

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRY NAZARENO, APPELLANT.

G.R. No. 167756. April 09, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

IN this rape case, the Court is confronted with remedial questions on (a) specificity of dates in the Information; (b) quantum of proof; and (c) concurrence of allegation and proof.

For Our final review is the Decision[1] of the Court of Appeals (CA) affirming with modification appellant's conviction for rape of his two minor daughters.

The Facts

In line with Our ruling in *People v. Cabalquinto*,[2] the real names of the rape victims will not be disclosed. We will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

Private complainants AAA and BBB are the legitimate daughters of appellant Jerry Nazareno with CCC. AAA was born on April 30, 1983.2-a BBB, the second child of the union, was born on June 24, 1984.2-b At that time, appellant and CCC were yet to wed. It was only in 1987 that the couple formally tied the knot in simple church ceremonies. Three more children sprang from the marriage since then.[3]

Sometime in 1990, AAA was inside a room in their house located at Barangay Codon, Municipality of San Andres, Province of Catanduanes. All of her siblings were playing in their yard. Unexpectedly, appellant entered the room, and without saying a word, held AAA tightly. He then directed AAA to crouch on the floor and raise her buttocks (*baka-bakahan*). While in that position, appellant removed the girl's short pants and underwear. He then proceeded to remove his own undergarments. Subsequently, appellant forcibly entered AAA from behind, inserting his penis into the girl's vagina. She was seven.[4]

Appellant threatened AAA not to reveal what happened to her to anyone; or else, she and the rest of her family would be killed. Expectedly, AAA suffered in silence. She feared for her life as well as that of her mother and siblings.[5]

AAA's ordeal with her father became a regular fare. Appellant would rape her whenever they were left alone in the house.[6] CCC was rarely home because she attended to farm work and accepted laundry jobs from neighbors to support the family. Appellant was jobless and stayed at home.[7]

On March 25, 1996, appellant again imposed his bestial urges on AAA. AAA distinctly remembered the incident because she graduated from primary school on that day. At around 2:00 p.m., appellant and AAA were left alone in the house. He told AAA to remove her shorts and panty. Appellant then asked her to crouch on the floor and raise her buttocks. Just as he did before, appellant positioned himself behind the girl and then inserted his penis

into her vagina. All that time, appellant's hands were clutching the girl's back.[8] Coincidentally, AAA's graduation from elementary school also marked the end of appellant's sexual abuses.

BBB suffered the same fate as her older sister AAA. Sometime in January 1992, appellant and BBB were left alone in their house. Suddenly, appellant told BBB to kneel on all fours (pig baka-baka).[9]

Appellant then removed BBB's shorts and panties. He then removed his maong pants. Appellant positioned himself at BBB's rear and then inserted his penis into the young girl's vagina. At the time of the rape, BBB was only seven years old and was a Grade II pupil.[10]

Appellant continued raping BBB, using the girl for his sexual gratification every other day. From BBB's account, appellant would rape her fifteen times in a month. Every time, appellant would threaten her that he would kill all of them should she tell anyone what was happening between them.[11]

On October 27, 1998, AAA and BBB found the courage to tell their mother CCC what appellant had been doing to them. AAA accidentally found that BBB was likewise being subjected to sexual abuses by their father. Gathering strength from one another, AAA and BBB tearfully recounted to their mother their individual ordeals. CCC was devastated.[12]

On December 6, 1998, appellant again attempted to force himself on BBB. He inserted his finger into BBB's vagina. BBB felt extreme pain from the nails protruding from her father's fingers. That was the last time appellant abused BBB.[13]

On February 16, 1999, CCC, with AAA and BBB, secretly went to the Municipal Building of San Andres, Catanduanes to file a complaint against appellant for the rape of AAA and BBB. AAA and BBB were immediately attended to by personnel from the Department of Social Welfare and Development. The two were later examined at the JMA District Hospital by Dr. Erlinda H. Arcilla.

CCC testified as to the age of the victims AAA and BBB at the time of the commission of the crimes. She affirmed that AAA was born on April 30, 1983 while BBB was born on June 24, 1984.[14] CCC narrated that she was shocked when she heard her two daughters complain that they were raped by their own father. She knew appellant to be temperamental. He would hit AAA and BBB at the slightest provocation. She failed to act immediately on her daughters' plight for fear of her husband. CCC was convinced that appellant might make good his threats to kill all of them.[15]

Dr. Arcilla narrated that she examined both AAA and BBB on February 16, 1999. During her examination, she uncovered old healed hymenal lacerations on both AAA and BBB at the 3 o'clock, 6 o'clock and 9 o'clock positions. The lacerations suggested that the two girls were no longer in a virgin state.[16]

On March 17, 1999, appellant Jerry Nazareno was indicted for violation of Article 266-A of the Revised Penal Code in Criminal Case No. 2638 for the rape of BBB. The information reads:

That sometime and between January 1992 up to December 06, 1998, in Barangay Codon, Municipality of San Andres, Province of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence and intimidation did then and there willfully, unlawfully, feloniously and repeatedly made sexual intercourse with his daughter BBB at the age of 7 through 14 years old against her will.

