

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LARRY CACHAPERO Y BASILIO, APPELLANT.

G.R. No. 153008. May 20, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Time is not an essential element of rape. An information that states the approximate rather than the precise time it was committed is sufficient in form. Any perceived formal defect in the information must be raised before arraignment, either through a bill of particulars or a motion to quash; otherwise, objection to such defect shall be considered waived.

The Case

Larry Cachapero y Basilio appeals the January 15, 2002 Decision[1] of the Regional Trial Court (RTC) of Camiling, Tarlac (Branch 68), in Criminal Case No. 98-68 Cam, finding him guilty of rape as follows:

“WHEREFORE, in view of the foregoing, accused LARRY CACHAPERO y [BASILIO] is hereby found GUILTY beyond reasonable doubt of the crime of RAPE, under Article 266-A of the Revised Penal Code, in relation to R.A. No. 7610, and is hereby sentenced to suffer the penalty of reclusion perpetua, with its accessory penalties, and [is hereby further] directed to pay the victim the sum of P50,000.00 as civil indemnity, the sum of P50,000.00 as moral damages and another sum of P25,000.00 as exemplary damages.”[2]

The Information[3] dated December 1, 1998, charged appellant in these words:

“That sometime in March 1998, in the Municipality of Camiling, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously by means of force and intimidation succeed in having sexual intercourse with Anna Laurence Toledo, a 7-year old minor.”[4]

Upon his arraignment on October 2, 2000,[5] appellant, assisted by his counsel de oficio,[6] pleaded not guilty. After trial in due course, the court a quo rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts in the following manner:

“Sometime in March 1998, complainant Anna Toledo, who was seven (7) years old, went to play with Lorena Cachapero and Dino Cachapero at a nearby house in Barrio Bancay 1st, Camiling, Tarlac.

“During that occasion, appellant Larry Cachapero, brother of Lorena, made her lie down and removed her shorts and panty. He inserted his penis into her sexual organ and she felt pain. Larry told her not to tell her parents because he might be scolded.

“On September 2, 1998, witness Conchita Donato was conducting a remedial class in Reading to her Grade I and II students. While they were reading the word ‘tagtuyot’ or ‘saluyot,’ one of her students Jocelyn Meneses told her that Anna was sexually abused by ‘Manong Larry.’

“She then ordered the students to leave the room and asked Jocelyn and Anna to stay behind. She confronted Anna and asked her the truth. Anna covered her face with her two hands, cried, and said yes. The teachers had a conference, after which they decided to report the matter to the parents of Anna.

“On September 3, 1998, Anna’s mother brought her to the Camiling District Hospital where she was examined. Dr. Mercedes B. Gapultos, a Medico Legal Officer, examined Anna and came out with the following report:

‘Findings:

Pelvic Exam: - Mons pubis undeveloped,
no pubic hairs

- Old hymenal lacerations
noted at 3:00 o’clock and
9:00 o’clock positions.

- No abrasions, contusions
noted in the perineum.’

“Dr. Gapultos testified that she found old hymenal lacerations and that it may be caused by many factors like penetration of the hymen by a hard object, or by an object forcibly entered.”[7] (Citations omitted)

Version of the Defense

Interposing the defenses of denial and alibi, appellant tersely relates his version of the facts in these words:

“Accused Larry Cachapero testified that at the time of the alleged incident, he was in their house together with his father and mother. He denied seeing the private complainant on that day. He alleged the case was filed against [him] because of the long standing feud between his mother and the mother of the private complainant.”[8] (Citations omitted)

Ruling of the Trial Court

According to the trial court, testimony coming from an innocent child like the victim was credible and sufficient to convict appellant of rape, more so because the testimony was supported by medical findings.

The lower court thus brushed aside the claim of appellant that he was falsely accused. It held that, whatever feud may have existed between the mother of the rape victim and the accused, no woman in her right mind would unnecessarily expose her minor daughter to the humiliation and stigma of a public trial. Citing Section 3(b)(1) of RA No. 7610, [9] it added that the sexual abuse of the victim prejudiced her development.

Hence, this appeal.[10]

Issues

In his Brief, appellant raises the following issues for our consideration:

“I.

