

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO VILLARUEL Y RIVADENERA, ACCUSED-APPELLANT.

G.R. No. 135401. March 06, 2002

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PER CURIAM:

For automatic review is the judgment of the Regional Trial Court, Fourth Judicial Region, Branch 31, San Pedro, Laguna dated July 10, 1998 imposing the death penalty on the accused-appellant for raping his sister.

On February 13, 1998, an Information was filed which reads as follows:

That on or about February 21, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, said accused being the brother of the victim, did then and there wilfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge with one MYRA R. VILLARUEL, 14 years of age against her will and consent.

CONTRARY TO LAW.[1]

With leave of court, the Information was amended, changing the date of the commission of the crime from February 21, 1997 to February 21, 1996. Thus, the Information now reads as follows:

That on or about February 21, 1996, in the Municipality of San Pedro, province of Laguna, Philippines and within the jurisdiction of this Honorable Court, said accused being the brother of the victim, did then and there willfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge with one MYRA R. VILLARUEL, 14 years of age, against her will and consent.[2]

When arraigned, the accused-appellant pleaded “not guilty.”

On July 10, 1998, the trial court rendered its judgment, to wit:

WHEREFORE, the Court hereby renders judgment sentencing accused Wilfredo Villaruel y Rivadenera to suffer the penalty of death, to pay the private complainant the amounts of P100,000.00 as civil indemnity and another P100,000.00 for moral damages. Costs against the accused.

SO ORDERED.[3]

The facts as stated in the brief of the Office of the Solicitor General (OSG) are as follows:

Myrna Villaruel was born on September 26, 1982. Her parents being both dead, she used to live with four (4) of her five (5) older brothers, namely, appellant Wilfredo, Joel, Ricky and Ogie in the house owned by their grandmother located at Barangay Bagong Silang, San Pedro, Laguna. Said house has two (2) bedrooms, with one (1) being occupied by Joel, his wife Carlota and their children, whereas the other one is being occupied by appellant, Ricky and Ogie. Myrna sleeps in the mezzanine located at the upper portion of the room occupied by Joel and Carlota. Their grandmother resides in another house adjacent to the one Myrna and her brothers occupied (TSN, April 6, 1998, pp. 6-9).

On February 21, 1996, at around 1:00 o'clock in the morning, Myrna was roused from her sleep by appellant

who pulled and shook her hands and who told her that they would buy bread. She followed appellant, her elder brother (TSN, *ibid.*, pp. 9-10).

Upon reaching a grassy area, near their comfort room located a meter away from the back of their house, appellant pulled Myrna and poked two (2) fan knives on both sides of her waist. Appellant threatened to kill Myrna if she would shout (TSN, *ibid.*, pp. 10-12).

After removing her t-shirt, shorts, panty and bra, appellant kissed Myrna on the different parts of her body while the two (2) knives were placed on the ground. Then, appellant removed his t-shirt and lowered his pants and brief down to his knees (TSN, *ibid.*, pp. 11-12).

Thereafter, appellant asked Myrna to lie down at the dark grassy area at the back of their comfort room, and kissed her again on the different parts of her body. Appellant placed himself on top of his sister and forcibly inserted his private parts into hers (TSN, *Id.*)

Appellant threatened his sister with death if she moves. Thus, Myrna did not do anything (TSN, *ibid.*, p. 13). He stayed on top of Myrna for about three (3) minutes. The latter's whole body ached (TSN, *ibid.*, p. 12).

At this time, Myrna had noted that her brother was drunk and was high on shabu (TSN, *ibid.*, p. 13).

On July 19, 1997 at about 12:00 o'clock midnight, appellant who was again high on shabu, asked Myrna to go with him to buy bread. She obliged but was surprised when he asked her to pass by the back of their house (TSN, *ibid.*, p. 15).

Thereat, appellant poked two (2) fan knives at his sister. He asked her if she had a boyfriend. When she answered in the negative, appellant told Myrna that he could teach her (TSN, *ibid.*, p. 16).

Appellant pulled Myrna again to the same grassy area where he first sexually molested her on February 21, 1996. She thought of shouting, but her elder brother slapped her (TSN, *Id.*, pp. 16-17).

But since the dogs were already barking and many had been awakened, appellant just sent his sister Myrna home. He again threatened to kill her if she would report the incident to her brothers and to the barangay authorities (TSN, *ibid.*, p. 17).

However, Myrna told the incident to her sister-in-law Carlota, who, in turn, reported the same to the former's aunts and to the barangay authorities (TSN, *id.*).

Thus, on July 29, 1997, together with the barangay authorities, Myrna and Carlota went to the police station where Myrna executed an affidavit (TSN, *ibid.*, p. 18).