CONTRARY TO LAW.[17]

On May 3, 1999, another Information docketed as Criminal Case No. 2650, for the rape of AAA, was levelled against appellant. The indictment is worded thus:

That from sometime in January 1990 up to December 1998 in barangay Codon, municipality of San Andres, Catanduanes, and within the jurisdiction of the Honorable Court, the said accused, being the father of the complainant, did then and there willfully, feloniously and criminally repeatedly had sexual intercourse with her daughter AAA, then five years old up to the time when she was 15-years-old against her will.

CONTRARY TO LAW.[18]

The case for the People, which portrayed the foregoing facts, revolved around the combined testimonies of AAA, BBB, CCC, and Dr. Erlinda Arcilla of the JMA District Hospital in San Andres, Catanduanes.

The defense, anchored on denial, was summed up by the trial court in this wise:

The defense presented JERRY NAZARENO, the accused himself who testified that he is 34 years old, married, fisherman, a resident of Codon, San Andres, Catanduanes.

He denied having raped his daughters. He said that he sometimes beat his children because he is strict with them in their studies especially during weekdays. He did not want them to watch television during schooldays. Though he is strict, he could not molest the complainants because they are his daughters. He said that the reason why his daughters filed these cases against him was because his father-in-law wants him to be incarcerated for the reason that from the very start, he was opposed to his marriage to CCC, his daughter.

He also said that in December 1998, the last molestation of BBB, he was in the motor launch that plies the San Andres and Caramoran route.[19]

RTC and CA Dispositions

On October 25, 2002, the trial court handed down a joint judgment of conviction, imposing upon appellant the capital punishment of death in both cases. The fallo of the RTC decision reads:

WHEREFORE, in view of all the foregoing, the prosecution having proved the guilt of the accused beyond reasonable doubt, he is sentenced to suffer the extreme penalty of DEATH for raping BBB in Criminal Case No. 2638 and the same penalty for raping AAA in Criminal Case No. 2650 in accordance with Article 335 of the Revised Penal Code as amended by R.A. 7659.

The accused is further ordered to indemnify both complainants the amount of Fifty Thousand Pesos (P50,000.00) each, to pay each of them the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and the cost of suit.

SO ORDERED.[20]

Conformably with the pronouncement in *People v. Mateo*[21] providing for an intermediate review by the CA of cases in which the penalty imposed is death, reclusion perpetua or life imprisonment, the Court issued a Resolution dated September 21, 2004,[22] transferring the case to the appellate court for appropriate action and disposition.

On February 22, 2005, the CA affirmed with modification the RTC judgment, disposing as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape as defined and penalized under Art. 335 of the Revised Penal Code as amended by Anti Rape Law of 1997, with the aggravating circumstance of relationship and minority, the decision of the court a quo sentencing him to death in both Criminal Cases Nos. 2638 and 2650 is hereby AFFIRMED. The award of civil indemnity is MODIFIED and INCREASED to P75,000.00 each, in both cases. The award of moral damages of P50,000.00 for each case is AFFIRMED. We also award P25,000.00 as exemplary damages in each case.

Let the records of this case be transmitted to the Supreme Court for appropriate action.

SO ORDERED.[23]

Issues

On September 27, 2005, the Court resolved to require the parties to submit their respective supplemental briefs, if they so desired, within thirty (30) days from notice. In a manifestation dated December 6, 2005, the Public Attorney's Office, representing appellant Jerry Nazareno, informed the Court that it is adopting its main brief on record.[24] The Office of the Solicitor General, for the People, similarly opted to dispense with the filing of a supplemental brief in its manifestation dated March 9, 2006.[25]

Appellant stands by the same lone error he raised before the appellate court:

THE TRIAL COURT ERRED (IN) NOT FINDING THAT THE INFORMATION(S) IN CRIMINAL CASE NO[S]. 2638 AND 2650 ARE INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS (SIC) FAILURE TO STATE THE PRECISE DATES OF THE COMMISSION OF THE OFFENSE CHARGED.[26] (Corrections and underscoring supplied)

Our Ruling

In the main, appellant argues that the Informations charging him with the rape of AAA and BBB are defective for failure to state with specificity the approximate date of the commission of the offenses. According to him, the twin convictions have no basis in law because the People violated his constitutional right to be informed of the nature and cause of the accusations against him.