The court a quo erred in giving weight and credence to the testimony of private complainant which is full of inconsistencies.

“II.

The court a quo erred in finding accused-appellant guilty of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.

“III.

The court a quo erred in not considering the Information as insufficient to support a judgment of conviction for failure of the prosecution to state the precise date of commission of the alleged rape[,] it being an essential element of the crime charged.”[11]

Simply put, appellant questions the sufficiency of (1) the Information and (2) the prosecution’s evidence.

The Court’s Ruling

The appeal has no merit; appellant’s conviction for statutory rape is affirmed, but the award of exemplary damages is deleted.

First Issue:

Sufficiency of Information

Contending that time is a material ingredient of rape, appellant argues that the Information was fatally defective for failing to state the precise hour when the crime was committed. Such infirmity, he added, jeopardized his right to be properly informed of the charge against him.

We disagree. The time of occurrence is not an essential element of rape.[12] This being so, its precise date and hour need not be alleged in the complaint or information.[13] Section 11 of Rule 110 of the Rules of Court provides:

“SEC. 11. Date of commission of the offense. – It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.”(Italics supplied)

The Information in this case alleged that the crime was committed “sometime in March 1998” which, according to private complainant, was more or less at the closing of the school year. [14] Being reasonably definite and certain, this approximation sufficiently meets the requirement of the law. After all, Section 6 of Rule 110[15] of the Rules of Court merely requires that the information must state, among others, the approximate time of the commission of the offense.

Moreover, objections as to the form of the complaint or information cannot be made for the first time on appeal.[16] If the present appellant found the Information insufficient, he should have moved before arraignment either for a bill of particulars,[17] for him to be properly informed of the exact date of the alleged rape; or for the quashal of the Information, on the ground that it did not conform with the prescribed form.[18] Having failed to pursue either remedy, he is deemed to have waived objection to any formal defect in the Information. [19]

By cross-examining the prosecution witnesses and presenting evidence for the defense, appellant’s counsel actively took part in the trial. Furthermore, the defense never objected to the presentation of the prosecution evidence[20] proving that the offense had been committed in March 1998. Appellant has not shown that he was deprived of a proper defense, for he was in fact able to foist an alibi. It cannot be said, therefore, that his constitutionally protected right to be informed of the nature and cause of the accusation against him has been violated.

Second Issue: Sufficiency of the Prosecution’s Evidence

Appellant contends that private complainant’s testimony, which was tainted with material inconsistencies, should not have been received by the trial court with precipitate credulity. Calling the victim a coached witness, he points

out that her answers were inconsistent on (1) whether or not she bled after the alleged rape and (2) what time she informed her mother about the incident.

Appellant's contentions are unconvincing. It is well-established that the testimony of a rape victim is generally given full weight and credit, [21] more so if she is a minor. The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint.[22] In so testifying, she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.

In this case, the victim was a young girl of seven years when she came forward to declare that appellant had raped her. At age nine, she narrated to the court the violation of her person in this manner:

“PROS. GUARDIANO [to Anna]:

Q Do you remember an incident that happened [i]n March, 1998 in relation [to] the accused?

A Yes, Sir.

Q [T]hat March, 1998, [is] that x x x, more or less, [about the] closing of the school year?

A Yes, Sir.

Q Can you tell us on that date, what did Larry Cachapero do to you?

A Larry Cachapero made [me lie] down and [he] remove[d] my panty and shorts, Sir.

Q Can you tell us if Larry Cachapero was the one who removed your panty and shorts?

A Yes, Sir.

Q After removing your panty and shorts, what did Larry Cachapero do after that?

A He had sexual intercourse with me, Sir.

Q Can you tell us what is [the] sexual intercourse [that] Larry Cachapero did to you?

A He just removed my shorts and panty and he sexually abused me, Sir.

Q How did he sexually abuse you?

A He made me [lie] down, Sir.

Q After he made you [lie] down, what did he do after that?

A He sexually abused me, Sir.

Q And did he put out his penis?

A Yes, Sir.

Q Did he place his penis touching your sex organ?

A Yes, Sir.

