PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ZALDY IBAÑEZ Y FRANCISCO, APPELLANT.

G.R. No. 174656 (Formerly G.R. No. 155271-73). May 11, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Appellant Zaldy Ibañez y Francisco was charged with three counts of Rape under three informations, docketed as Criminal Cases Nos. 7197-99, 7198-99 and 7199-99, before the Regional Trial Court (RTC), xxx, Cavite, Branch 21. The informations read:

CRIMINAL CASE NO. 7197-99

> That sometime in June 1997, in xxx, Cavite, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then twelve (12) years old and by means of force, threat and intimidation, did, then and there, wilfully, unlawfully and feloniously lie and have sexual intercourse with AAA, a minor, against her will and consent.
>
> CONTRARY TO LAW.[1]
>
> CRIMINAL CASE NO. 7198-99
>
> That during the period January to December 1998, in xxx, Cavite, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then thirteen (13) years old and by means of force, threat and intimidation, did, then and there, wilfully, unlawfully and feloniously lie and have sexual intercourse with AAA, a minor, against her will and consent.
>
> CONTRARY TO LAW.[2]
>
> CRIMINAL CASE NO. 7199-99
>
> That sometime in April 1999, in xxx, Cavite, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, [then] fourteen (14) years old and by means of force, threat and intimidation, did, then and there, wilfully, unlawfully and feloniously lie and have sexual intercourse with AAA, a minor, against her will and consent.
>
> CONTRARY TO LAW.[3]

When arraigned, appellant entered pleas of not guilty. Whereupon, trial on the merits ensued.

On the first charge of rape, AAA testified that she was in their home at xxx, Cavite in June 1997. Her mother was in Isabela at the time. Her youngest sibling, BBB, and she were sleeping inside her parents' room when her father carried BBB and placed BBB on the floor. He told her to be quiet as he undressed her, kissed her lips, her breasts,

then inserted his penis in her vagina. He was on top of her for around 10 minutes. She kept still because she was afraid of him, as she had always been because he was a drug dependent. Though he did not threaten her, she told no one of the incident.[4]

On the second charge of rape, AAA testified that appellant raped her eight times from January to December 1998 in their home and she did not tell her mother because she was afraid of appellant.[5]

AAA testified that the third rape happened sometime in the morning of April 1999 in their house while her mother was at work. Appellant called her to come in her parents' room. When she refused, he came out, took her by the arms and dragged her into the room. Inside, he undressed her, kissed her body and raped her. After the incident, she told a cousin what happened and the latter brought her to the National Bureau of Investigation (NBI) where her complaint-affidavit was executed.[6]

The NBI's medical examination in Living Case No. MG-99-477 revealed that AAA's hymen had an old-healed laceration at the four o'clock position and that the hymenal orifice admitted a tube 2.5 cm. in diameter.[7]

Appellant denied raping his daughter. As alibi, he claimed that he was often away from home and usually returned only four days after because he was hooked on gambling and drugs. He would usually return home in the morning after his wife had gone to work to avoid quarrels. By then, AAA would already be in school. He admitted being in a rehabilitation center for sometime, but continued to take drugs upon his release. He also admitted that he would beat and threaten his wife if she did not give him money for drugs. He testified further that in January 1999, he left the house, stayed in Pasig and returned home only to steal his wife's car. His wife threatened to have him arrested if he did not return the car. He asked his cousin to return it minus the stereo. When he returned home, his family had gone and he started to sell their things to buy shabu.[8]

After trial, the lower court found appellant guilty beyond reasonable doubt of the crime of qualified rape in Criminal Cases Nos. 7197-99 and 7199-99. Appellant was acquitted in Criminal Case No. 7198-99. The dispositive portion of the Decision[9] dated July 17, 2002 reads:

> WHEREFORE, finding the accused guilty beyond reasonable doubt of the felony of rape as charged in the informations in criminal cases nos. 7197-99 and 7199-99, said accused is hereby sentenced to die by lethal injection and to pay the private complainant the amount of P50,000.00 as indemnity, another sum of P50,000.00 as moral damages, P25,000.00 as exemplary damages and the cost of this suit.
>
> The accused however is hereby acquitted of the felony of rape as charged in the information in criminal case no. 7198-99.
>
> SO ORDERED.[10]

Hence, the instant resort to automatic review of appellantï¿½s conviction.

