

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIAM CHING, ACCUSED-APPELLANT.

G.R. No. 177150. November 22, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision of the Court of Appeals in CA-G.R. CR-HC No. 01798 dated 3 August 2006,[1] affirming with modifications the Decision of the Quezon City Regional Trial Court (RTC), Branch 107, in Criminal Cases No. Q-99-87053, Q-99-87054, and Q-99-87055 dated 4 August 2004,[2] convicting accused-appellant William Ching of three counts of rape committed against his minor daughter, AAA.[3]

The factual antecedents are as follows:

On 1 October 1999, three separate informations[4] were filed with the RTC against appellant for qualified rape allegedly committed as follows:

CRIMINAL CASE NO. Q-99-87053

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of force and intimidation, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. Q-99-87054

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of force and intimidation, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. Q-99-87055

That in or about the year of 1996, in XXX, Philippines, the said accused by means of force and intimidation, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

Subsequently, these informations were consolidated for joint trial. When arraigned on 6 March 2000, appellant, with the assistance of counsel de oficio, pleaded “Not Guilty” to each of the charges in the informations.[5] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses AAA, AAA’s mother, BBB, PO3 Jesus Deduque (PO3 Deduque), PO3 Melba Baldeswis (PO3 Baldeswis), and Dr. Angel Cordero (Dr. Cordero). Their testimonies, taken together, present the following narrative:

AAA is the third child in a brood of eight children born to appellant and BBB. She was 12 years of age in the year

1996 when the alleged incidents of rape took place.

Sometime in the year 1996, at around 5:00 in the afternoon, she and her younger siblings, namely, CCC, DDD, EEE and FFF, were left at their house with appellant, while BBB was at the market buying food. Appellant told CCC, DDD and EEE to play outside the house. AAA was then cooking rice when appellant instructed her to go inside the bedroom.

When AAA was already inside the room, appellant ordered her to lie down on the cemented floor. When she did, appellant placed himself on top of her and removed her shorts and panty. She screamed “Tulungan po ninyo ako!” and resisted, but to no avail because appellant pressed his feet against hers. Appellant then removed his shorts and brief and thereafter inserted his penis into her vagina. AAA felt pain but she could not move because appellant held both her hands above her head. Appellant told her, “Wag kang maingay, papatayin kita.”

After satisfying his lust, appellant stood up and left the bedroom. AAA proceeded to the house of BBB’s kumare, Aling Leony, to forget and recover from the incident. She did not inform BBB of the incident because of her fear that appellant would make good his threats to kill her.

For the second time, one evening of May 1998, AAA and her younger siblings were sleeping on the cemented floor inside the bedroom when appellant entered and lay down beside her. Appellant pulled her left arm and made her lie in a straight body position. He removed his shorts and placed himself on top of her. He then pulled down her shorts and panty, and again inserted his penis into her vagina. Despite the pain, AAA did not shout because appellant threatened to kill her. Subsequently, appellant stood up and reiterated his threat to kill her if she would tell anyone what happened.

For the third time, in the evening of May 1998, while AAA and her younger siblings were sleeping inside the bedroom, appellant lay down beside her. Appellant pulled her left arm and made her face him. Appellant placed himself on top of her and removed her shorts and panty. Thereafter, he had carnal knowledge of her. She did not shout out of fear. Afterwards, appellant stood up and warned her not to tell anyone of the incident or he would kill her.

From June 1998 to February 1999, appellant was arrested and detained for drug pushing. In the meantime, AAA was employed as a house helper. After his release from jail, appellant would go to see AAA at her employer’s house demanding money and creating a scene when AAA refused to give him any. Fed up, AAA sneaked out of her employer’s house and proceeded to the nearby barangay hall to report, not just the commotion caused by appellant in front of her employer’s house when she did not give him money, but also that appellant previously raped her several times. Hence, appellant was arrested by PO3 Deduque and PO3 Baldeswis, and charged with rape.[6]

BBB was not able to accompany AAA in filing the instant case against appellant because she was also detained for drug pushing and was released only on 5 December 1999. Upon her release from jail, she immediately sought AAA and, when informed of the incident, she fully supported AAA in the instant case against appellant.[7]

Dr. James Belgira (Dr. Belgira), a physician of the Philippine National Police (PNP) Crime Laboratory, personally examined AAA. His findings, as stated in the medico-legal report, are as follows:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with dark brown areola and nipple from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and slightly gaping with an area of erythematous at the middle of the left labium and the dark brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with shallow healed lacerations at 5 and 9 o'clock position. External vaginal orifice offers moderate resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