On the following day, July 30, 1997, Carlota brought Myrna to the National Bureau of Investigation where she was examined by NBI Medico-Legal Officer Annabelle Soliman, whose findings and conclusion are indicated in a written report denominated as Living Case No. MG-97-1053 (Exh. "C"; TSN, April 29, 1998, pp. 8-18).[4]

On the other hand, the version of accused-appellant as stated in his brief is as follows:

Accused Wilfredo Villaruel denied that he raped his sister on February 21, 1997 or in 1996 at 1:00 A.M. in their house at Barangay Bagong Silang, San Pedro, Laguna. From January 3, 1997 to March 22, 1997, he was detained in the Municipal Jail of San Pedro, Laguna relative to a complaint for illegal possession of deadly weapon filed against him. On February 21, 1996 he could not recall where he was, but he was then residing at Block 47, Lot 8, Barangay Bagong Silang, San Pedro, Laguna, together with the complainant and his brothers. He did not know why his sister filed this case of rape against him.[5]

In assailing the trial court's decision, the accused-appellant raises the lone assignment of error that:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT WILFREDO VILLARUEL GUILTY OF RAPE NOTWITHSTANDING THE MEDICAL FINDINGS AND THE INCONSISTENT, IMPROBABLE AND INCREDIBLE TESTIMONY OF THE COMPLAINANT.[6]

The accused-appellant avers that the evidence of the prosecution did not meet the quantum of proof required to overcome his innocence. He doubts the credibility of the complainant's testimony considering that initially, she stated that her brother raped her on February 21, 1997 and thereafter, changed the date to February 21, 1996. Her narration of the sexual assault appears to be divergent from the findings of the medico-legal officer of the NBI, who found complainant's hymen still intact.

It is the well-settled rule that the assessment of the credibility of the witnesses depends upon the discretion of the trial court for it is more in the position to observe their demeanor. In the case at bar, the trial court was convinced that the complainant was telling the truth when she testified in a candid and straightforward manner that her brother sexually molested her in the early morning of February 21, 1996. We do not find any cogent reason to divert from the findings and conclusions of the trial court as we find it in accord with the law and the evidence on record.

We agree with the trial court that the amendment of the Information changing the date of the commission of the crime was merely a matter of form.[7] When recalled to the witness stand for additional direct examination,[8] the complainant sufficiently explained that she was very confused at that time she signed the complaint and did not notice the error in the date, that it should have been February 26, 1996 and not 1997. Nonetheless, Section 11 of Rule 110[9] does not require that the precise time when the offense was committed be stated in the information. In rape cases, the date of the commission of the crime is not an essential element of the crime and, therefore, need not be accurately stated.[10] Contrary to the allegation of the accused-appellant, the modification did not at all affect the credibility of the complainant nor did it prejudice the rights of the accused-appellant as she was positively firm about the sexual assault committed on her by her brother.

The complainant testified, to wit:

PROS. LOMARDA:

q-

Miss Villaruel, at around 1:00 o'clock in the morning of February 21, 1997 do you still recall where you were?

a-

In our house at Barangay Bagong Silang, San Pedro, Laguna, sir.

q-

Where was your brother Wilfredo Villaruel, the accused in this case on that particular date and time?

a-

He was also in the house, sir.

q-

While you and your brother Wilfredo Villaruel were inside the house located at Barangay Bagong Silang, San Pedro, Laguna, what happened if anything happened at all?

a-

He told me that we will buy bread, sir.

q-

Earlier, you said that three of your brothers are also residing in that same house, where were your brothers on that particular date and time, Miss Villaruel?

a-

They were sleeping, sir.

COURT:

q-

You mean to tell this Court that you were not sleeping yet at 1:00 o'clock in the morning on February 21, 1997?

a-

He woke me up, maam.

q-

When you said "he", you are referring to whom?

a-

Wilfredo Villaruel, maam.

PROS. LOMARDA:

q-

How do you address your brother Wilfredo Villaruel?

a-

Kuya, sir.

q-

As soon as your brother woke you up because according to you he wanted to buy some bread, what did you do if you did anything, Miss Witness?

a:

I followed him but he pulled me and poked a fan knife at me, sir.

q:

To which direction did he pull you?

A:

At the back of our comfort room, sir.

q:

Where is your comfort room located in relation to your house?

a:

At the back of our house, sir.

COURT:

q:

Is it outside your house?

a:

Yes, maam.