Following People v. Mateo,[11] the case was transferred and referred to the Court of Appeals. Upon review, the Court of Appeals rendered its Decision[12] dated May 31, 2006, affirming with modification the decision of the lower court. The fallo of the decision reads:

> WHEREFORE, appeal is hereby DISMISSED and the assailed July 17, 2002 Decision of the Regional Trial Court of xxx, Cavite, Branch 21, is hereby AFFIRMED with the MODIFICATION that accused-appellant Zaldy Ibañez is sentenced to DEATH for each conviction in Criminal Cases Nos. 7197-99 [and] 7199-99 and accused-appellant Zaldy Ibañez is hereby ORDERED to pay private complainant AAA P150,000.00 as civil indemnity and P100,000.00 as moral damages.
>
> Pursuant to Section 13 (a), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No.

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> 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, the Court of Appeals, after rendering judgment, hereby refrains from making an entry of judgment and forthwith certifies the case and elevates the entire record of this case to the Supreme Court for review.
> SO ORDERED.[13]

Before us, appellant raises this issue for our resolution:

> THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE INFORMATIONS IN CRIMINAL CASES NOS. 7197-99 AND 7199-99 INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR FAILURE OF THE PROSECUTION TO STATE THE PRECISE DATES OF THE COMMISSION OF THE ALLEGED RAPES, IT BEING AN ESSENTIAL ELEMENT OF THE CRIME CHARGED.[14]

Simply stated, should the precise dates of the commission of the rape be alleged in the information?

In his brief, appellant contends that he should have been acquitted in Criminal Cases Nos. 7197-99 and 7199-99. He avers that the informations are not explicit and certain as to the dates of the rape. He argues that such uncertainties run afoul of the constitutionally protected right of the accused to be informed of the nature and cause of the accusation against him.

On the other hand, the Office of the Solicitor General (OSG) submits that the two criminal informations filed against appellant are sufficient to inform appellant of the accusations against him. The OSG contends that Section 6, Rule 110[15] of the Rules of Court merely requires that the information state "the approximate time of the commission of the offense." Further, Section 11[16] of the same rule provides that the precise date of the commission of the offense needs to be alleged in the information only when "it is a material ingredient of the offense."

After considering the submissions of the parties, we find appellant's contention devoid of merit.

An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof. The exact date of the commission of a crime is not an essential element of the crime charged. Thus, in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission.[17] The gravamen of the offense is carnal knowledge of a woman. The precise time of the crime has no substantial bearing on its commission. Therefore, it is not essential that it be alleged in the information with ultimate precision.[18]

Also, it cannot be seriously asserted that appellant was deprived of his constitutional right to be informed of the nature and cause of the accusation against him when the prosecution failed to state the exact date of the commission of the offense. This Court has previously upheld complaints and informations in prosecutions for rape which merely alleged that a rape has been committed "sometime in the month of April 1993," for a rape which was committed in 1993; "on or about May 1998," for a rape committed sometime in the first week of May 1998; and "sometime in the month of September 1998,ï¿½ for a rape committed on an evening in September 1998.[19] The allegation in the informations that the appellant committed the rape "sometime in June 1997"[20] and "sometime in April 1999"[21] was sufficient to inform appellant that he was being charged of qualified rape committed against his daughter. The allegation adequately afforded appellant an opportunity to prepare his defense. Thus, appellant cannot complain that he was deprived of his right to be informed of the nature and cause of the accusation against him.

At any rate, it is now too late for appellant to question the sufficiency of the criminal informations regarding the dates of the commission of the offense. Appellant could have filed a motion for a bill of particulars before his arraignment[22] or a motion to quash on the ground that the informations alleged erroneous dates prior to his entry of plea.[23] However, he did not. Instead, he had himself arraigned and entered a plea of not guilty to the

crime of rape. Such being the case, appellant has waived his right to object to the informations on the ground of an error as to the time of the alleged rape.