The argument is specious. An information is intended to inform an accused of the accusations against him in order that he could adequately prepare his defense. Verily, an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. Thus, to ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information should state the name of the accused; the designation given to the offense by the statute; a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense; and the place where the offense has been committed.[27] Further, it must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused, so that he can properly prepare for and undertake his defense.[28]

However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless time is an essential ingredient of the offense.[29] In *People v. Bugayong*,[30] the Court held that when the time given in the information is not the essence of the offense, the time need not be proven as alleged; and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action.

In *People v. Gianan*,[31] the Court ruled that the time of the commission of rape is not an element of the said crime as it is defined in Article 335 of the Revised Penal Code. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated therein, i.e.: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented. In accordance with Rule 110, Section 11 of the 2000 Rules of Criminal Procedure, as long as it alleges that the offense was committed "at any time as near to the actual date at which the offense was committed," an information is sufficient.

The doctrine was reiterated with greater firmness in *People v. Salalima*[32] and in *People v. Lizada*. [33]

In the case under review, the information in Criminal Case No. 2638 alleged that the rape of BBB transpired

"sometime and between January 1992 up to December 6, 1998 in Barangay Codon, Municipality of San Andres, Province of Catanduanes." In Criminal Case No. 2650, the information averred that "from sometime in January 1990 up to December 1998 in Barangay Codon, Municipality of San Andres, Province of Catanduanes," AAA was raped by appellant. To the mind of the Court, the recitals in the informations sufficiently comply with the constitutional requirement that the accused be informed of the nature and cause of the accusation against him.

In *People v. Garcia*,^[34] the Court upheld a conviction for ten counts of rape based on an Information which alleged that the accused committed multiple rapes "from November 1990 up to July 21, 1994." In *People v. Espejon*,^[35] the Court found the appellant liable for rape under an information charging that he perpetrated the offense "sometime in the year 1982 and dates subsequent thereto" and "sometime in the year 1995 and subsequent thereto."

Indeed, this Court has ruled that allegations that rapes were committed "before and until October 15, 1994,"^[36] "sometime in the year 1991 and the days thereafter,"^[37] and "on or about and sometime in the year 1988"^[38] constitute sufficient compliance with Rule 110, Section 11 of the 2000 Rules of Criminal Procedure.

More than that, the Court notes that the matter of particularity of the dates in the information is being raised for the first time on appeal. The rule is well-entrenched in this jurisdiction that objections as to matter of form or substance in the information cannot be made for the first time on appeal.^[39] Appellant failed to raise the issue of defective informations before the trial court. He could have moved to quash the informations or at least for a bill of particulars. He did not. Clearly, he slumbered on his rights and awakened too late.

Too, appellant did not object to the presentation of the evidence for the People contending that the offenses were committed "sometime and between January 1992 up to December 6, 1998" for Criminal Case No. 2632 and "sometime in January 1990, up to December 1998" in Criminal Case No. 2650. On the contrary, appellant actively participated in the trial, offering denial and alibi as his defenses. Simply put, he cannot now be heard to complain that he was unable to defend himself in view of the vagueness of the recitals in the informations.

We now tackle appellant's convictions for the multiple rape of AAA and BBB.

In an effort to exculpate himself, appellant contends that the charges for rape are mere fabrications and lies. He insists his daughters were instigated by his father-in-law to file the complaints. According to appellant, his father-in-law has an axe to grind against him. His in-law disdained him from the very beginning and wanted him out of CCC's life.

In reviewing rape cases, the Court is guided by the following jurisprudential guidelines: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[40]

Tersely put, the credibility of the offended party is crucial in determining the guilt of a person accused of rape. By the very nature of this crime, it is usually only the victim who can testify as to its occurrence. Thus, in rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Elsewise stated, the lone testimony of the offended party, if credible, suffices to warrant a conviction for rape.^[41]

In her testimony before the trial court, AAA narrated:

Q

Why, when were you particularly raped by your father?

A

Since 1990, when I was in Grade I until I was in Grade VI, Sir.

Q

When you were in Grade I, how old were you then?

A

Seven (7) years old, Sir.

Q

Can you remember the first time, you said your father raped you in 1990?

A

I could no longer remember the date, Sir.

Q

But how did your father rape you, do you remember how he raped you in 1990, the first time?

A

Yes, Sir.

Q

Could you please tell us how he raped you for the first time?

A

I was croaching with raised buttocks, Sir.

Q

Do you remember where did he tell you to make that position?

A

No, Sir.

Q

Where particularly in your house?

A

In our room, Sir.

Q

Do you still remember the date, the first time he raped you?

A

No, Sir.

Q

Who were with you in your house during that time?

A

No one, Sir, because all my other siblings are playing outside the house, and my mother was at work.

Q

When you were in that position with your buttocks raised and hands and knees on the floor, what did your father do next?

A

He positioned behind me and s[ta]rted raping me, Sir.

Q

When you used the term "rape," what do you mean?

A

He inserted his penis into my vagina, Sir.

