

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR MIRANDA Y CAPE, ACCUSED-APPELLANT.

G.R. No. 142566. August 08, 2002

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PER CURIAM:

For automatic review by this Court is the decision of the Regional Trial Court, 5th Judicial Region, Branch 57, Libmanan, Camarines Sur imposing the death penalty on the accused-appellant, Salvador Miranda for raping his fourteen-year old daughter, Teresita.

The Information reads as follows:

The undersigned 4th Assistant Provincial Prosecutor of Camarines Sur, upon a sworn complaint filed by Teresita L. Miranda, hereby accuses SALVADOR MIRANDA y DOE for the crime of RAPE defined and penalized under Article 355 of the Revised Penal Code in relation to R.A. 7659, committed as follows:

That sometime in February, 1998 at Sitio Sampaloc, Barangay Banga Caves, Municipality of Ragay, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force and intimidation, and while armed with a fan-knife, did then and there, willfully, unlawfully and feloniously have sexual intercourse with his 14 year old daughter, TERESITA L. MIRANDA against her will, to her damage and prejudice.

ACTS CONTRARY TO LAW.[1]

When arraigned on October 25, 1998, the accused-appellant pleaded “not guilty.” Pre-trial was waived so trial ensued. The prosecution presented the victim and the medico-legal officer as witnesses. The medico-legal report was offered as their documentary evidence. For the defense, only the accused-appellant testified on his own behalf.

On January 17, 2000, the RTC rendered its decision with the following dispositive portion:

WHEREFORE, in view of the foregoing, this Court finds the accused, SALVADOR MIRANDA, GUILTY beyond reasonable doubt of the crime of Rape, as defined and punished under Article 335 of the Revised Penal Code as amended, and hereby sentences him to the supreme penalty of DEATH. He is likewise directed to pay his daughter damages of Fifty Thousand Pesos (P50,000.00), exemplary damages of Thirty Thousand Pesos (P30,000.00) and to pay the costs of this suit. Considering his old age, however, this Court hereby recommends that the penalty be commuted to Reclusion Perpetua.

Let the record of this case be forwarded to the Supreme Court on automatic review.[2]

The facts as found by the trial court are as follows:

Sometime in February 1998, Teresita (Tessie) did not go to school. Her other siblings were in school, while the older ones who were already married lived in their respective houses. Her mother was washing clothes near her brother’s place, while her father was engaged in a drinking bout with four men. At about 12:00 noon, her father, smelling a gin, went inside their house, and pulled her towards the room. Tessie was not able to shout or

make any sound, afraid that her father might hurt her. Her father removed her T-shirt and shorts and then undressed himself. He made her lie down on the floor, then he laid down also and inserted his penis into her vagina. The initial, unwelcome and detestable experience was excruciating that Tessie cried. She was still naked when her mother Rosella arrived. His father stood up, wore his shorts and did not answer his wife's query what he did to their child. Rosella got angry and asked her husband why did he do it, but the latter did not speak and just went away as if nothing happened. Tessie, in tears, told her mother about her carnal defilement in the hands of her father that day. The following day Tessie, together with her aunt, Casiana Miranda, went to Daet where she stayed with the latter's daughter for a month, until her mother fetched her. Her elder sister Hilda Navarro, who came to learn of her fate from her mother, brought her to the police authorities. She executed a sworn statement before police at Ragay, Camarines Sur (Exhibit B, p. 4, Record).

