's transgressor punished accordingly.[32] This futile effort to extricate himself from the charge is so lame for such omission on the part of accused-appellant would not have impelled the victim and her family to impute so grave a crime against accused-appellant were it not the truth. Thus, in one case, this Court ruled:[33]

The absence of any ill motive on the part of a rape victim to institute charges does not render her testimony less credible, for no woman, especially one of tender age, will agree to undergo the trouble of having her private parts medically examined and the humiliation of a public trial if she had not been raped. The only clear and evident reason for her to institute rape charges is to get justice for her plight. Besides, a mother like Thelma Penafiel herein would not subject her child to a public trial, with its accompanying stigma as the victim of rape, if the charges filed were not true.

Time and again when the issue is one of credibility of witnesses, we have held that appellate courts will generally not disturb the findings of the trial courts, considering that the latter are in a better position to decide the question as they have heard the witnesses and observed their deportment and manner of testifying during trial.[34] This Court has said:[35]

We have consistently adhered to the rule that where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect. These findings will not ordinarily be disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. The reason for the rule is an excellent chance on the part of the trial court, an opportunity that is not equally open to an appellate court, of being able to personally observe the expression of declarants on the witness stand and their demeanor under questioning. And the Court agrees with the observation of the trial court that the testimony of Maricris was straightforward, guileless and credible. She gave a plain and candid account of her harrowing experience in a manner reflective of honest and unrehearsed testimony. The rule is well settled that when the question of credence as to which of the conflicting versions of the prosecution and the defense where a rape as committed is in issue, the trial court's answer is generally viewed as correct.

Third. Accused-appellant claims that he was denied his constitutional right to be informed of the nature and cause of accusation against him for failure of the information to indicate the approximate time of the commission of the offense. This claim is not tenable. The phrase in the information, "that sometime in 1995. . ." has sufficiently apprised accused-appellant of the crime which he allegedly committed in 1995. It bears stressing that, in the case of rape, the date of commission is not an essential element of the offense, what is material being the occurrence thereof and not the time of its commission. In the case at bar, a reading of the information would readily reveal satisfactory compliance with the rules and that appellant unquestionably has been properly apprised of the charges proffered against him. Thus, in *People v. Isug Magbanua*,[36] it was held:

Although the information did not state with particularity the dates when the sexual attacks took place, we believe that the allegations therein that the acts were committed "on (sic) the year 1991 and the days thereafter" substantially apprised appellant of the crime he was charged with since all the essential elements of the crime of rape were stated in the information. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the case filed against him. An information can withstand the test of judicial scrutiny as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof.

The above ruling was reiterated in the case of *People v. Pambid*,[37] where it was held that, under Rule 110, §§6 and 11 of the Rules on Criminal Procedure, an information is sufficient as long as it states the statutory designation of the offense and the acts or omissions constituting the same, since in rape cases, the time of

commission of the crime is not a material ingredient of the offense. It is thus sufficient if it is alleged that the crime took place as near to the actual date at which the offense(s) are committed as the information or complaint will permit. In this connection, this Court also ruled that in rape cases, victims of rape hardly retain in their memories the dates, number of times, and manner they were violated. In the same vein, to be material, discrepancies in the testimony of the victim should refer to significant facts which are determinative of the guilt or innocence of the accused, not to mere details which are irrelevant to the elements of the crime, such as the exact time of its commission in a case of rape.

In any event, it is now too late in the day to question the form or substance of the information because when he entered his plea at his arraignment, accused-appellant did not object to the sufficiency of the information against him. The rule is that, at any time before entering his plea, the accused may move to quash the information on the ground that it does not conform substantially to the prescribed form. The failure of accused-appellant to assert any ground for a motion to quash before he pleads to the information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds for a motion to quash, except when the grounds are that no offense was charged, the court trying the case has no jurisdiction over the offense charged, the offense or penalty has been extinguished, and the accused would be twice put in jeopardy.[38]

Regarding his arrest, while accused-appellant claimed that he protested when he was imprisoned by the police authorities, he failed to raise objections to his arrest at the earliest possible opportunity. The record shows that he voluntarily entered a plea of not guilty when he was arraigned on March 7, 1997, thereby waiving his right to question any irregularity in his arrest. By pleading guilty, accused-appellant submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest, for the legality of an arrest affects only the jurisdiction of the court over his person. Furthermore, any such irregularity will not negate the validity of his conviction duly proven beyond reasonable doubt by the prosecution.[39]

Therefore, the trial court correctly ruled that accused-appellant Agustin Gopio is guilty beyond reasonable doubt of the crime of statutory rape.

The award of damages by the trial court in favor of the victim should, however, be modified. The award of actual damages, in the sum of P3,727.00, must be deleted in the absence of proof required by Art. 2199 of the Civil Code. To be entitled to actual and compensatory damages, there must be competent proof constituting evidence of the actual amount thereof, such as receipts showing the expenses incurred on account of the rape incident.[40] In this case, only the laboratory fee issued by Our Lady of Salambao Hospital in Bulacan amounting to P350.00 was duly receipted. The rest of the documents, which the prosecution presented to prove the actual expenses incurred by the victim, were merely a doctor's prescription and a handwritten list of food expenses. Nevertheless, under Article 2221 of the Civil Code, nominal damages are adjudicated in order that the right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. As has been held, "whenever there has been a violation of an ascertained legal right, although no actual damages resulted or none are shown, the award of nominal damages is proper." [41] In this case, the victim's family clearly incurred medical expenses due to the rape committed by accused-appellant. The victim suffered from pains in her navel which required her physical examination. An award of P2,000.00 as nominal damages is thus appropriate under the circumstances.