Q

You mean your father inserted his penis to your vagina?

A

Yes, Sir.

Q

Now after that first time, do you remember the second time that he did it to you?

A

I could not remember anymore, Sir.

Q

Do you remember how long the period was between the first and the second time he raped you?

A

I could not longer remember, Sir.

COURT

Fiscal, we are only trying here the rape that occurred on March 25, so if you can prove to us really, maybe several times before that, the court cannot do something about that, because it is not included in the information.

AYO

Q

So when was the last time that your father raped you?

A

When I graduated from the elementary school, Sir.

Q

When was that?

A

March 24, 1996, Sir.

Q

Between the first time that your father raped you and the last time that your father raped you, did you not report this to anybody, the thing that your father had been doing to you?

A

I did not report this to anybody, Sir.

Q

Why?

A

Because I was threatened by my father that if we tell this matter to anybody, he would not only kill me but the rest of us, Sir.

Q

What other things did your father do when you said that he raped you, whenever your father raped you, you said you have been raped by your father in the time that you are in Grade I up to the time that you were in Grade VI, what did your father do to you?

CABRERA

The question is vague, because there is no definite date.

COURT

Recess for ten (10) minutes.

COURT

(After ten minutes) Court session resumed.

AYO

Q

Do you remember the last time that your father raped you?

A

March 25, 1996, Sir.

Q

Where?

A

In our house, Sir.

Q

How old were you then?

A

Thirteen (13) years old, Sir.

Q

How did he rape you?

A

I was croaching with raised buttocks, Sir.

Q

And what did he do again when you are in that position?

A

He told me to remove my shorts and my panty, Sir.

Q

And did you do it?

A

Yes, Sir.

Q

Then what did he do next?

A

He positioned behind me and he raped me, Sir.

Q

In that position while he was raping you, where was (sic) his hands?

A

His hands were on my back, Sir.[42]

Upon the other hand, BBB testified thus:

AYO

Q

Now, Miss witness, you said your first rape by your father in 1992, do you remember the specific time when he first raped you?

A

I could no longer recall the date, because that has been sometime already, Sir.

Q

In 1992, were you already in school then?

A

Yes, Sir.

Q

What grade were you in when your father first raped you?

A

Grade II, Sir.

Q

Do you recall the circumstances when you were first raped by your father in 1992?

A

I was made to lie on top of my father, Sir.

Q

When you used the term "Pig baka-baka," will you please demonstrate to us how it is done?

A

(Witness demonstrating by kneeling and had her two hands on the floor, a position similar to four-legged animal, and she stated that her father is at her rear portion).

Q

And that was the first time your father raped with that position?

A

Yes, Sir.

Q

And what clothes were you wearing at that time when you were at that position, if you can still remember?

A

Yes, Sir, I can remember, I was wearing shorts.

Q

How about your father, do you remember what clothes he was wearing in that position?

A

He was wearing maong pants, Sir.

Q

And what was your father doing aside from having that position?

A

He removed my shorts and panty, Sir.

Q

And after removing your shorts and panty, what did he do?

A

My father inserted his penis in my vagina, Sir.

Q

That was the first time you said he raped you?

A

Yes, Sir.

Q

Do you remember the date again, the first time that he raped you?

A

I could no longer remember the exact date, Sir.

Q

You could only remember the month and the year?

A

Yes, Sir, I could not remember the date, but I remember only the month and the year.

Q

How about the second time, do you remember when he raped you, the second time?

A

I could not, Sir.[43]

On cross-examination, BBB stated that:

CABRERA

Q

You said you were allegedly raped by your own father, sometime in 1992, will you tell us what time is that alleged incident committed to you?

A

About 2:00 p.m., Sir.

Q

And who were the persons in the house, at around 2:00 o'clock in the afternoon?

A

The two of us only, Sir.

Q

Where were your companions in the home?

A

By that time, my mother is working in the farm, my ate is in school, and the rest of my siblings are playing outside, Sir.

Q

What was your age then at the time you were allegedly raped?

A

I was eight years old, Sir.

Q

You were never forced to have that position of "baka-bakahan"?

A

I was forced to do that, Sir.

Q

You were only told in mild manner, correct?

A

He kepts (sic) on telling me that I should do that position, although I don't like it, he kepts (sic) on prodding me, Sir.

Q

At that time your father was telling you on a very low voice, because you were near to the children who are playing?

A

They were playing, Sir.

Q

Will you describe to us your house, what is the elevation of your house from the ground floor?

A

The flooring of our house is quite elevated. (Witness is demonstrating a height of about one [1] foot).

Q

Who were those children playing outside the house?

A

My three (3) siblings are playing outside the house, Sir.

Q

Your house has a window fronting the yard, correct?

A

Yes, Sir.

Q

And that yard was the playing ground of the children while your father was telling you that position of "baka-bakahan"?