Dr. Marilyn Follosco, Municipal Health Officer of Ragay, examined Tessie Miranda on March 24, 1998. The medical certificate (Exhibit A, p.5, Record) indicated the following:

"Pertinent PE findings:

Healed, Complete, Hymenal Laceration at 4:00 o'clock"

x x x[3]

The accused-appellant denied the accusations and claimed that he was in the farm busy plowing the field in February, 1998. He denied that he was drunk that noon of February and asserted that he goes to the farm everyday, in February, or even before that month and also in March until he was arrested by the police.[4]

In this appeal, the accused-appellant raised the lone assignment of error that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO STATE IN THE INFORMATION THE PRECISE DATE OF THE COMMISSION OF THE ALLEGED OFFENSE.[5]

The accused-appellant asserts that the Information where he is charged for rape is fatally defective as it does not state the approximate time of the commission of the crime in violation of the Rules of Court.[6]

The information merely states that the rape was allegedly committed "sometime in February 1988." As it does not mention the precise time and date when the rape was committed; the Information must, therefore, be considered void. Such defect jeopardizes the right of the accused-appellant to be informed of the offense charged. With this constitutional infirmity, the accused-appellant deserves an acquittal.

The contention is untenable.

In refutation of accused-appellant's argument, the Office of the Solicitor General (OSG) presented adequate jurisprudence on the matter that it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless the time is an essential ingredient of the crime.[7] In the crime of rape, the time of its commission is not "a material ingredient of the offense." [8] It is sufficient that the act complained of is alleged to have taken place "as near to the actual date at which the offense was committed as the information or complaint will permit." [9] It can not be said that the accused-appellant was not properly apprised of the charges proffered against him. There is, therefore, no merit in accused-appellant's appeal.

After a careful review, we find the findings and conclusions of the trial court to be in accord with the law and jurisprudence and supported by evidence. The trial court gave credence to the testimony of the victim because she testified in a candid and straightforward manner. It had the badges of truth considering that the trial court found no motive which would make her testify falsely against the father if she has not really been aggrieved. She testified, to wit:

PROS. CONTRERAS:

Q: By the way, you said that you were raped by your father, where did it happen?

A: In our house, Sir.

Q: What is the name of your father?

A: Salvador Miranda.

Q: You said that you were raped by your father, are you referring the house of your father at Banga Caves, Ragay, Camarines Sur?

A: Yes, sir.

Q: Now, approximately, what time was that when it happened?

A: At 12:00 noon, Sir.

Q: Can you still remember the specific date?

A: I do not know, Sir.

Q: On that date, when you were raped by your father, was it schooldays or none schooldays?

A: There were classes, Sir.

Q: And on February of 1998 at 12:00 noon, aside from you and your father, who else were there in your house?

A: Only the two of us, Sir.

Q: Why, where was your mother at that time?

A: She was washing clothes Sir.

Q: Where?

A: At the house of my brother.

Q: Whom are you referring?

A: Jenny, Sir.

Q: Is Jenny's house, near or far?

A: Far, Sir.

Q: What about your sister Francia, where was she at that time?

A: She was at Sipocot, Sir.

Q: What about Danilo?

A: He (sic) also studying, Sir.

Q: You said, you were only two at your house and your father raped you, before your father raped you, what did he do first to you?

A: He followed me and he pulled me.

Q: Up to what place?

A: Towards the room.

Q: While the two of you was already there, what did he do to you?

A: He undressed me.

Q: What kind of clothes were you wearing on that time?

A: T-shirt and short, Sir.

Q: You said that your father undressed you, what did you do?

A: I was not able to move.

Q: You said you were not able to moved (sic), why?

A: Because, he might hurt me, Sir.

Q: Why do you say that he might hurt you, was he carrying any weapon?

ATTY. MIRABUENO:

Leading, Your Honor.

COURT:

Reform your question.

PROS. CONTRERAS:

Q: What did you observe from your father at that time?

A: I smelled of gin to (sic) him, Sir.

Q: Why do you say that he was (sic) smelled of gin?

A: He drunk, Sir.

Q: Where?

A: In our house, Sir.

Q: On that same date?

A: Yes, Sir.

Q: And who was his drinking mate?

A: My uncle, Sir.

COURT:

Q: No other persons?

A: They were four (4) Mam.

COURT:

Proceed, fiscal.

PROS. CONTRERAS:

Q: You said your father undressed you, which clothes you were wearing that he removed?