On the other hand, based on our current rulings, the award of P30,000.00 as moral damages should be increased to P50,000.00 irrespective of proof thereof.[42] In addition, the victim is entitled to the award of P50,000.00 as civil indemnity which must be given even if there is neither allegation nor evidence presented as basis therefor.[43]

WHEREFORE, the decision of the Regional Trial Court, Branch 12, Bulacan, finding accused-appellant Agustin

Gopio guilty of statutory rape and sentencing him to reclusion perpetua is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay the victim the amounts of P2,000.00, by way of nominal damages, P50,000.00, as moral damages, and the additional amount of P50,000.00, as civil indemnity, plus the costs of the suit.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Crisanto C. Concepcion.

[2] Rollo, p. 4.

[3] Also referred to as Jhun.

[4] TSN (Ma. Princess Millano), pp. 6-7, April 29, 1997.

[5] Id., pp. 8-10; TSN, p. 4, May 9, 1997; TSN, p. 3, May 20, 1997; Sworn statement of Ma. Princess Millano, dated Nov. 23, 1996, RTC Records, pp. 35-37.

[6] TSN (Ma. Princess Millano), p. 3, May 9, 1997; TSN, pp. 4-6, May 20, 1997; Sworn Statement of Ma. Princess Millano, supra.

[7] TSN (Luzviminda Millano), p. 4, June 13, 1997; TSN, p. 4, July 8, 1997.

[8] TSN, pp. 2-5, Aug. 5, 1997; TSN, pp. 4-5, June 13, 1997.

[9] RTC Records, p. 34; Exh. A.

[10] TSN (Dr. Rufino Bautista), pp. 10-12, April 18, 1997.

[11] TSN (Luzviminda Millano), pp. 3-4, June 13, 1997; TSN, p. 5, Aug. 5, 1997.

[12] TSN, pp. 2-3, July 8, 1997.

[13] TSN (Agustin Gopio), pp. 4, 6-8, 13, 15-16, Oct. 3, 1997; TSN (Susita Gopio), pp. 3-7, Dec. 16, 1997.

[14] TSN (Agustin Gopio), pp. 9-12, Oct. 3, 1997; Exh. 1 (not attached to the records of the case but accused-appellant testified that he denied the accusations against him in the sworn statement which he executed).

[15] Rollo, pp. 18-19.

[16] People v. Brondial, G.R. No. 135517, October 18, 2000 citing People v. Baniguid, G.R. No. 137714, Sept. 8, 2000; People v. Baygar, G.R. No. 132238, Nov. 17, 1999; People v. Sta. Ana, 291 SCRA 188 (1998); People v. Auxtero, 289 SCRA 75 (1998); People v. Balmoria, 287 SCRA 687 (1998); People v. Barrientos, 285 SCRA 221 (1998); People v. Gallo, 284 SCRA 590 (1998).

[17] People v. Rebose, 308 SCRA 499 (1999).

[18] Sworn statement of Ma. Princess Millano, dated Nov. 23, 1996, RTC Records, pp. 36-37.

[19] TSN, pp. 6, 8-10, April 29, 1997.

[20] TSN, pp. 2-6, May 20, 1997.

[21] Rollo, p. 18.

[22] 201 SCRA 37 (1991).

[23] People v. Barcelona, G.R. No. 125341, February 9, 2000.

[24] People v. Luzorata, 286 SCRA 487 (1998).

[25] People v. Padre, 249 SCRA 422 (1995).

[26] TSN, pp. 7-8, April 29, 1997.

[27] People v. Lagarto, G.R. Nos. 118828 & 119371, February 29, 2000; People v. Escobar, 281 SCRA 498 (1997).

[28] People v. Pano, 257 SCRA 274 (1996) citing People v. Rio, 201 SCRA 702 (1991); People v. Flores, 195 SCRA 295 (1991).

[29] See People v. Escobar, 281 SCRA 498 (1997); People v. Dela Cruz, 276 SCRA 181 (1997); People v. Banayo, 195 SCRA 543 (1991).

[30] People v. Escobar, *supra*.

[31] People v. Accion, 312 SCRA 250 (1999).

[32] *Id.*

[33] People v. Padre, *supra*, p. 429 (citation omitted).

[34] People v. Teves, 310 SCRA 788 (1999).

[35] People v. Accion, *supra*, p. 261.

[36] G.R. No. 128888, December 3, 1999.

[37] People v. Pambid, G.R. No. 124453, March 15, 2000 citing People v. Dimapilis, 300 SCRA 279 (1998).

[38] People v. Isug Magbanua, G.R. No. 128888, December 3, 1999.

[39] People v. Lagarto, *supra*.

[40] People v. Vital, G.R. No. 130785, September 29, 2000; People v. Gallo, G.R. No. 128361, November 16, 1999; People v. Lachica, G.R. No. 94432, October 12, 1999; People v. Apelado, G.R. No. 114937, October 11, 1999.

[41] Sumalpong v. Court of Appeals, 268 SCRA 764, 775-776 (1997).

[42] People v. Tolentino, G.R. No. 130514, June 17, 1999 citing People v. Prades, 293 SCRA 411 (1998).

[43] People v. Prades, *supra*.

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