A

They were playing in our yard, but they are playing near the house of our neighbor, Sir.

Q

How far is the house of your neighbor to your house?

A

(Witness demonstrating a distance of one two-arms length).

Q

And those children could hear what your father is saying?

A

They could not have heard what my father said, because they were playing, Sir.

Q

Why, what kind of game they are playing?

A

They were playing hide and seek, Sir.

Q

What time did you eat your lunch?

A

I took my lunch at 11:00 o'clock a.m., Sir.

Q

Will you tell us what was the nature of your father's work at that time you were allegedly raped?

A

He is jobless, Sir.

Q

Who is the one providing for your subsistence?

A

My mother, Sir.

Q

From where does your mother get your subsistence?

A

She is doing some laundry works and works in the farm, Sir.

Q

If your story is correct that you were allegedly raped, will you tell us what happened to your vagina after the alleged rape?

A

My vagina became painful, Sir.

Q

Was there blood that oozed in your vagina?

A

I do not know if there was blood, what I could feel was the pain, Sir.

Q

After the alleged intercourse, did you wear your panty?

A

Yes, Sir.

Q

After the rape, what time did your mother arrive in your home?

A

My mother arrived at about 4:00 o'clock in the afternoon, Sir.

Q

Since you were still a child, if your story is correct, why did you not tell your mother that you were allegedly raped at 2:00 o'clock in the afternoon?

A

I did not tell my mother because he threatened me, Sir.

Q

Were you threatened before, during, or after the rape?

A

Before I was raped, Sir.

Q

And you were silent after the rape, he did not threaten you anymore?

A

Yes, Sir, he threatened me again after he committed the rape.

Q

Would you tell us the exact words, what did your father tell you?

A

He told me that if you will tell anybody, I am going to kill all of you, Sir.

Q

Was there any occasion on the part of your mother and you that you were alone without the presence of your father, after the rape?

A

There was none, Sir.

Q

You mean your father was always in your house?

A

There are times that he stays outside the house, he is jobless, he hangs around, Sir.

Q

After you were allegedly raped, did you have any occasion in the evening to talk to your mother immediately after this alleged rape?

A

There are, but then I could not tell my mother, because I was afraid of my father, Sir.

Q

But there was an occasion that you were together with your mother and you could have told her what happened to you, is that correct?

A

Yes, there were occasions and opportunities that I could tell my mother, but I could not because of the threat of my father, Sir.

Q

Was there any occasion that actually happened after that threat when you were harmed by your father?

A

Yes, Sir.

Q

When was that?

A

Right after that evening, I did not do anything wrong, he just punished us, because he is not tempered, Sir.

Q

Your father is not insane, he will not do anything to you without any reason?

A

Yes, because every time he has no money, he becomes ill tempered, because he wanted to gamble, Sir.

Q

You are a young child then, is it not a fact that as a loving father he tried to discipline you, because of your mischievous acts?

A

We do not considered that a discipline, although we feel we did not do anything wrong, he keeps on punishing us, because he is ill tempered, Sir.

Q

Where was your mother when your father is trying to harm you?

A

She is at work, Sir.

Q

You mean he tried to harm you when your mother is out?

A

When my mother is around, he punishes us every time we did something wrong, but then he does that too when my mother is not around, Sir.

Q

Do you tell that to your mother that your father punished you without any reason?

A

Yes, Sir.

Q

Will you tell us the date, the first you were abused by your father in the year 1992?

A

I could no longer remember the date, Sir.

Q

But you can recall the fifteen (15) times?

A

Yes, Sir.

Q

What is important to you is the fifteen (15) times, but the first rape is not important to you?

A

Yes, Sir.

Q

You said you were last raped on February 16, 1998, is that correct?

A

No, Sir, December 16, 1998. February 16 was when we reported to the police.

Q

This last incident, did you tell your mother about this?

A

Yes, Sir.

Q

And what did your mother say?

A

My mother told us that we report the matter, but we told her that we could not manage to do it, Sir.

Q

How were you raped on December 6, 1998?

A

He used his finger, Sir.

Q

Was there any nail in the finger?

A

Yes, Sir.

Q

And how did you feel when your father used his finger?

A

It is painful, Sir.

Q

What he used is finger only?

A

Yes, Sir.

Q

Could it be possible that there was inside your vagina and your father is trying to remove it?