A: My short, Sir.

Q: After removing your short, what did he do next?

A: He took out my panty and then he undressed himself.

Q: When you have no more panty, what happened next?

A: He made me to (sic) lay down.

Q: After you laydown (sic), what happened next?

A: He also laydown (sic), Sir.

Q: Where, on top of you?

ATTY. MIRABUENO:

Leading, Your Honor.

COURT:

Reform your question.

PROS. CONTRERAS:

Q: You said you laydown (sic), what happened next when he also laydown (sic)?

A: I was raped, Sir.

Q: How did he rape you?

A: His penis inserted to my vagina.

Q: What did you do, when he inserted his penis to your vagina?

A: I cried, Sir.

Q: Why did you cry?

A: Because it is painful, Sir.

Q: And after your father inserted his penis to your vagina, what happened next?

A: My mother arrived, Sir.

Q: And when your mother arrived, where was your father?

A: He stood up, Sir.

Q: And after your father stood up, what did he do next?

A: He wore his clothes.

Q: When your mother arrived were you still naked?

A: Yes, Sir.

Q: What did your mother do, when you were still naked?

A: She just cried, Sir.

Q: What did your mother do, when she saw you that you were naked?

A: She asked my father, what did he do to me.

Q: And what was the responded (sic) of your father?

A: He did not answer, Sir.

Q: Considering that your father did not answer, what did your mother do?

A: She got angry, Sir.

Q: When you said that your mother got angry, what did she utter to your father?

A: She said that why did he do it to me.

Q: And what was the responded (sic) of your father?

A: None, sir.

Q: What about you, did you not say anything?

A: I told my mother that my father raped me.

Q: Now, after that where did your father go?

A: He fixed his clothes.

Q: After he fixed his clothes, where did he go?

A: He left, Sir.

Q: Did he return to your house?

A: No, Sir.

Q: In (sic) the following day, did he return to your house?

A: I do not know, Sir.

Q: Why you did not know?

A: Because, we went to Daet, Sir.

Q: Who is your companion?

A: My auntie, Sir.

Q: What is the name of your auntie?

A: Casiana Miranda, Sir.

Q: Was that on the same date, when you go to Daet?

A: In (sic) the following day, Sir.

Q: At Daet, to whom did you stay?

A: At the daughter of Casiana Miranda.

Q: How long have you stayed there in Daet?

A: I stayed there for one (1) months, Sir.

Q: Do you remember of having executed an affidavit in this case?

A: Yes, Sir.

Q: In this case, can you remember where did you give your statement?

A: Yes, Sir.

Q: To whom did you give your statement?

A: At the Ragay Police, Sir.

xxx[10]

Although the Information indicated that the accused-appellant was armed with a fan-knife at that time he sexually assaulted his daughter, the prosecution, however, failed to prove this allegation as it no longer pursued the subject during the direct testimony of the complainant. Nonetheless, the trial court justified the presence of force and intimidation in the case, as it correctly explained, that:

xxx In a rape case by a father against her own daughter, his moral ascendancy and influence over the latter can sufficiently substitute for violence and intimidation. Thus, even without any weapon, his being a father is enough to intimidate and bring dread to a very young daughter.[11]

Indeed, in cases of incestuous rape, the accused-appellant's moral ascendancy over the victim takes the place of the force and intimidation in rape.[12] The force and intimidation is subjective and should be viewed in the context of the victim's perception and judgment at that time of the commission of the offense.[13] Teresita testified that she submitted herself to the father because she was afraid that he might hurt her. She noticed that his father was drunk, knowing that he had a drinking spree in their house at that time. No words of threat were necessary because her father's presence and moral ascendancy was intimidating enough for Teresita not to resist his advances. The fact that Teresita failed to put up a strong resistance or shout for help cannot be considered consent. This lack of resistance on the part of the victim as a product of the moral ascendancy is very well explained in the case of *People v. Chua*: [14]

In Philippine society, the father is considered the head of the family, and the children are taught not to defy the

father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do.

