

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GUALBERTO CINCO Y SOYOSA, ACCUSED-APPELLANT.

G.R. No. 186460. December 04, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] dated 30 January 2008 of the Court of Appeals in CA-G.R. CR-HC No. 01537 which affirmed in toto the Decision, dated 14 July 2005, of the Regional Trial Court (RTC), Branch 106, Quezon City, in Criminal Cases No. Q-98-79944, No. Q-99-89097 and No. Q-89098,[2] finding accused-appellant Gualberto Cinco y Soyosa guilty of two counts of simple rape.

The facts gathered from the records are as follows:

In November 1998, an information[3] was filed before the RTC accusing appellant of acts of lasciviousness, thus:

Criminal Case No. Q-98-79944

That on or about the 30[th] day of November 1998, in Quezon City, Philippines, the said accused with lewd design, did then and there willfully, unlawfully and feloniously commit an act of sexual abuse upon the person of AAA,[4] a minor, 14 years old, by then and there touching her body and mashing her breast, against her will and without her consent which act debases, degrades, or demeans the intrinsic worth and human dignity of said complainant as a human being, to the damage and prejudice of the said offended party.

Subsequently, on 18 August 1999, two separate informations[5] were filed with the RTC charging appellant with rape. The accusatory portions of the informations read:

Criminal Case No. Q-99-89097

That on or about the month of November, 1998 in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressed [AAA], a minor, 14 years of age, inside her room of the house located at XXX, and thereafter have carnal knowledge with [AAA] against her will and without her consent.

Criminal Case No. Q-99-89098

That on or about the 1st day of November, 1998 in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressed [AAA], a minor, 14 years of age, in the sala of their house located at XXX, and thereafter have carnal knowledge with [AAA] against her will and without her consent.

Thereafter, the aforementioned cases were consolidated. When arraigned on 7 February 2000, appellant, assisted by counsel de oficio, pleaded "not guilty" to the charges. Trial on the merits followed.

The prosecution presented as witnesses Dr. Mariella Castillo and AAA. Their testimonies, woven together, bear the following:

Herein private complainant, AAA, was born on 21 August 1984 in the province of YYY. When she was 12 years old, her aunt, BBB, took her from the custody of her paternal grandmother and brought her to BBB's residence located at XXX. Since then, AAA lived in the said house with BBB and herein appellant (BBB's common-law spouse/live-in partner).

On 1 November 1998, at around 6:00 p.m., AAA, then 14 years old, was inside the house watching television. Appellant entered the house and proceeded to the kitchen. He took a knife therefrom and poked it at AAA. He told her not to shout or he would kill her. He tied her two hands at the back of her head and removed her skirt and panty. She began to cry, but he told her to stop doing so. He went on top of her, spread her thighs, and inserted his penis into her vagina. He then made push and pull movements. As she felt pain in her vagina, she tried to push him away but to no avail. He pinched her breast which was very painful. After satisfying his lust, he untied her hands, put on his shorts and left her. She then stood up and put on her clothes. She went to the comfort room and saw her panty stained with blood.

In the latter part of November 1998, at about 4:00 p.m., AAA was inside the house while appellant was drinking with friends outside. Later, appellant, then armed with a knife, entered AAA's room and approached AAA. He pointed the knife at her neck and told her not to make noise. He covered her mouth with a handkerchief and tied her hands with a nylon rope. He then removed his pants and brief, stripped her of her shorts and panty, and went on top of her. He inserted his penis into her vagina and made up and down movements. Before leaving her, he warned her not to tell anyone of the incidents or he would kill her.

Subsequently, AAA went to the barangay hall to report the incidents. However, upon arriving thereat, she told the barangay officials that she was merely "touched" and not raped by appellant. She was forced to make such statement because appellant's siblings, namely, Sonia and Roel, threatened to kill her if she would divulge the truth. Appellant was eventually arrested and detained. She then filed with the Office of the Prosecutor, Quezon City, a complaint for acts of lasciviousness against appellant.

Thereafter, AAA confided to BBB that appellant raped her. BBB accompanied AAA to the office of the Department of Social Welfare and Development (DSWD), Marilac Hills, Alabang, Muntinlupa. Thereupon, AAA disclosed to a social worker that she was raped by appellant. After the interview, the social worker and BBB accompanied AAA to Camp Crame where the latter underwent physical and genital examination, which was conducted by Dr. Mariella Castillo (Dr. Castillo). In the said genital examination, Dr. Castillo found that AAA had an estrogenized hymen with healed laceration at the 6:00 o'clock and 8:00 o'clock positions. The deep notches, being in the posterior part of the hymen, indicate that the same had been lacerated before, but were now healed. The notches were caused by penetration injuries or by an object being inserted through the hymen opening to the vaginal canal.

Afterwards, appellant was charged with two counts of rape.[6]

The prosecution also proffered documentary evidence to buttress the testimonies of its witness, to wit: (1) provisional medical certificate of AAA issued by Dr. Castillo (Exhibit A);[7] (2) final medical certificate of AAA issued by Dr. Castillo (Exhibit B);[8] (3) sworn statement of AAA (Exhibit C);[9] and (4) AAA's birth certificate (Exhibit D).[10]

For its part, the defense presented the testimonies of appellant, Gregorio Frias and Roel Cinco to refute the foregoing accusations. No documentary evidence was adduced. Appellant denied any liability and interposed an alibi.