A

There is none, Sir.[44] (Underscoring supplied)

The trial court observed that AAA's and BBB's testimonies bear the hallmarks of truth. Their testimonies are "spontaneous, convincing and highly-credible." [45] We find no cogent reason not to apply here the oft-repeated rule that the matter of assigning values to the declaration of witnesses on the stand is a matter best left to the discretion of the trial court. The trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a

discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[46] This doctrine assumes greater significance when the determination of the trial court on the credibility of a witness has been affirmed by the appellate court.[47]

The Court has consistently ruled that no young girl would concoct a sordid tale of defloration at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[48] A rape victim's testimony against her parent is entitled to great weight since Filipino children have a natural reverence and respect for their elders. These values are so deeply ingrained in Filipino families, and it is unthinkable for a daughter to brazenly concoct a story of rape if such were not true.[49] Certainly, a rape victim or any other member of her family would not dare to publicly expose the dishonor of the family, more specifically, if such accusation is against a fellow member of the family, unless the crime was, in fact, committed.[50]

We sustain the trial court and the CA's rejection of appellant's defense founded on denial and alibi. Denial and alibi, being weak defenses, cannot overcome the positive testimonies of the offended parties and their witnesses. As this Court has reiterated often enough, denial and alibi cannot prevail over positive identification of the accused by the prosecution witnesses.[51] The positive, consistent and straightforward testimonies of the victims and the other witnesses for the People sufficiently established appellant's culpability.

In order to merit credibility, alibi must be buttressed by strong evidence of non-culpability. Verily, for the said defense to prosper, accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the locus criminis or its immediate vicinity.[52] Appellant dismally failed to discharge this onus.

The trial court and the CA, however, both blundered in convicting appellant of multiple rape of AAA and BBB, from January 1990 to December 1998 and from January 1992 up to December 6, 1998, respectively.

The RTC and the CA convicted appellant of multiple rapes under two separate informations, Criminal Cases Nos. 2638 and 2650. However, both the trial and appellate courts erroneously sentenced him to a single death penalty for each information.

We find that appellant is guilty of two qualified rapes, instead of multiple rapes under Criminal Case No. 2650, and only one qualified rape, not multiple, under Criminal Case No. 2638. The legal basis for conviction for as many offenses as are charged and proved is Section 3, Rule 120 of the 2000 Rules of Criminal Procedure.[53]

It is axiomatic that each and every charge of rape is a separate and distinct crime. Verily, each of the alleged incidents of rape charged should be proven beyond reasonable doubt.[54] In *People v. Matugas*,[55] the Court aptly ruled:

This Court cannot thus sustain the conviction of accused-appellant for 29 counts of rape because only two incidents were sufficiently proven by the prosecution. While we do not doubt that she was raped on other dates, we cannot ascertain the exact number of times she was actually raped. It must be remembered that each and every charge of rape is a separate and distinct crime so that each of the 27 other alleged incidents of rape charged should be proven beyond reasonable doubt. If, as complainant claimed, the number could be more, the possibility that it could be much less than 27 cannot be discounted.[56]

In *People v. De la Torre*,[57] the Court held that:

Each and every charge of rape is a separate and distinct crime; hence, each of the eight other rape charges

should be proven beyond reasonable doubt. The prosecution is required to establish, by the necessary quantum of proof, the elements of rape for each charge. Baby Jane's testimony on the first rape charge was explicit, detailing the participation of each appellant in the offense and clearly illustrating all the elements of the offense of rape. However her simple assertion that the subsequent rapes occurred in exactly the same manner as in previous incidents is clearly inadequate and grossly insufficient to establish to a degree of moral certainty the guilt of the appellants insofar as the eight rape charges are concerned. Her testimony was too general as it failed to focus on material details as to how each of the subsequent acts was committed. Even her testimony on cross-examination did not add anything to support her accusations of subsequent rape. Thus, only the rape alleged to have been committed on September 1992 was proven beyond reasonable doubt and the appellants may be penalized only for this offense.[58]

In the case under review, the evidence bear out that what were proved by the People beyond reasonable doubt in Criminal Case No. 2650 were the rapes committed by appellant on AAA sometime in 1990 and then again on March 25, 1996. AAA was categorical that she was first raped by appellant sometime in 1990. Her account of the first rape was vivid, candid and straightforward. She further disclosed that appellant repeatedly abused her. However, when asked by the court to clarify her claim that the sexual abuses were repeated, AAA failed to supply the details. But she was able to recount the last incident of rape on March 25, 1996. According to her, that day was of significance to her since she graduated from primary school on that day.[59]

Applying *De la Torre*, We hold that AAA's assertion that the subsequent rapes occurred in exactly the same manner as in previous incidents is clearly inadequate and grossly insufficient to establish to a degree of moral certainty the guilt of appellant insofar as the other rape incidents are concerned. Her testimony was too general as it failed to focus on material details as to how each of the subsequent acts was committed. In fine, appellant should have been convicted, in Criminal Case No. 2650, only of the qualified rape of AAA sometime in 1990 and then again on March 25, 1996.

With respect to private complainant BBB in Criminal Case No. 2638, what is extant from the records is that appellant succeeded in raping her in January 1992. BBB, like AAA, failed to give an account of the alleged rape subsequent to January 1992 when she testified in the court below.[60] As with AAA, We hold that BBB's account of the rapes subsequent to January 1992 but before December 6, 1998 is too general and unconvincing.