Q And did you feel any pressure when his penis touched your sex organ?

A Yes, Sir.

Q And that feels very painful?

A Yes, Sir.

Q And that pain you felt is at the [opening] of your sex organ?

A Yes, Sir.

Q And it is very painful everytime there was pressure in the opening of your sex organ?

A Yes, Sir.

Q And how many times did he put pressure in the opening of your organ?

A Only once, Sir.

Q And do you remember if his penis penetrated your sex organ?

A Yes, Sir.

Q Can you estimate which part of his penis penetrated your organ, how long?

A (Witness demonstrated by spreading her index finger measuring about two [2] inches as stipulated).

Q After that, did your organ bleed?

A Yes, Sir.”[23]

To be sure, the victim’s testimony was not flawless or perfect in all aspects. We must remember, however, that it was the narration of a minor who barely understood sex and sexuality.[24] Hence, in assessing her testimony, it would not be fair to apply the standards used for adults.[25] Indeed, she fully understood the defilement of her person, even if she was at a loss for the right words with which to describe the horrid details. It was for this reason that the prosecutor had to ask leading questions, which are allowed under Section 10 of Rule 132 of the Rules of Court.[26]

Furthermore, the account given by the victim, stating the essential fact that appellant had carnal knowledge of her, refers to details that are not in any way affected or obscured by the supposed contradictions --whether or not she bled after the rape or how soon she informed her mother of the incident.[27] What further buttressed the story of private complainant were Dr. Gapultos’ medical findings[28] that there were old lacerations in her hymen. Although not indispensable to a rape conviction,[29] such findings were credible physical evidence of forcible defloration, among others.[30]

Similarly corroborative of the girl’s tale of woe was Conchita Donato’s un rebutted testimony. It disclosed that appellant’s sister, Lorena, had admitted to having seen the incident in much the same detail as the victim had declared. The pertinent portion of Lorena’s testimony during cross-examination is reproduced below:

“ATTY. JOAQUIN:

Q

When you heard of this conversation, did you ask what she mean[t] by the word ‘yot.’?

A

Yes, Sir. I asked her if she understands the word ‘yot.’ [T]he child Jocelyn Meneses said that ‘niyotyot’ ni Mang Larry ni Anna Lorraine’ and I asked Anna Lorraine if it is true that she was sexually abused by Larry and she cried and answered yes, Sir.

Q

But you did not ask x x x further questions?

A

No more, Sir, because the child cried.

Q

So, she did not exactly tell what happened to her and what Larry did to her because she was already crying?

A

No, Sir[,] we again interviewed the child while we were at the Guidance Center with my co- teachers and she said yes and I even asked how the incident happened and Lorena told me that both were inside the room and they were naked and Larry was on top of Anna Lorraine, Sir.

Q

Are we made to understand Madam Witness that you also interviewed the sister[,] Lorena?

A

Yes, Sir.

Q

Who between the two (2) were naked as narrated to you by Lorena?

A

‘Labus da’ they were naked, she told us, Sir.

Q

And that was only the exact narration given by Lorena?

A

Yes, Sir[,] and that Larry was on top of Anna Lorraine.

Q

Did Lorena see the private organ[s] of those naked persons?

A

I did not ask about that, Sir.

Q

And you did not also ask whether the private organ of Larry Cachapero was inserted into the private organ of Anna Lorraine?

A

I did not, Sir.”[31] (*Italics supplied*)

Finally, it is a general rule that appellate courts will not interfere with the judgment of trial courts on the credibility of witnesses, unless there appears on record some facts or circumstances of weight and influence that have been overlooked, misapprehended or misinterpreted.[32] This deference to the trial court’s appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused.[33] Thus, when a guileless girl of seven credibly declares that she has been raped, she has said all that is necessary to prove the ravishment of her honor. [34]

The gravamen of statutory rape is carnal knowledge of a woman below twelve years of age. [35] In this case, the prosecution duly established that appellant had sexual intercourse with private complainant; and that the latter, as shown by her birth certificate,[36] was under twelve years old at the time.