Apparently in the case at bar, the accused-appellant certainly abused the reverence and respect which his daughter had for him as he was successful in forcing her to submit to his lust. The pain and trauma which she experienced could not be concealed. Her anger and resentment against her father was clearly manifested in her testimony. When asked on cross-examination, she knew and understood the consequences of her charge for she had this determined resolve to put her father to death as a result of the incident. When a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped.[15] She testified on cross-examination:

ATTY. MIRABUENO:

Q You said that your father and uncle and two other persons were drinking at that time, can you still remember that?

A Yes, Sir.

Q What were they drinking?

A Tanduay, Sir.

ATTY. MIRABUENO:

Q You said during direct examination, your father drinking gin and now you said drinking Tanduay, which is now correct, Gin or Tanduay?

A Tanduay, Sir.

Q So your testimony that he smelled Gin is not correct?

A Yes, Sir.

Q What time did they start drinking?

A 11:00 A.M., Sir.

Q And what time did they finish in drinking?

A I do not know, Sir.

Q Did they drink up to afternoon?

A No, Sir.

Q Up to 1:00 o'clock in the afternoon?

A No, Sir.

Q Up to 12:00 Noon?

A Before 12:00 Noon, Sir.

Q Aside from them, as you mentioned they were four persons drinking, was there any other persons at that time?

A None, Sir.

Q When your father, according to you, he pulled you, did you not shout?

A No, Sir.

Q Did you not ask your father, why you were being pulled by him?

A No, Sir.

Q After the following day that your father allegedly insert his penis to your vagina, did you tell to anybody of what happened to you?

A Yes, Sir.

Q To whom?

A To my sister, Sir.

Q What time did you tell to her?

A My mother was the one who told her.

Q So, it was your mother who told her and not you, is that correct?

A Yes, Sir.

Q Now, do you know that if found out your father really raped you, he put to death, you understand that?

A Yes, Sir.

Q Do you want your father to die?

A Yes, Sir.

Q You can not forgive your father?

A No, Sir.

ATTY. MIRABUENO:

That's all, Your Honor.

COURT:

Q Where is your mother, Tessie?

A She is outside, Ma'am.

Q Why, that your sister only who helping you in this case?

A When I arrived in Daet, Nilda is not supporting me, but when my mother took me from Daet, Ate Nilda brought me to the Police.

Q Are you angry with your father?

A Yes, Ma'am.

COURT:

Q Why?

A Because of what did he do it to me.

Q Before the alleged incident, is your father angry to you?

A I do not know, Ma'am.

Q Even before that date, did he hurt you?

A No, Ma'am.

Q Was this is (sic) first time did your father to you?

A Yes, Ma'am.

Q When your mother arrived, was he still on top of you?

A No more, Ma'am.

Q Do you know that your parents are instrument in giving your life?

A Yes, Ma'am.

Q Before the incident, did you love your parents particularly your father?

A Yes, Ma'am.

Q But now, you want that your father be sentenced to death?

A Yes, Ma'am.

Q What did you feel now, for what your father do to you?

A Painful, Ma'am.[16]

The accused-appellant merely denied raping his daughter and interposed alibi for his defense. Unfortunately, this self-serving denial can not prevail over the affirmative and categorical assertions of the victim which the trial court found to be more credible. For alibi to prosper, the accused-appellant must prove that he was somewhere else when the crime was committed and it was physically impossible for him to have been at the scene of the crime.[17] In the case at bar, the farm was not too far from the house and the accused-appellant even admitted that he goes home for lunch. Thus, it was not impossible that the accused-appellant committed the dastardly act on his daughter on that fateful afternoon.