Likewise borne by the records is the insertion of appellant's finger into BBB's vagina on December 6, 1998. BBB testified that appellant raped her for the last time on December 6, 1998. When asked by the court to clarify what she meant, BBB disclosed that appellant inserted his finger into her vagina.[61]

What appellant did was rape by sexual assault, punishable under Article 266-A, paragraph 2 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353. The said law provides:

Art. 266-A. Rape; when and how committed. - Rape is committed -

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a)

Through force, threat or intimidation;

b)

When the offended party is deprived of reason or otherwise unconscious;

c)

By means of fraudulent machination or grave abuse of authority; and

d)

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[62] (Underscoring supplied)

Rape by sexual assault was introduced into our penal system via the amendatory Anti-Rape Law of 1997 (R.A. No. 8353), which took effect on October 22, 1997. With these amendments, rape was reclassified as a crime against person and not merely a crime against chastity.[63]

Considering that the law was already in force at the time of the insertion of appellant's finger into BBB's vagina on December 6, 1998, he should have been prosecuted and tried for rape by sexual assault and not under the traditional definition of rape. The People, however, failed in this regard. That is fatal.

Sections 8 and 9 of the 2000 Rules of Criminal Procedure state:

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances for the court to pronounce judgment.

Under the new rules, the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. Otherwise stated, the accused will not be convicted for the offense proved during the trial if it was not properly alleged in the information. Although the rule took effect on December 1, 2000, the same may be applied retroactively because it is a cardinal rule that rules of criminal procedure are given retroactive application insofar as they benefit the accused.[64]

In sum, in Criminal Case No. 2638, appellant should have been convicted only of the qualified rape of BBB in January 1992. The rape by sexual assault committed on December 6, 1998, although proven, should not have been considered by the trial and appellate courts for lack of a proper allegation in the information.

We go now to the penalty and the award of damages.

Appellant is liable for the rape of AAA sometime in 1990 and on March 25, 1996. He is also guilty of raping BBB in January 1992. At that time, the law penalizing rape was still Article 335 of the Revised Penal Code, as amended by R.A. No. 7659. The said law provides:

Art. 335. When and how rape is committed.

x 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.

In view of the passage of R.A. No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the death penalty should be downgraded. Pursuant to Section 2 of the said law, the penalty to be meted out to appellant shall be reclusion perpetua. Said section reads:

Section 2. In lieu of the death penalty, the following shall be imposed:

(a)

the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b)

the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of the said law, which provides:

Section 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

With regard to the award of damages, the same must be modified. The CA correctly increased the amount of indemnity from P50,000.00 to P75,000.00 each for AAA and BBB. Civil indemnity of P75,000.00 is warranted if the crime is qualified by circumstances which warrant the imposition of the death penalty.[65] The award of additional P25,000.00 each by way of exemplary damages deserves affirmance due to the presence of the qualifying circumstances of minority and relationship.[66]

However, the CA erred in affirming the RTC award of moral damages of P50,000.00 which should be increased to P75,000.00 without need of pleading or proof of basis.[67]

WHEREFORE, the appealed judgment is AFFIRMED WITH MODIFICATION, as follows:

(1) In Criminal Case No. 2650, appellant Jerry Nazareno is hereby found GUILTY of two counts of qualified rape and is sentenced to reclusion perpetua for each felony, without eligibility for parole. He is further ordered to indemnify the victim in the amount of P75,000.00, another P75,000.00 in moral damages and P25,000.00 in exemplary damages, for each count.

(2) In Criminal Case No. 2638, appellant is found GUILTY of one count of qualified rape and is sentenced to reclusion perpetua without eligibility for parole. He is likewise ordered to pay the complainant P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, and Brion, JJ., concur.

Azcuna, J., on official leave.

[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Remedios Salazar-Fernando and Rosmari D. Carandang, concurring; rollo, pp. 4-21.

[2] G.R. No. 167693, September 19, 2006, 502 SCRA 419, citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act."

[2-a] Records, p. 54, Exhibit "D"

[2-b] Records, p. 53, Exhibit "B"

[3] TSN, September 7, 2000, pp. 4-5.

[4] TSN, June 29, 2000, pp. 5-6.

[5] Id. at 7.

[6] Id. at 5-6.

[7] Id. at 4.

[8] Id. at 8-9.

[9] TSN, May 31, 2000, pp. 6-7.

[10] Id. at 7-8.

[11] Id. at 9.

[12] TSN, September 7, 2000, pp. 6-7.

[13] TSN, May 31, 2000, p. 20.

[14] TSN, September 7, 2000, pp. 3-5.

[15] Id. at 6-12.

[16] TSN, February 18, 2000, pp. 4-6.