On the other hand, of little probative value is the alibi of appellant that he was in the house of his parents at the time of the rape. In rape cases, while denial and alibi are legitimate defenses, bare assertions thereof cannot overcome the categorical testimony of the victim.[37] In particular, the defense of alibi is weak if wanting in material corroboration,[38] as in this case.

Also unpersuasive is the contention of appellant that the charge against him was precipitated by a long-standing feud between his family and that of private complainant. He himself belied this allegation during his cross-examination, from which we quote:

“PROS. GUARDIANO [to Cachapero]:

Q

Mr. Witness, how far is your house [from] the house of the private complainant?

A

From my seat to the Municipal building, Sir (estimated at 150 meters).

Q

And you are aware that Anna [Laurence] Toledo and your younger sister and brother are friends, is that correct?

A

No, Sir.

Q

And there was a quarrel between your mother and the mother of the complainant, as you said earlier?

A

Yes, Sir.

Q

And you said [that] they quarreled [with] each other even before this crime, is that correct?

A

Not yet, Sir.

Q

So they quarrel[ed] after this incident, is that correct?

A

Yes, Sir.

Q

Because you are accused of rape by the private complainant who is the daughter of that mother whom your mother quarreled with, is that correct?

A

Yes, Sir.”[39] (Italics supplied)

Award of Exemplary

Damages Improper

The trial court’s award of P25,000 for exemplary damages should be deleted. Such damages may be given only when one or more aggravating circumstances are alleged in the information and proved during the trial.[40] In the present case, there are no such circumstances.

WHEREFORE, the appeal is DENIED and the assailed Decision of the Regional Trial Court (RTC) of Camiling, Tarlac, AFFIRMED. The award of exemplary damages is DELETED. Costs against appellant.

SO ORDERED.

Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Rollo, pp. 15-20. Written by Judge Afable E. Cajigal.

[2] RTC Decision, pp. 5-6; rollo, pp. 19-20.

[3] Signed by OIC Provincial Prosecutor Alipio C. Yumul.

[4] Rollo, p. 7.

[5] See Order dated October 2, 2000; records, Vol. I, p. 20.

[6] Atty. Domingo R. Joaquin.

[7] Appellee's Brief, pp. 3-5; rollo, pp. 79-81. Signed by Assistant Solicitor General Carlos N. Ortega and Solicitors Renan E. Ramos and Arleen Q. Tadeo-Reyes.

[8] Appellant's Brief, p. 5; rollo, p. 48. Signed by Attys. Elpidio C. Bacuyag and Edgardo Noel B. Cruz of the Public Attorney's Office (PAO).

[9] Entitled "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for Its Violation, and for Other Purposes." Section 3(b)(1) thereof provides:

"SEC. 3. Definition of Terms. –

x x x x x x x x

(b) 'Child abuse' refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment; x x x.

[10] This case was deemed submitted for decision on July 14, 2003, upon receipt by this Court of appellant's Manifestation that he was adopting appellant's Brief as his Reply Brief. Appellee's Brief was received by this Court on April 15, 2003, and appellant's Brief on November 29, 2002.

[11] Appellant's Brief, pp. 1-2; rollo, pp. 44-45. Original in upper case.

[12] *People v. Elpedes*, 350 SCRA 716, 724, January 31, 2001; *People v. Marquez*, 347 SCRA 510, 515, December 8, 2000; *People v. Gianan*, 340 SCRA 477, 486, September 15, 2000; *People v. Alicante*, 388 Phil. 233, 258, May 31, 2000.

[13] *People v. Alvero*, 386 Phil. 181, 191-192, April 5, 2000; *People v. Bernaldez*, 355 Phil. 740, 749-750, August 17, 1998; *People v. Quiñones*, 222 SCRA 249, 254, May 18, 1993.

[14] TSN, November 7, 2000, p. 4.

[15] §6 of Rule 110 of the Rules of Court reads in full:

"SEC. 6. 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 date of the commission of the offense; and the place where the offense was committed.

"When an offense is committed by more than one person, all of them shall be included in the complaint or information." (Italics supplied)

[16] *People v. Marquez*, supra; *People v. Razonable*, 386 Phil. 771, 780, April 12, 2000.