PROS. LOMARDA:

q:

How far away is your house from your comfort room?

a:

About one (1) armlength, sir.

q:

Could you describe to us, Miss Villaruel, the place where your brother Wilfredo dragged or pulled you to?

a:

At the grassy area at the back of our house, sir.

q:

What kind of grass are growing in that place where you were dragged by your brother Wilfredo?

a:

Short grass, sir.

q:

How tall are the grasses?

a:

About this high, sir. (Witness demonstrating with the use of her hands the height of about 9 inches.)

q:

Miss Villaruel, in which part of your body did Wilfredo poke the fanknife?

a:

There were two fan knives poke on both sides of my waist, sir. (Witness demonstrating by pointing with her two hands both sides of her waist.)

q:

After arriving at the grassy portion near your comfort room located at the back of your house, what did the accused do if he did anything?

a:

He removed my t-shirt, my short, my panty and my bra, sir.

q:

What was your position when your brother was removing your t-shirt, short, panty and bra?

a:

I was lying down, sir.

COURT:

q-

Why were you lying down?

a-

He asked me to lie down, maam.

q-

And you followed him when he asked you to lie down?

a-

Yes, maam, because he was poking his fan knives at me.

PROS. LOMARDA:

q:

After your brother removed the items in your body you mentioned, what did he do if he did anything?

a:

He kissed me on the different parts of my body, sir.

q:

What else did he do if he did anything aside from kissing you on the different parts of your body?

a:

He forced to insert his private part into mine, sir.

q:

Was he able to insert his private part into your private part?

a:

Yes, sir.

q:

How did you feel when his private part entered your private part?

a:

My body ached, sir.

COURT:

q:

You mean your whole body?

a:

Yes, Ma'am.

PROS. LOMARDA:

q:

How long did he stay on top of you, Miss Villaruel?

a:

About 3 minutes, sir.

q:

When you said that he inserted his penis into your private part, what else did he do, if any?

a:

No more. Sir, he asked me to enter the house.

COURT:

q:

Was that the first time that he placed himself on top of you and inserted his private part into yours?

a:

Yes, maam.

PROS. LOMARDA:

q:

Miss Villaruel, while your brother was on top of [you] and inserting his organ into your private part, what did you do if you did anything?

a:

None, sir, because, he threatened to kill me if I move.

x x x[11]

On cross-examination, she was consistent and firm with her declaration of the sexual assault on her.

x x x

q:

Where is the nearest house to the place where you were?

a:

The incident happened at the back of our comfort room, which is fronting the door of the house, sir.

q:

After you lied down, what did your brother do?

a:

He kissed me on the different parts of my body, sir.

q:

Is that place where you lie down rocky or smooth?

a:

It's a grassy place, sir.

q-

Can you be more specific? In what part of your body were you kissed by your brother?

a-

On my face, breast, waist and neck, sir.

q-

For how long did he do that to you?

a-

For about three (3) minutes, sir.

q-

Why did you know that it took him three minutes, did you look at your watch?

a-

Because it was long, sir.

q-

And at that time he was holding your arms?

a-

Yes, sir.

q-

Both his hands were holding you?

a-

Yes, sir.

q-

When he kissed your breast, you enjoyed it, isn't it?

a-

No, sir. I cried.

q-

And then what happened afterwards?

a-

He forced to insert his private part to mine, sir.

x x x

q-

And he did not succeed in placing his penis into your vagina, is it not?

a-

He was able to insert it, sir.

x x x[12]

When a woman says that she has been raped, she says in effect all that is necessary to show that rape has been inflicted on her.[13] No woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and be subjected to public trial and humiliation if her claim is not true.[14] We do not find any motive on the part of the victim why she would falsely charge her brother for the crime. The delay in reporting the crime which was over one (1) year was sufficiently explained in court as she said that she was afraid of her brother,[15] because every time the latter was drunk and was high on “shabu,” he would destroy the house, throw their belongings and even hurt the complainant. It is understandable for Myra to conceal for some time the assault against her virtue because of the accused-appellant’s threats and violent nature. It was only when her brother was incarcerated in July, 1997,[16] for violation of B.P. Blg. 6[17] did Myra muster enough courage to complain about the sexual assault. A rape victim will not come out in the open if her motive is not to obtain justice.[18]

Anent the medical findings, the accused-appellant asserts that there could not have been any rape because the medico-legal officer, Dr. Annabelle Soliman who had attended to 500 rape cases found that the victim’s hymen was still intact. The accused-appellant further states that if he indeed raped the complainant, as the victim testified that the accused-appellant forcefully inserted his penis into her vagina, her hymen should have been lacerated since it was found to be of the rigid type.

We are not persuaded.

