

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZOSIMO CANTOMAYOR Y TAHUM ALIAS JESUS, ACCUSED-APPELLANT.

G.R. No. 145522. December 05, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Zosimo Cantomayor y Tatum alias Jesus appeals from the decision[1] of the Regional Trial Court of Malaybalay City, Branch 8, finding him guilty beyond reasonable doubt of raping his 9 year old daughter; and sentencing him to suffer the penalty of reclusion perpetua and to pay the amounts of P50,000.00 as civil indemnity and another P50,000.00 as moral damages.

The Information charging accused-appellant of the crime of rape, states –

That on or about the year 1990 at sitio Sumbang, barangay Iba, municipality of Cabanglasan, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, prompted by lewd design with the use of force and intimidation on the person of LIEZL CANTOMAYOR who was then a nine (9) year-old minor and a daughter of the accused did then and there willfully and criminally undress the latter, place himself on top of LIEZL CANTOMAYOR, inserted his penis into the vagina of the victim and have sexual intercourse against her will, to the damage and prejudice of LIEZL CANTOMAYOR in such amount as may be allowed by law.

Contrary to and in violation of Article 335 of the Revised Penal Code.[2]

Upon arraignment on January 21, 1999, accused-appellant pleaded not guilty.[3] Trial on the merits thereafter ensued.

Complainant Liezl Cantomayor testified that she was born on July 5, 1981; that in 1990 she was raped many times by her father, accused-appellant Zosimo Cantomayor. She was then nine years of age and living in the house of her parents at Sumbang, Iba, Cabanglasan, Bukidnon. Liezl recounted that accused-appellant touched her breasts and inserted his penis into her vagina. She felt pain but could not do anything because accused-appellant threatened to harm her. Liezl sought the help of her mother but the latter simply advised her to kick accused-appellant's testicles the next time he tries to assault her.[4]

Sometime in October 1995, Lolo Aning, accused-appellant's uncle, who lives in Cotabato City, went to Cabanglasan, Bukidnon in order to settle some tax obligations. On his way to accused-appellant's house, he met Liezl who broke down and revealed the sexual abuses she suffered in the hands of her father. Outraged, Lolo Aning did not allow Liezl to return home and instead brought her to his house in Cotabato City. Thereafter, Liezl went to Manila to work.[5]

In 1998, Liezl was informed that accused-appellant shot her brother, Rey. Upon her return to the province, she filed a parricide case[6] against him. Not long thereafter, her younger sister, Cristina, revealed that accused-appellant also raped her. Consequently, Liezl and Cristina filed two separate cases of rape against their

father.[7] The case filed by Cristina Cantomayor was, however, dismissed because she could no longer be located and her whereabouts unknown.[8]

Accused-appellant, on the other hand, denied having raped Liezl but admitted that in 1990 she was living in his house at Cabanglasan, Bukidnon.[9] He testified that in 1984, he was working in Sumbang, Cabanglasan, Bukidnon, while his family was living in Alusan, Cotabato. In 1988, his family joined him in Cabanglasan, Bukidnon.[10] In 1994, Liezl left for Manila and took P2,500.00 from him without permission.[11] In 1998, he was incarcerated at the municipal jail for accidentally shooting his son, Rey. While in prison, he learned that he was charged of raping his daughters, Cristina and Liezl. He surmised that anger moved Liezl to file a rape charge against him because she suspected that he intentionally shot Rey.[12]

On August 18, 2000, the trial court rendered the instant judgment of conviction. The dispositive portion thereof, reads:

WHEREFORE, in view of the foregoing, judgment is entered finding accused Zosimo Cantomayor guilty beyond reasonable doubt of the offense of rape as charged, and he is hereby sentenced to suffer the penalty of reclusion perpetua. He is further ordered to indemnify private complainant Liezl Cantomayor the sum of P50,000.00 and moral damages of P50,000.00.

SO ORDERED.[13]

Accused-appellant appealed the judgment of conviction raising the lone assignment of error that –

THE COURT A QUO GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ALLEGE IN THE INFORMATION THE APPROXIMATE DATE OF THE COMMISSION OF THE CRIME CHARGED.[14]

Accused-appellant invokes the case of *People v. Ladrillo*,^[15] contending that his conviction should be set aside because the information, charging him with rape allegedly committed “on or about the year 1990,” failed to specifically allege the exact date of the commission of the crime, thus depriving him of the opportunity to fully defend himself.