Appellant also alleged that AAA filed the rape cases to have him imprisoned because of his failure to fulfill his paternal obligations.

We are not persuaded by his allegation. When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to constitute the commission of the crime that has been inflicted on her. This doctrine applies with more vigor when the culprit is a close relative of the victim, and her father at that.[24] Besides, no woman, least of all a minor, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her.[25]

Withal, we are in agreement with the submission of the Court of Appeals and the OSG that the RTC erred in the imposition of the appropriate penalty because it imposed only one penalty of death for two convictions of rape. The penalty imposed on the appellant should be modified so that in each case, the conviction of rape should separately be penalized by death. However, in view of the enactment of Republic Act No. 9346[26] on June 24, 2006 prohibiting the imposition of the death penalty, the penalty in each case to be meted on appellant is reclusion perpetua in accordance with Section 2 thereof which reads:

> SEC. 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. (Emphasis supplied.)

Further, this Court upholds the Court of Appeals' ruling that the award of damages be modified. Pursuant to prevailing jurisprudence,[27] the civil indemnity and moral damages to be awarded are P75,000 and P75,000, respectively, for each conviction of rape which is qualified by circumstances warranting the imposition of the death penalty, and P25,000 as exemplary damages in light of the presence of the qualifying circumstances of minority and relationship. Hence, appellant should pay AAA P150,000 as civil indemnity, P150,000 as moral damages and P50,000 as exemplary damages.

WHEREFORE, the Decision dated May 31, 2006 of the Court of Appeals finding appellant Zaldy Ibañez y Francisco guilty beyond reasonable doubt of the crime of qualified rape is AFFIRMED with the following MODIFICATIONS:

(1) the penalty of death meted out on the appellant is reduced to RECLUSION PERPETUA, for each count of rape, without eligibility for parole as provided under Rep. Act No. 9346; and

(2) the awards of civil indemnity, moral damages, and exemplary damages against appellant are set at P75,000, P75,000, and P25,000, respectively, for each count of rape, or a total of P150,000 as civil indemnity, another P150,000 as moral damages, and P50,000 as exemplary damages, for the two counts of rape, consistent with prevailing jurisprudence.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

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Austria-Martinez, and Corona, JJ., on leave.
Nachura, J., no part name appears in pleading as Sol Gen.

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[1] Records, p. 1.

[2] Id. at 3.

[3] Id. at 5.

[4] TSN, June 5, 2000, pp. 5-10.

[5] Id. at 12-13.

[6] Id. at 14-19.

[7] Records, p. 94.

[8] TSN, March 12, 2001, pp. 4-11.

[9] CA rollo, pp. 14-24. Penned by Judge Norberto J. Quisumbing, Jr.

[10] Id. at 23-24.

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

[12] Rollo, pp. 3-11. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Godardo A. Jacinto and Noel G. Tijam concurring.

[13] Id. at 10-11.

[14] CA rollo, p. 38.

[15] 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 given 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.

[16] 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.

[17] People v. Espejon, G.R. No. 134767, February 20, 2002, 377 SCRA 412, 420.

[18] People v. Narido, G.R. No. 132058, October 1, 1999, 316 SCRA 131, 147.

[19] People v. Macabata, G.R. Nos. 150493-95, October 23, 2003, 414 SCRA 260, 268-269.

[20] Records, p. 1.

[21] Id. at 5.

[22] Rules of Court, Rule 116, Sec. 9.

SEC. 9. Bill of particulars. - The accused may, before arraignment, move for a bill of particulars to enable him

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properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

[23] RULES OF COURT, Rule 117, Sec. 3, par. (e).
SEC. 3. Grounds.- The accused may move to quash the complaint or information on any of the following grounds:
x x x x
(e) That it does not conform substantially to the prescribed form;
x x x x

[24] People v. Narido, supra at 144.

[25] People v. Operario, G.R. No. 146590, July 17, 2003, 406 SCRA 564, 571.

[26] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Section 1, thereof reads:

SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R. A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R. A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

[27] People v. Quiachon, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.

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