[17] *People v. Marquez*, supra, p. 516; citing *People v. Gianan*, supra, p. 487. §9 of Rule 116 of the Revised Rules of Court provides:

"SEC. 9. Bill of particulars. – The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired."

[18] *People v. Gianan*, supra; *People v. Razonable*, supra. §3(e) of Rule 117 of the Revised Rules of Court reads:

“SEC. 3. Grounds. – The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x

(e) That it does not conform substantially to the prescribed form;

x x x x x x x x.”

[19] *People v. Razonable*, supra.

[20] The victim testified that the crime was committed around the closing of the school year in 1998 (TSN, November 7, 2000, p. 4). Her teacher, Conchita Donato, also testified that the former had reported that the incident happened sometime after graduation, which was in March 1998 (TSN, March 19, 2001, p. 12).

[21] *People v. De Guzman*, 372 SCRA 95, 109, December 11, 2001; *People v. Makilang*, 368 SCRA 155, 167, October 23, 2001; *People v. Galvez*, 418 Phil. 159, 170, September 24, 2001.

[22] *People v. Bato*, 382 Phil. 558, 567, February 16, 2000; *People v. Brigildo*, 380 Phil. 610, 623, January 28, 2000.

[23] TSN, November 7, 2000, pp. 4-6.

[24] *People v. Gonzales*, 385 SCRA 573, 583, July 31, 2002.

[25] *Ibid.*; *People v. Asuncion*, 417 Phil. 190, 198, September 7, 2001; *People v. Sta. Ana*, 353 Phil. 388, 409, June 26, 1998.

[26] *Dulla v. Court of Appeals*, 382 Phil. 791, 804, February 18, 2000. §10 of Rule 132 of the Rules of Court provides:

“Sec.10. Leading and misleading questions. — A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

x x x x x x x x

(c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is of feeble mind, or deaf- mute; x x x.”

[27] *People v. Flores*, 372 SCRA 421, 435, December 14, 2001; *People v. Managbanag*, 371 SCRA 615, 622, December 7, 2001; *People v. Cula*, 385 Phil. 742, 752, March 28, 2000.

[28] *Medico-Legal Certification*, Exhibit “A”; records, Vol. I, p. 5.

[29] *People v. Dawisan*, 417 Phil. 443, 452, September 13, 2001; *People v. Ferrer*, 415 Phil. 188, 198, August 14, 2001; *People v. Licanda*, 387 Phil. 371, 386, May 4, 2000.

[30] *People v. Gabon*, 421 Phil. 21, 39, November 16, 2001; *People v. Acala*, 366 Phil. 797, 813, May 19, 1999.

[31] TSN, March 19, 2001, pp. 13-16.

[32] *People v. Aliben*, 398 SCRA 255, 276, February 27, 2003; *People v. Julian-Fernandez*, 372 SCRA 608, 622, December 18, 2001; *People v. Balgos*, 380 Phil. 343, 351, January 26, 2000.

[33] *People v. Cula*, supra; *People v. Tagaylo*, 345 SCRA 284, 293, November 20, 2000; *People v. Dedace*, 385 Phil. 410, 421, March 22, 2000.

[34] *People v. De los Reyes*, 383 Phil. 801, 814, March 1, 2000.

[35] *People v. Dimapilis*, 300 SCRA 279, December 17, 1998.

[36] Exhibit “B”; records, Vol. I, p. 33.

[37] *People v. Nicolas*, 387 SCRA 638, 651, August 22, 2002; *People v. Mercado*, 419 Phil. 534, 543, October 12, 2001; *People v. Cabuntog*, 368 SCRA 112, 122-123, October 23, 2001.

[38] *People v. Mayor Sanchez*, 361 Phil. 692, 717, January 25, 1999; *People v. Realin*, 361 Phil. 422, 440, January 21, 1999.

[39] TSN, July 11, 2001, pp. 4-5.

[40] *Talay v. Court of Appeals*, 398 SCRA 185, 202, February 27, 2003; *People v. Villanueva*, 391 SCRA 718, 730, November 15, 2002; *People v. Catubig*, 416 Phil. 102, 119, August 28, 2001.

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