

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERONIMO DOMINGO, APPELLANT.*G.R. No. 177744. November 23, 2007*

Ponente: NACHURA, J.

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For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02098 dated July 6, 2006 which affirmed the Decision[2] of the Regional Trial Court of Imus, Cavite, Branch 21 in Criminal Cases Nos. 7427-99 and 7428-99. The trial court convicted Geronimo Domingo of rape in Criminal Case No. 7428-99 but acquitted him in Criminal Case No. 7427-99.

Sometime in 1997, AAA, then ten years of age being born on July 17, 1987, was inside her residence located at Block 17, Lot 29, Dasmariñas, Cavite. At 2:00 in the afternoon, while sleeping on the sofa in their living room, AAA was awakened by the appellant, the son of AAA's maid. He told her to transfer to her bed which she did. While inside the room, she was asked to remove her shorts which she again did; then appellant subsequently inserted his penis into her private organ until the satisfaction of his bestial act. He, thereafter, warned her not to tell anybody about the incident, otherwise, something bad would happen to her. The rape incident was repeated sometime in February 1998.[3]

BBB, the mother of AAA, noticed that the latter was always crying and not happy. She thus confronted AAA but she refused to answer. Later, BBB found out that there was a stain in AAA's panty.[4] On June 20, 1998, BBB thus brought AAA to the medico-legal office for examination. The examination revealed that AAA's vagina admitted a finger with ease; and there were fresh lacerations at 12:00 and 6:00 positions.[5] AAA subsequently admitted to BBB that she was raped twice by the appellant.[6]

Appellant was separately charged with two counts of rape in the following Information:

Criminal Case No. 7427-99

That on or about and sometime in the year 1997, in the Municipality of Dasmariñas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to have carnal knowledge of eleven (11) years old AAA and with threat and intimidation, did, there and then, willfully, unlawfully and feloniously have sexual intercourse with said AAA, an 11 year old girl, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.[7]

Criminal Case No. 7428-99

That on or about the month of February 1998, in the Municipality of Dasmariñas, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to have carnal knowledge (sic) of eleven (11) year old AAA, and with threat and intimidation, did, there and then, willfully, unlawfully and feloniously have sexual intercourse with said eleven (11) year old AAA, against the

latter's will and consent, to her damage and prejudice.

CONTRARY TO LAW.[8]

For his part, appellant denied the charges. He instead claimed that AAA fell in love with him. As evidence of his relationship with her, he claimed to have received love letters from her.[9] Appellant's mother testified that it was impossible for appellant to have raped AAA because she was with her son twenty-four hours a day.[10]

On November 11, 2003, the RTC rendered a Decision convicting the appellant of rape in Criminal Case No. 7428-99 while acquitting him in Criminal Case No. 7427-99. The pertinent portion of the decision reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the felony of rape as charged in the information in criminal case no. 7428-99, said accused is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the private complainant the amount of P50,000.00 as indemnity and another amount of P50,000.00 as moral damages and the costs of this suit.

The accused, however, is hereby acquitted of the felony of rape as charged in the information in criminal case no. 7427-99.

SO ORDERED.[11]

The trial court acquitted appellant of the first count of rape (in Criminal Case No. 7427-99) because of the defect in the information as to the time of the commission of the offense --- sometime in 1997. As to the second count of rape which was committed in February 1998, the court gave credence to the evidence of the prosecution and did not consider the sweetheart theory offered by the appellant. Assuming that there was consent on the part of AAA, still, the act committed by the appellant constituted statutory rape, considering the age of the victim.[12] Appellant was, thus, sentenced to suffer the penalty of reclusion perpetua. The court further awarded P50,000.00 as civil indemnity and P50,000.00 as moral damages.

The case was initially elevated to this Court but the same was transferred to the CA pursuant to the Court's directive in *People v. Mateo*. [13]

On July 6, 2006, the CA affirmed the trial court's decision. The fallo reads:

WHEREFORE, the instant appeal is DISMISSED. The assailed Decision dated November 11, 2003 of the Regional Trial Court of Imus, Cavite, Branch 21, in Criminal Case No. 7428-99 is AFFIRMED.

SO ORDERED.[14]

On appeal before the Court, instead of filing their supplemental briefs, the parties opted to adopt their respective briefs filed before the CA.

We find no merit in the appeal.

The only issue raised by the appellant is the alleged defect in the Information charging him with the second count of rape in Criminal Case No. 7428-99, for failure to state therein the precise date and time when the offense was committed.

An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof.[15] The precise time or date of the commission of an offense need not be alleged in the complaint or information, unless it is an essential element of the crime charged. In rape, it is not.[16] The gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes 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.[17]

The Information clearly alleged and the prosecution sufficiently established the commission by the appellant of statutory rape. We reiterate the findings of the CA in this wise:

We are convinced that the prosecution was able to establish the fact that the accused-appellant had carnal knowledge of AAA in February 1998 when she was only 10 years old. AAA's birth certificate admittedly shows that she was born on July 17, 1987. At the time she had carnal knowledge of accused-appellant in February 1998, she was only 10 years and five months old. The gravamen of statutory rape is carnal knowledge of a woman below twelve years of age. AAA, in this regard, categorically testified that she in fact was raped, and that she, as shown by her birth certificate was under twelve years old at the time. More importantly, she positively identified the accused-appellant as her rapist.[18]

In view of the foregoing, the appellant was correctly sentenced to suffer the penalty of reclusion perpetua for statutory rape. Appellant shall not be eligible for parole pursuant to the Indeterminate Sentence Law.[19]

On the civil aspect, the court rightly awarded P50,000.00 as civil indemnity and another P50,000.00 for moral damages, but failed to award exemplary damages. As we held in *People v. Malones*,[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 which is pegged at P25,000.00.

WHEREFORE, premises considered, the appeal is DENIED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02098 is AFFIRMED with MODIFICATION. Appellant Geronimo Domingo is sentenced to suffer the penalty of reclusion perpetua with no eligibility for parole. In addition to the award of civil indemnity and moral damages, AAA is hereby awarded P25,000.00 for exemplary damages.

SO ORDERED.

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

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo, concurring, rollo, pp. 3-17.

[2] Penned by Executive Judge Norberto J. Quisumbing, Jr., CA rollo, pp. 25-31.

[3]Rollo, p. 5.

[4] Id.

[5] CA rollo, p. 27.

[6]Rollo, pp. 5-6.

[7] CA rollo, p. 11.

[8]Id. at 12.

[9]Rollo, pp. 6-7.

[10]Id. at 7.

[11]CA rollo, p. 31.

[12] Id. at 30.

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

[14] Rollo, p. 16.

[15] *People v. Espejon*, 427 Phil. 672, 680 (2002).

[16] *People v. Mangubat*, G.R. No. 172068, August 7, 2007; *People v. Latag*, 463 Phil. 492, 502 (2003); *People v. Espejon*, *supra*.

[17] *People v. Espejon*, *supra* note 15, at 681.

[18] Rollo, p. 11.

[19] The Court has consistently held that the Indeterminate Sentence Law does not apply to persons sentenced to reclusion perpetua (See: *People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; *People v. Tan*, 411 Phil. 813, 841-842 (2001); and *People v. Lampaza*, 377 Phil. 119, 137 (1999)).

[20] 469 Phil. 301, 333 (2004).

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