The rape committed on the victim falls under the qualifying circumstances listed under R.A. 7659.[18] considering the relationship of the accused-appellant to the victim and the latter's minority in which case the imposition of the death penalty is mandatory.[19] The concurrence of these two circumstances must not only be pleaded in the information but must, likewise, be proven beyond reasonable doubt. The prosecution presented the birth certificate,[20] to show that the victim was only 13 years old at the time of the incident and that Salvador Miranda was her father.[21] At the time she testified in court in 1999, it was not difficult for the trial court to take judicial notice that the victim was certainly under 18 years old.

We note the trial court's disposition recommending a commutation of this sentence to reclusion perpetua considering the alleged old age of the accused-appellant. The records reveal that the accused-appellant was only 55 years old at the time he testified in court in 1999.[22] Obviously, he does not enjoy the commutation of penalty provided by law.[23] The law may be exceedingly hard but so the law is written and the Court is duty bound to apply it.[24] The death penalty is certainly irrevocable and deplorable but given the pertinent circumstances obtaining in this case which have been duly proven by the prosecution, the Court is constrained to affirm the imposable penalty of death in this case.[25]

Finally, the award of damages by the trial court should also be modified in line with recent jurisprudence on the matter. In addition to the moral damages of P50,000.00 which need not be proven, a civil indemnity of P75,000.00 is awarded if the crime was committed under circumstances that justify the imposition of the death penalty.[26] Exemplary damages should also be reduced to P25,000.00,[27] to deter fathers from abusing their daughters.

WHEREFORE, the decision of the trial court in Criminal case No. L-2071 is AFFIRMED with the MODIFICATION that the accused-appellant is ordered to pay complainant Teresita Miranda the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

In accordance with Section 25 of R.A. No. 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the President of the Philippines for the possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez and Corona, JJ., concur.

[1] Rollo, p. 7.

[2] Rollo, p. 18.

[3] Id., at 12-13.

[4] Decision, p. 3, Rollo, p. 14.

[5] Rollo, p. 32.

[6] Sec. 6, Rule 110. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.

[7] People v. Ferolino, G.R. Nos. 131730-31, April 5, 2000; People v. Alvero, G.R. Nos. 134536-38, April 5, 2000; People v. Razonable, G.R. Nos. 128085-87, April 12, 2000; People v. Alicante, G.R. Nos. 127026-27, May 31, 2000; People v. Santos, G.R. Nos. 131103 and 143472, June 29, 2000; Rollo, pp. 65-79.

[8] People v. Dimapilis, 300 SCRA 279 (1998); People v. Alba, 305 SCRA 811 (1999).

[9] Sec. 11, Rule 110, Rules of Court.

[10] TSN, July 7, 1999.

[11] Original Records, p.55.

[12] People v. Sancha, 324 SCRA 646 (2000).

[13] People v. Sagun, 303 SCRA 382 (1999).

[14] Supra.

[15] People v. Gonzales, 338 SCRA 678 (2000).

[16] TSN, July 7, 1999, pp. 70-73.

[17] People v. Labugen, 337 SCRA 488 (2000).

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

1. when the victim is under eighteen (18) years of age and when 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.

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[19] People v. Taneo, 284 SCRA 251 (1998).

[20] Exhibit "C," Records, p. 35.

[21] TSN, July 7, 1999, p. 74.

[22] TSN November 8, 1999, p. 2.

[23] ART. 83. Suspension of the execution of the death sentence.- The death sentence shall not be inflicted upon a woman within the three years next following the date of the sentence or while she is pregnant, nor upon any person over seventy years of age. In this last case, the death sentence shall be commuted to the penalty of reclusion perpetua with the accessory penalties provided in Article 40.

[24] People v. Agbayani, 284 SCRA 315 (1998).

[25] Three (3) members of the Court, although maintaining their adherence to the separate opinions expressed in People v. Echegaray that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional,

nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

[26] *People v. Ballenas*, 330 SCRA 519 (2000).

[27] *People v. Pablo Santos*, G.R. Nos. 138308-10, September 26, 2001.

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