

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO PASCUAL, ACCUSED-APPELLANT.

G.R. No. 171089. October 17, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Rogelio Pascual (appellant) was charged and convicted of the crime of Rape under an Information, which reads as follows:

The undersigned Provincial Prosecutor, on complaint of the offended party AAA,[1] accuses Rogelio Pascual y Bayran @ Eyo of the crime of rape, penalized under the provisions of Art. 266-B in relation to Art. 266-A, par. 1(d) of the Revised Penal Code, as amended, committed as follows:

That on or about sometime during the year 1998 in the municipality of x x x, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused did then and there wilfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of the said AAA, a minor, 10 years of age, against her will and without her consent.

Contrary to law.[2]

In a Decision dated January 31, 2001, the Regional Trial Court of Malolos, Bulacan, Branch 21, found appellant guilty of Statutory Rape, with the dispositive portion of the RTC Decision as follows:

WHEREFORE, all premises considered, this Court resolves and so holds that the accused is GUILTY beyond reasonable doubt of the crime of Statutory Rape penalized under Article 266-A and B of the Revised Penal Code, as amended by R.A. 7659. Accordingly, accused Rogelio Pascual y Bayran alias "Eyo" is hereby sentenced to suffer the penalty of Reclusion Perpetua. Further, he is ordered to indemnify AAA in the sum of P50,000.00; pay her P100,000.00 for moral damages and another P50,000.00 for compensatory damages.

With costs against the accused.

SO ORDERED.[3]

Appellant appealed to this Court and in accordance with People v. Mateo,[4] the case was transferred to the Court of Appeals (CA) for review.[5]

On October 27, 2005, the CA rendered its Decision[6] affirming with modification the RTC Decision dated January 31, 2001. The decretal portion of the CA Decision reads:

WHEREFORE, the foregoing considered, the assailed Decision is hereby AFFIRMED with the MODIFICATION that the award of moral damages is reduced to P50,000.00 while the award of compensatory damages is deleted. Costs against accused-appellant.

SO ORDERED.[7]

Hence, the present appeal through the Public Attorney's Office (PAO), pursuant to Section 13, Rule 124 of the

Rules of Court. Appellant adopted his Appellant's Brief filed with the CA, with the following Assignment of Errors:

THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE FATALLY DEFECTIVE INFORMATION UNDER WHICH HE WAS CHARGED, TRIED AND FINALLY, CONVICTED.[8]

Appellant contends that the Information was defective in that the allegations contained therein states that the alleged rape occurred in 1998, while the victim's testimony during cross-examination states that it happened in 1997,[9] thus meriting an acquittal for appellant.

The appeal is bereft of merit.

Failure to specify the exact date or time when the rape occurred does not ipso facto make the information defective on its face. When all the essential elements of the crime of rape are stated in the information, an accused is sufficiently apprised of the crime charged against him. Moreover, the precise time of the commission of the crime of rape is not an essential element of rape. Neither is the exact date of commission of rape an element of the crime for the gravamen of the offense of rape is sexual intercourse without consent.[10]

This was reiterated in *People v. Sayao, Jr.*,[11] which repudiated the argument that the information filed in that case was void for being vague and ambiguous as to the date of the commission of the crime, to wit:

x x x First, Rule 110, §11 provides that it is not necessary for the information to allege the exact date and the time of the commission of the crime if such is not an essential ingredient of the offense. In the crime of rape, the date of commission is not an essential element. Second, even if the information fails to specify the date of commission of the crime, accused-appellant waived objection on this ground because he failed to file either a motion for a bill of particulars or a motion to quash the information. Third, the vagueness of the information could not have prejudiced accused-appellant since his denial and alibi are so general that it cannot be said that his defense hinges on the date of commission.

This was recently affirmed in *People v. Nazareno*,[12] ruling that:

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. (Emphasis supplied)

In the present case, the phrase "(T)hat on or about sometime during the year 1998 in the municipality of x x x with lewd designs, have carnal knowledge of the said AAA, a minor, 10 years of age, against her will and without her consent," is sufficient to apprise appellant of the charges against him. The fact that AAA testified that she was abused in 1997 does not render the Information void inasmuch as such testimony merely shows that the first time when she was first abused by appellant, thus:

Q.

Madam Witness, you told the police that you cannot remember whether the assault against you was committed by the accused at around 1997 or 1998 or 1999 or 1996, am i correct?

A.

No, sir.

Q.

Are you telling us that you remember the year?

A.

Yes, sir.

Q.

And you remember the month?

A.

No, sir.

Q.

What year was that when you was [sic] first assaulted?

A.

1997, sir.[13]

Her testimony, in fact, confirmed that the abuse continued up to 1998 -

Q.

You stated that you were in Grade III when the accused abused you and you said you could recall it was in 1997, is it not a fact that your Grade III lasted from 1997 to 1998 are you aware of that?

A.

Yes, ma'am.

Q.

So the rape or abuses on you by the accused happened within 1997 up to 1998, do you agree with that?

A.

Yes, ma'am.[14]

The gravamen of Statutory Rape is the carnal knowledge of a woman below twelve years old.[15] Proof of force is not an element, as the absence of a free consent is presumed. Conviction will lie provided sexual intercourse is proven.[16]

The respective evidence for the prosecution and the defense were summed up by the CA as follows:

Evidence for the prosecution showed that in 1998, private complainant AAA, then ten (10) years old, was enrolled at xxx Elementary School where she was a Grade x student. Unable to state the exact month and date of the incident, AAA testified that sometime after the start of the school year, while she was walking towards her school, Rogelio Pascual, alias "Eyo" approached her and inquired if she wanted some money. Assenting to the offer, she went to the cemetery with him where she was brought to the comfort room. Inside, Pascual first undressed himself and then took off AAA's school uniform and made her lie on the comfort room's flooring. While on her back, Pascual went on top of her and inserted his penis in her vagina which made AAA cry in pain. Thereafter, AAA left and with the P100.00 Pascual gave her, she bought herself "chichiria".