CONCLUSION: Subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.[8]

However, in view of the unavailability of Dr. Belgira to personally appear before the trial court, it was Dr. Cordero, another physician at the PNP crime laboratory, who appeared in court for the purpose of producing and interpreting the medical records of AAA and confirming that the same was conducted in accordance with the protocol of the PNP.[9]

The prosecution also presented documentary evidence to bolster its version of the events, to wit: (1) Sinumpaang Salaysay of AAA[10]; (2) marriage contract of BBB and appellant[11]; (3) the baptismal certificate of AAA with her date of birth entered as 12 August 1983[12]; (4) letter referral of Police Station 4, Novaliches, Quezon City, of the instant case to the Office of the City Prosecutor[13]; (5) joint sworn affidavit of the arresting officers[14]; (6) the medico-legal report with regard to AAA issued and signed by Dr. Belgira as the medico-legal officer of the PNP Crime Laboratory[15]; (7) the routing slip from the PNP Crime Laboratory[16]; (8) request for laboratory examination forwarded by Police Station 4 to the PNP Crime Laboratory[17]; (9) the initial laboratory report issued by the PNP Crime Laboratory[18]; (10) the sexual crime narrative report based on the narration of AAA[19]; and (11) manifestation of consent executed by AAA as accompanied by PO3 Baldeswis.[20]

Appellant singly testified in his own behalf and denied the foregoing accusations. He admitted that AAA is his daughter and third child with his wife, BBB. From 1992 to 1996, he worked as a driver, but he was detained for selling drugs in 1997. He was released on 29 March 1998, but he was again imprisoned for robbery and drug cases. While he was in jail, he learned that BBB asked AAA to find a job and that BBB was subsequently detained for drugs. Upon his release from jail in February 1999, appellant immediately went home and found his eldest son taking care of his other children. On several occasions, he would see AAA at her employers' house to ask for money. This purportedly irked AAA and the latter's employer. It was AAA's employer and BBB who coached AAA to file rape charges against appellant.[21]

On 27 July 2004, the RTC rendered a Decision convicting appellant of three counts of rape. In Criminal Case No. Q-99-87055, the Court imposed on appellant the penalty of reclusion perpetua. In Criminal Cases No. Q-99-87053 and Q-99-87054, appellant was sentenced to death. The dispositive portion of the decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, this Court finds that the prosecution established the guilt of the accused beyond reasonable doubt and is therefore found guilty of the offenses charged. The accused is hereby sentenced:

- In Crim. Case No. Q-99-87055:
- To suffer the penalty of reclusion perpetua;
- To indemnify the private complainant AAA the amount of P50,000.00 by way of civil indemnity;
- To pay the private complainant AAA the amount of P50,000.00 for exemplary damages;
- To pay the private complainant AAA the amount of P50,000.00 for moral damages;

- To pay the costs of the suit;
- In Crim. Case No. Q-99-87053:
- To suffer the penalty of DEATH;
- To indemnify the private complainant AAA the amount of P75,000.00;
- To pay the private complainant AAA the amount of P75,000.00 for exemplary damages;
- To pay the private complainant AAA the amount of P75,000.00 for moral damages;
- To pay the costs of the suit; and
- In Crim. Case No. Q-99-87054:
- To suffer the penalty of DEATH;
- To indemnify the private complainant AAA the amount of P75,000.00;
- To pay the private complainant AAA the amount of P75,000.00 for exemplary damages;
- To pay the private complainant AAA the amount of P75,000.00 for moral damages; and
- To pay the costs of the suit.

In the event, however, that the accused shall be pardoned by the President, he is, however, forever barred from showing himself to the private complainant. He must not approach the private complainant; he shall never contact the private complainant directly or indirectly either by letters, telephone, cellphone or send text messages or with the use of any electrical devices.[22]

In view of the penalty imposed upon appellant, the RTC elevated the records of the case directly to the Court of Appeals for review pursuant to our ruling in *People v. Mateo*. [23]

On 3 August 2006, the Court of Appeals promulgated its Decision, affirming with modifications the Decision of the RTC, thus:

WHEREFORE, premises considered, the Decision dated 27 July 2004, promulgated on 04 August 2004, of the Regional Trial Court of Quezon City, Branch 107 convicting accused-appellant William Ching of three (3) counts of qualified rape in Crim. Cases Nos. Q-99-87053, Q-99-87054, Q-99-87055 is AFFIRMED with the MODIFICATION that the sentence imposed on appellant is reduced to reclusion perpetua for each count of qualified rape, in lieu of death penalty, by reason of Republic Act No. 9346, and that pursuant to said law, accused-appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. Further, accused-appellant is ordered to pay the victim AAA the amounts of P75,000.00 for civil indemnity, another P75,000.00 for moral damages and P25,000.00 for exemplary damages for each count of qualified rape.[24]

Before us, appellant assigns a single error, to wit:

THE TRIAL COURT ERRED IN NOT CONSIDERING THE INFORMATION CHARGING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR FAILURE OF THE PROSECUTION TO STATE WITH PARTICULARITY THE APPROXIMATE DATE OF THE COMMISSION OF THE ALLEGED RAPES.[25]

Appellant maintains that the approximate time of the commission of the offense must be stated in the complaint or information; that the informations in the instant case do not state the approximate time of the alleged rapes; that the informations are fatally defective; that the date and time of the alleged rapes are so indefinite thereby

depriving appellant of the opportunity to prepare for his defense; and that appellant's constitutional right to be informed of the nature and cause of accusation against him was violated.[26]

The contentions are devoid of merit.

An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.[27] To be considered as valid and sufficient, an information must state 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.[28] The purpose of the requirement for the information's validity and sufficiency is to enable the accused to suitably prepare for his defense since he is presumed to have no independent knowledge of the facts that constitute the offense.[29]

With respect to the date of the commission of the offense, Section 11, Rule 110 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date the offense was committed except when it is a material ingredient of the offense, and that the offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

In rape cases, failure to specify the exact dates or times when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[30] In sustaining the view that the exact date of commission of the rape is immaterial, we held in *People v. Purazo*[31] that:

We have ruled, time and again that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated. As early as 1908, we already held that where the time or place or any other fact alleged is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information within the period of the statute of limitations and at a place within the jurisdiction of the court.

This Court has upheld complaints and informations in prosecutions for rape which merely alleged the month and year of its commission.[32] In *People v. Magbanua*,[33] we sustained the validity of the information for rape which merely alleged the year of its commission, thus:

Although the information did not state with particularity the dates when the sexual attacks took place, we believe that the allegations therein that the acts were committed "on (sic) the year 1991 and the days thereafter" substantially apprised appellant of the crime he was charged with since all the essential elements of the crime of rape were stated in the information. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the case filed against him. An information can withstand the test of judicial scrutiny as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof.

There is no cogent reason to deviate from these precedents especially so that all the essential elements of rape were also stated in the informations. Hence, the allegations in the informations which stated that the three incidents of rape were committed in the year 1996 and in May 1998 are sufficient to affirm the conviction of

appellant in the instant case.

Since the sole issue raised by appellant was resolved by this Court in favor of the validity of the informations filed against him, then the subsequent trial court proceedings and the resulting judgment of conviction against appellant should likewise be affirmed, there being no other questions raised by appellant as to them. We further uphold the penalty imposed on appellant by the Court of Appeals.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, was the law applicable in the year 1996, the time the first rape was committed. On the other hand, Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, was the law pertinent to the two rapes committed in May 1998. Both laws state that the death penalty shall be imposed if the rape victim is a minor and the offender is a parent. The qualifying circumstances of minority of the victim and the latter's relationship with the offender must be alleged in the complaint or information and proved during the trial to warrant the imposition of the death penalty.[34]

The informations in Criminal Cases No. Q-99-87053, Q-99-87054 and Q-99-87055 specifically alleged that AAA was a minor at the time she was raped and that the offender, herein appellant, is her father. The prosecution also proved during the trial the presence of the qualifying circumstances of minority and relationship through documentary and testimonial evidence.

As a rule, the best evidence to prove the age of the offended party for the purpose of appreciating the qualifying circumstance of minority is an original or certified true copy of the certificate of live birth of such party. However, in the absence of a certificate of live birth, similar authentic documents, such as a baptismal certificate, which show the date of birth of the victim would suffice to prove age.[35]

In the case at bar, the prosecution was not able to present the birth certificate of AAA because, according to BBB, the birth of AAA was not registered with the appropriate government agencies. BBB testified during the trial that at the time she gave birth to AAA through the assistance of a comadrona, the latter told her that a neighbor known only as comadre volunteered and suggested to register the birth of AAA together with the registration of birth of comadre's child; that to the best of her knowledge, comadre registered the birth of AAA; that when AAA was about to enroll in school, she went to the Quezon City Hall to secure a birth certificate of AAA but she was told therein that there are no records of birth of AAA; that she talked with comadre because the latter took all the necessary papers relevant to the birth of AAA; and that comadre told her that such papers were lost.[36]