The contention is without merit. In *People v. Ladrillo*, the appellant was indicted for rape allegedly committed “on or about the year 1992.” The complainant therein testified that she was raped by appellant in the latter’s house at Abanico, Puerto Princesa City. It was, however, established that in 1992, appellant was still residing in Liberty, Puerto, Princesa City and had never been to Abanico, Puerto Princesa City at any time in 1992 nor was he familiar with complainant and her family. In sustaining appellant’s defenses of alibi and denial, the Court held that it was impossible for appellant to have committed the crime of rape in 1992 at his house in Abanico, Puerto Princesa City on the basis of the prosecution evidence considering that he was not yet residing in Abanico at that time and neither did his family have a home in the said place.

Clearly, therefore, the time of the commission of the crime assumes importance only when it creates serious doubt as to the commission of the rape or the sufficiency of the evidence for purposes of conviction. The date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant’s narration practically hinge on the date of the commission of the crime.[16]

Such, however, is not the case at bar. While it is true that the information states that rape was committed “on or about the year 1990,” the factual backdrop of the instant case is different from that of *People v. Ladrillo*. In contrast, the defense raised by accused-appellant is plainly denial. He even admitted that in 1990, he and his family including Liezl were living together in one house. The veracity therefore of the rape charge in the case at bar is not dependent on the time of the commission of the offense but on the credibility of Liezl and the

truthfulness of her narration as to how she was sexually abused.

Moreover, the judgment of acquittal in *People v. Ladrillo* was not based solely on the failure of the information to sufficiently inform the appellant of the date of the commission of the crime. To be sure, it was based primarily on the finding of the Court that the complainant's testimony was untruthful and not in accord with ordinary human experience. Hence, the ruling in *People v. Ladrillo* finds no application here considering that Liezl's testimony is convincing and worthy of belief.

This case is evidently one of those instances where the Court properly held that the failure to specify the exact date or time when rape was committed does not ipso facto make the information defective on its face. Thus, in *People v. Espejon*,^[17] where the Court convicted the appellant for rape under an information charging him with rape perpetrated "sometime in the year 1982 and dates subsequent thereto" and "sometime in the year 1995 and subsequent thereto," the Court explained that the date or time of the commission of rape is not a material ingredient of the said crime 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. 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.

Anent the imposable penalty, the trial court correctly imposed the penalty of reclusion perpetua, pursuant to Article 335 of the Revised Penal Code. Since the crime was committed in 1990, the higher penalty imposed for incestuous rape by Republic Act No. 7659 and Republic Act No. 8353, which took effect on December 13, 1993 and October 22, 1997, respectively, not being favorable to accused-appellant cannot be given retroactive application.

As to the civil liability, the Court sustains the awards of P50,000.00 as civil indemnity and P50,000.00 as moral damages which are automatically awarded once the fact of rape has been established.^[18]

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Malaybalay City, Branch 8, finding accused-appellant Zosimo Cantomayor y Tahum alias Jesus guilty beyond reasonable doubt of the crime of rape, and imposing upon him the penalty of reclusion perpetua; and ordering him to pay complainant, Liezl Cantomayor the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Azcuna, J., on official leave.

[1] Rollo, p. 9; Penned by Judge Vivencio P. Estrada.

[2] Rollo, p. 5.

[3] Records, p. 12.

[4] TSN, February 3, 2000, pp. 8-10.

[5] *Ibid.*, pp.20-22.

[6] Criminal Case No. 9933-99 (Decision, Rollo, p. 10).

[7] TSN, February 3, 2000, pp. 25-29.

[8] Decision, Rollo, p. 10.

[9] TSN, April 6, 2000, pp. 13-14.

[10] Ibid., pp. 3-7.

[11] Id., 7-8.

[12] Id., pp. 11-12.

[13] Rollo, p. 11.

[14] Rollo, p. 35.

[15] 320 SCRA 61 [1999].

[16] People v. Ladrillo, *supra*.

[17] G.R. No. 134767, February 20, 2002, citing People v. Magbanua, *supra*.

[18] People v. Palermo, 360 SCRA 84, 96 [2001].

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