AAA further testified that the incident was repeated every week thereafter with Pascual giving her money after each incident. Finally, she recounted her tale to her "ate", referring to her sister-in-law BBB, who reported the matter to the police authorities.

On cross-examination, AAA affirmed her previous testimony that Pascual's sex organ penetrated her vagina. However, she also testified that she was first raped in 1997 while she was in the second grade. During her re-direct examination, she explained that the rapes were committed from 1997 to 1998.

For his part, Pascual testified that in 1997, he kept two jobs as a plumber at the municipal building where he works full time and another as "sweeper" at the San Gabriel Memorial Park, which was then under construction, where he reports for work before proceeding to the municipal building including Sundays. He confirmed the existence of one small comfort room made of G.I. Sheets inside the memorial park which is about five (5) meters away from the bunkhouse which served as living quarters of some of the construction workers.

When asked about the charges hurled against him, Pascual denied having raped AAA and while he admitted knowing the latter's mother and sister-in-law, he, however, denied personally knowing or being familiar with her up until 1999. However, on cross-examination, he refuted his own testimony by admitting seeing private complainant at the public market as early as 1998. He further testified that AAA and BBB would often asked (sic) money from him every 15[th] and 30[th] of the month to buy rice whenever he would pass by their place. He denied knowing any person who might have raped AAA although he had knowledge that the house where she was staying was used as a hideout for drug addicts, gamblers, drunkards and other bad elements.

To corroborate his defense, Lamberto Musni, a distant relative by affinity of Pascual testified that in 1998, he worked with Pascual, at the San Gabriel Memorial Park. Aside from being a night watch since 1995, Pascual sometimes starts his duties as a "sweeper" as early as 5 o'clock in the morning. He further testified that he never saw AAA nor any child in particular at the cemetery's premises while he was working there. The defense witness also verified the existence of two (2) small comfort rooms made of wood and G.I. Sheets with cemented flooring.[17]

The prosecution was able to discharge the burden of evidence necessary to convict appellant. Appellant's bare denials, without more, cannot stand against AAA's positive identification. The Court even notes the audacity and consistency displayed by AAA when she was being baited on cross-examination by appellant's counsel, to wit:

Atty. Medrano: They talk to you about everything and that includes this case? x x x

A.

Yes, sir.

x x x

Q.

BBB was the one who answered the questions propounded by the police?

A.

No, sir.

Q.

The people at the DSWD told you that the family name of Rogelio is Pascual?

A.

No, sir.

Q.

Did not the DSWD tell you to state that the incident happened in 1998?

A.

No, sir.[18]

Appellant was correctly convicted of Statutory Rape as defined under Article 266-A(1) of the Revised Penal Code, which provides:

Article 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 discretion; 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. (Emphasis supplied)

Appellant was also correctly meted out the penalty of reclusion perpetua, as provided in Article 266-B of the Revised Penal Code, to wit:

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Moreover, appellant shall not be eligible for parole, as enunciated in *People v. Tuazon*,^[19] wherein the Court held that:

x x x appellant shall not be eligible for parole pursuant to the Indeterminate Sentence Law. Section 2 thereof provides that the law "shall not apply to persons convicted of offenses punished with death penalty or life imprisonment." Although the law makes no reference to persons convicted to suffer the penalty of reclusion perpetua such as the appellant herein, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to reclusion perpetua.

The award of P50,000.00 as civil indemnity and P50,000.00 for moral damages is likewise correct. Both lower courts, however, failed to award exemplary damages. As stated by the Court in *People v. Domingo*,^[20] this is not the first time that a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. To curb this disturbing trend, appellant should, likewise, be made to pay exemplary damages in the amount of P25,000.00.

WHEREFORE, the Court of Appeals Decision dated October 27, 2005 is AFFIRMED with MODIFICATION in that appellant is ordered to pay AAA the amount of P25,000.00 as exemplary damages, in addition to the award of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Puno,^[*] C.J., Ynares-Santiago, (Chairperson), Chico-Nazario, and Reyes, JJ., concur.

* In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated September 22, 2008.

[1] In line with the Court's ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 4), the real names of the victims will not be disclosed; instead fictitious initials will be used 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; see also Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC.

[2] CA rollo, p. 6.

[3] Id. at 22.

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

- [5] Resolution dated August 25, 2004; CA rollo, p. 114.
- [6] Penned by Associate Justice Josefina Guevara-Salonga, with the concurrence of Associate Justices Delilah Vidallon-Magtolis and Fernanda Lampas-Peralta, rollo, p. 3.
- [7] CA rollo, p. 126.
- [8] CA rollo, p. 59.
- [9] Id. at 68-69.
- [10] *Peole v. Baring, Jr.*, 425 Phil. 559, 573 (2002).
- [11] 405 Phil. 1, 9 (2001).
- [12] G.R. No. 167756, April 8, 2008.
- [13] TSN, October 23, 2000, p. 22.
- [14] TSN, id. at 23-24.
- [15] *People v. Canonigo*, 392 Phil. 78, 90 (2000).
- [16] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 389.
- [17] CA rollo, pp. 118-119.
- [18] TSN, October 18, 2000, pp. 3-4.
- [19] G.R. No. 168650, October 26, 2007, 537 SCRA 494, 511.
- [20] G.R. No. 177744, November 23, 2007, 538 SCRA 733, 738-739 citing *People v. Malones*, 469 Phil. 301, 333 (2004).

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