[17] Rollo, p. 21.

[18] Records, Vol. II, p. 18.

[19] CA rollo, p. 52.

[20] Id. at 54-55.

[21] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[22] CA rollo, p. 90.

[23] Id. at 110.

[24] Rollo, pp. 23-24.

[25] Id. at 26-28.

[26] CA rollo, p. 38.

[27] *People v. Quitlong*, 354 Phil. 372, 388 (1998), citing Rules of Criminal Procedure (2000), Rule 110, Secs. 6 and 8.

[28] *Id.*

[29] *People v. Santos*, 390 Phil. 150, 161 (2000); Rules of Criminal Procedure (2000), Rule 110, Sec. 11 reads:

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.

[30] G.R. No. 126518, December 2, 1998, 299 SCRA 528.

[31] G.R. Nos. 135288-93, September 15, 2000, 340 SCRA 477.

[32] G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 192.

[33] G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62.

[34] G.R. No. 120093, November 6, 1997, 281 SCRA 463.

[35] G.R. No. 134767, February 20, 2002, 377 SCRA 412.

[36] *People v. Bugayong*, *supra* note 30.

[37] *People v. Magbanua*, G.R. No. 128888, December 3, 1999, 319 SCRA 719.

[38] *People v. Santos*, G.R. Nos. 131103 & 143472, June 29, 2000, 334 SCRA 655.

[39] *People v. Razonable*, 386 Phil. 771, 780 (2000).

[40] *People v. Silvano*, G.R. No. 127356, June 29, 1999, 309 SCRA 362; *People v. Alimon*, G.R. No. 87758, June 28, 1996, 257 SCRA 658.

[41] *People v. Mercado*, G.R. No. 139904, October 12, 2001, 367 SCRA 252; *People v. Pecayo, Sr.*, G.R. No. 132047, December 14, 2000, 348 SCRA 95.

[42] TSN, June 29, 2000, pp. 5-9.

[43] TSN, May 31, 2000, pp. 6-7.

[44] TSN, May 31, 2000, pp. 14-20.

[45] CA rollo, p. 53.

[46] *People v. Rayles*, G.R. No. 169874, July 27, 2007, 528 SCRA 409; *People v. Quijada*, G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191, 212-213; *People v. Lua*, G.R. Nos. 114224-25, April 26, 1996, 256 SCRA 539, 546.

[47] *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642.

[48] *People v. Bernabe*, 421 Phil. 805, 811 (2001); *People v. De Guzman*, 333 Phil. 50, 66 (1996).

[49] *People v. Pandapatan*, G.R. No. 173050, April 13, 2007, 521 SCRA 304, citing *People v. Mangitngit*, G.R. No. 171270, September 20, 2006, 502 SCRA 560, 574.

[50] *People v. Esperanza*, 453 Phil. 54, 74-75 (2003), citing *People v. Villaraza*, G.R. Nos. 131848-50, September 5, 2000, 339 SCRA 666.

[51] *People v. Lachica*, G.R. No. 143677, May 9, 2002, 382 SCRA 162; *People v. Lozano*, G.R. No. 126149, December 7, 2001, 371 SCRA 546.

[52] *People v. Lachica*, *supra*; *People v. Cana*, G.R. No. 139229, April 22, 2002, 381 SCRA 435.

[53] Section 3, Rule 120 of the 2000 Rules of Criminal Procedure states:

Sec. 3. Judgment for Two or More Offenses. - When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

[54] *People v. Matugas*, G.R. Nos. 139698-726, February 20, 2002, 377 SCRA 434, 447; *People v. Tagud*, G.R. No. 140733, January 30, 2002, 375 SCRA 291, 309; *People v. Baring*, G.R. No. 137933, January 28, 2002, 374 SCRA 696, 712.

[55] *People v. Matugas*, *supra*.

[56] *Id.* at 446-447.

[57] G.R. Nos. 121213 & 121216-23, January 13, 2004, 419 SCRA 18.

[58] *People v. De la Torre*, *id.* at 36.

[59] TSN, June 29, 2000, pp. 5-9.

[60] TSN, May 31, 2000, pp. 6-7, 14-20.

[61] *Id.* at 14-20.

[62] Revised Penal Code, Art. 266-A, as amended by R.A. No. 8353.

[63] *People v. Fetalino*, G.R. No. 174472, June 19, 2007, 525 SCRA 170.

[64] *People v. Vallejo*, G.R. No. 125784, November 19, 2003, 416 SCRA 193.

[65] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 561.

[66] *People v. Arsayo*, G.R. No. 166546, September 26, 2001, 503 SCRA 275; *People v. Bonghanoy*, G.R. No. 124097, June 17, 1999, 308 SCRA 383, 394; New Civil Code, Art. 2230.

[67] *People v. Alfaro*, 458 Phil. 942, 963 (2003).

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