Nonetheless, BBB submitted AAA's baptismal certificate dated 23 August 2001 issued by Rev. Fr. Romeo M. Castro, SVD, Parish Priest of Sacred Heart Parish, Kamuning, Quezon City.[37] The baptismal certificate states that AAA was born on 12 August 1983. This implies that AAA was about 13 years old at the time she was raped by appellant in 1996, and that she was barely 14 years and 9 months old when she was twice raped by appellant in May 1998. The baptismal certificate also states that appellant is the father of AAA.

Further, the prosecution adduced the marriage contract of appellant and BBB showing that they were married on 29 February 1980.[38] Appellant admitted that AAA is his daughter and BBB is his wife.[39]

Given the foregoing considerations, the penalty of death for each of the three counts of rape committed against AAA is proper.

However, in view of the effectivity of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty to be meted to appellant shall be reclusion perpetua in accordance with Section 2 thereof which 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 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.

We also sustain the award of damages made by the Court of Appeals in favor of AAA for each of the three rapes. The award of civil indemnity in the amount of P75,000.00 is the correct amount to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty. With respect to moral damages, the amount of P75,000.00 is fitting even though it was not pleaded or its basis established by evidence, pursuant to prevailing jurisprudence.[40] Further, the award of exemplary damages in the amount of P25,000.00 is authorized due to the presence of the qualifying circumstances of minority and relationship.[41]

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 01798 dated 3 August 2006 is hereby AFFIRMED in toto. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin, concurring; rollo, pp. 3-56.

[2] Penned by Judge Rosalina L. Luna-Pison; CA [rollo,] pp. 27-57.

[3] Pursuant to Republic Act No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004” and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (People v. Cabalquinto, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426.)

[4] CA rollo, pp. 9-14.

[5] Records, p. 28.

[6] TSN, 15 March 2001, pp. 2-35; TSN, 30 March 2001, pp. 2-18; TSN, 16 July 2001, pp. 3-5.

[7] TSN, 16 July 2001, pp. 7-18.

[8] Records, p. 193.

[9] TSN, 5 December 2002, pp. 2-10.

[10] Records, pp. 185-186.

[11] Id. at 188.

- [12] Id. at 189.
- [13] Id. at 190.
- [14] Id. at 191.
- [15] Id. at 193.
- [16] Id. at 194.
- [17] Id. at 195.
- [18] Id. at 196.
- [19] Id. at 197.
- [20] Id. at 198.
- [21] TSN, 24 April 2003, pp. 2-15; TSN, 3 September 2003, pp. 2-6.
- [22] Rollo, pp. 55-56.
- [23] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [24] Rollo, p. 221.
- [25] CA rollo, p. 79.
- [26] Id. at 87-90.
- [27] Section 4, Rule 110 of the Revised Rules of Criminal Procedure.
- [28] Section 6, Rule 110 of the Revised Rules of Criminal Procedure.
- [29] *Balitaan v. Court of First Instance of Batangas, Branch II*, 201 Phil. 311, 323 (1982).
- [30] *People v. Magbanua*, 377 Phil. 750, 763 (1999).
- [31] 450 Phil. 651, 671-672 (2003).
- [32] *People v. Macabata*, 460 Phil. 409, 421 (2003), citing *People v. Aspuria*, 440 Phil. 41 (2002); *People v. Morfi*, 435 Phil. 166 (2002); *People v. Abellano*, 440 Phil. 288 (2002).
- [33] *Supra* note 30 at 764.
- [34] *People v. Layugan*, G.R. Nos. 130493-98, 28 April 2004, 428 SCRA 98, 116.
- [35] *People v. Cayabyab*, G.R. No. 167147, 3 August 2005, 465 SCRA 681, 690, citing *People v. Pruna*, 439 Phil. 440 (2002).
- [36] TSN, 16 July 2001, pp. 7-18.
- [37] Records, p. 189.
- [38] Id. at 188.
- [39] TSN, 24 April 2003, p. 3.
- [40] *People v. Soriano*, 436 Phil. 719, 757 (2002); *People v. Sambrano*, 446 Phil. 145, 162 (2003).

[41] People v. Audine, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 553.

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