The medico-legal officer very well explained that while the victim’s hymen was intact, there could not have been full penetration but only partial or labial penetration. We have held that a broken hymen is not an essential element of rape. Genital laceration is not even necessary to sustain a conviction for rape.[19] It was enough that there was an introduction of the male organ within the labia of the pudendum of the female organ.[20] We quote the testimony of Dr. Soliman:

q-

On the basis of your conclusion, Dr. Soliman, could you say that prior to July 30, 1997 the date of your examination of Myra Villaruel, she had sexual intercourse? At any time prior to July 30, 1997?

a-

I cannot say, sir, because the hymen was intact, and the opening is so small that there is no penetration.

q-

When you said that there is no penetration, it is possible that there was a previous sexual intercourse but no complete penetration?

a-

It is possible, sir.

x x x

PROS. LOMARDA:

q-

If the subject woman or any woman for that matter, a virgin at that has a sexual intercourse and the penetration is only partial, would her hymen be lacerated or ruptured?

a-

When we say partial, if the penis touches the labia, then the hymen would not be ruptured.

x x x[21]

The fact remains that Myra positively testified in court that her brother sexually molested her in the morning of February 21, 1996. The accused-appellant was her older brother who had definitely moral ascendancy over her. He, being the eldest among the children since both of their parents were dead, the accused-appellant stood as guardian of the siblings. Thus, when the complainant was roused from her sleep to accompany the accused-appellant to buy bread, the complainant obediently followed him. To the accused-appellant, this was highly improbable that the complainant would entertain his plea to go out with him at such an unholy hour or even allegedly knowing fully well that the latter had taken shabu and liquor.[22] There is nothing incredible with the complainant's story. Notwithstanding the time or the physical condition of her brother, Myra certainly did not expect that he had other ill motives against her. It certainly is not normal for a brother to take out his lust on his sister. Myra also testified that she did not resist his advances for fear of her life as her brother had two (2) fan knives poking at her as she was being raped. More importantly, the moral ascendancy and influence the accused-appellant has over the complainant sufficiently substitute for the force and intimidation required in rape.

The victim's relationship to the accused-appellant and her minority qualify the rape as one of the circumstances provided under R.A. 7659 where the supreme penalty of death is imposed, to wit:

x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- 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.
- when the victim is under the custody of the police or military authorities
- when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
- when the victim is a religious or a child below seven (7) years old.
- when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

We affirm the trial court's findings that the accused-appellant is guilty of the crime charged. However, as to the damages awarded by the trial court, there is a need to correct the same as it is not in accord with recent jurisprudence on the matter.[23] Accused-appellant should be ordered to indemnify the complainant in the amount

of P75,000.00 and moral damages awarded in the amount of P50,000.00 without the need for pleading or proof of the basis thereof.

Four (4) members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, the judgment of the Regional Trial Court, Fourth Judicial Region, Branch 31, San Pedro Laguna dated July 10, 1998 is AFFIRMED with the modification that the award of civil indemnity shall be reduced from P100,000.00 to P75,000, and the amount of moral damages, from P100,000.00 to P50,000.00.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. 7659, upon finality of this decision, let certified true copies thereof and the record of the case be forwarded forthwith to the Office of the President for possible exercise of the clemency and pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Gutierrez, and Carpio, JJ., concur.

[1] Rollo, p. 10.

[2] Appellant's Brief, p. 2; Rollo, p. 48.

[3] Rollo, p. 35.

[4] Id., at 80-83.

[5] Id., at 51.

[6] Id., at 47.

[7] Order dated June 11, 1998; Records, p. 135.

[8] TSN, June 17, 1998, pp. 4-8.

[9] Rules of Court, Rule 110, Sec. 11. Time of the Commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

[10] *People v. Bugarin*, 273 SCRA 384 (1997); *People vs. Garcia*, 281 SCRA 463 (1997).

[11] TSN, April 6, 1998, pp. 9-13.

[12] TSN, April 22, 1998, pp. 12-14.

[13] *People v. Ambray*, 303 SCRA 697 (1999).

[14] *People v. Oliver*, 303 SCRA 72 (1999).

[15] TSN, June 17, 1998, pp.13-14.

[16] Ibid.

[17] See Decision, p. 4; Batas Pambansa Blg. 6 is An Act Reducing the Penalty for Illegal Possession of Bladed, Pointed or Blunt Weapons, and For Other Purposes, Amending for the Purpose Presidential Decree Numbered Nine.

[18] People vs. Juntilla, 314 SCRA 568 (1999).

[19] People v. Tabarangao, 303 SCRA 623 (1999).

[20] People vs, De la Cuesta, 304 SCRA 83 (1999).

[21] TSN, April 29, 1998, pp. 14-16.

[22] TSN, April 6, 1998, p. 14.

[23] People v. Manolito Augustin, G.R. Nos. 135524-25, September 24, 2001.

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