Appellant claimed that he was not in the house when the alleged incidents occurred. He testified that from 8:00

a.m. to midnight of 1 November 1998, he sold ice cream in Cubao, Quezon City. He went home in the morning of the following day, 2 November 1998. Also, during the latter part of November 1998, he sold ice cream for the whole day in the same place and went home in the morning of the following day. He alleged that AAA had ill motive to fabricate the rape charges, because he caught her several times stealing money from his box inside the house.[11]

Gregorio Frias, friend of appellant, narrated that on 1 November 1998, he and appellant were selling ice cream in Cubao, Quezon City. At about 5:00 p.m. of the same day, he went to appellant's house and upon arriving therein, he noticed that the people inside were arguing about the loss of money. On 30 November 1998, he and appellant were selling ice cream in Cubao, Quezon City.[12]

Roel Cinco, brother of appellant, stated that on 1 November 1998, he was watching television inside appellant's house. At around 6:00 p.m., appellant arrived at the house. Later that evening, appellant quarreled with BBB because AAA had several times stolen money from him.[13]

After trial, the RTC rendered a Decision convicting appellant of rape in Criminal Case Nos. Q-99-89097 and Q-89098. Appellant was sentenced to reclusion perpetua in both cases. He was also ordered to pay AAA in each of the cases the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages. With respect to Criminal Case No. Q-98-79944 for acts of lasciviousness, appellant was acquitted therein for failure of the prosecution to establish said charge. Appellant appealed to the Court of Appeals.

On 30 January 2008, the Court of Appeals promulgated its Decision affirming in toto the RTC Decision. Appellant filed a Notice of Appeal on 12 February 2008.[14]

In his Brief, appellant assigns a lone error, thus:

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE INFORMATIONS UNDER CRIMINAL CASE NOS. Q-99-89097 AND Q-99-89098 AS INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR THE PROSECUTION'S FAILURE TO STATE WITH PARTICULARITY THE APPROXIMATE DATES OF THE COMMISSION OF THE ALLEGED RAPES.[15]

Appellant maintains that the approximate times and dates of the commission of the offense must be stated in the informations; that the informations in the instant cases do not state the approximate times and dates of the alleged rapes; that although AAA testified that the first rape occurred nearly before All Saints Day of 1998, the information in Criminal Case No. Q-89098, nonetheless, states that such incident transpired on 1 November 1998; that the informations are fatally defective; that the times and dates of the alleged rapes are so indefinite, thereby depriving appellant of the opportunity to prepare for his defense; that appellant's constitutional right to be informed of the nature and cause of the accusation against him was violated; and that by reason of the foregoing, appellant is entitled to an acquittal.[16]

An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.[17] 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.[18] 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.[19]

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.[20] In sustaining the view that the exact date of commission of the rape is immaterial, we ruled in *People v. Purazo*[21] 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.[22] There is no cogent reason to deviate from these precedents, especially so when the prosecution has established the fact that the rape under Criminal Case No. Q-99-89097 was committed prior to the date of the filing of the information in the said case. Hence, the allegation in the information under Criminal Case No. Q-99-89097, which states that the rape was committed on or about November 1998, is sufficient to affirm the conviction of appellant in the said case.

Appellant's allegation of variance between the date of the commission of rape in Criminal Case No. Q-99-89098 and that established by the evidence during the trial is erroneous. AAA categorically testified that she was raped by appellant on 1 November 1998.[23] This is consistent with the allegation in the information under Criminal Case No. Q-99-89098 that appellant raped AAA on 1 November 1998.

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 RTC and the Court of Appeals.

Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, was the law pertinent to the rapes committed on 1 November 1998 and in the latter part of November 1998. The law states that the death penalty shall be imposed if the rape victim is a minor, and the offender is the common-law spouse of the parent of the victim.[24] The qualifying circumstances of minority of the victim and her 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.[25]

The informations in Criminal Case No. Q-99-89097 and Q-99-89098 allege that AAA was a minor at the time she was raped. However, there is no allegation therein that the offender, herein appellant, is the common-law spouse of AAA's parent. Thus, the qualifying circumstances of minority and relationship cannot be properly appreciated. In the absence of such qualifying circumstances, the rapes in the instant cases are treated as simple rapes. Under

Republic Act No. 8353, the penalty for simple rape is reclusion perpetua.

We also sustain the RTC and the Court of Appeals' award of civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 to AAA, pursuant to prevailing jurisprudence.[26] Nonetheless, the award of exemplary damages in the amount of P25,000.00 should be deleted, as no aggravating circumstance in the commission of rapes was proven.[27]

WHEREFORE, the Decision, dated 30 January 2008, of the Court of Appeals in CA-G.R. CR-HC No. 01537, is hereby AFFIRMED with the MODIFICATION that the award of exemplary damages is deleted.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Bersamin,[*] JJ., concur.

[*]Associate Justice Lucas P. Bersamin was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 20 April 2009.

[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta concurring; rollo pp. 2-15.

[2] CA rollo, pp. 9-17.

[3] Id. at 9-10.

[4] 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.)

[5] Records, pp. 2-5.

[6] TSN, 9 November 2000, 8 August 2001, 22 August 2001, 19 September 2001 and 3 October 2001.

[7] Records, p. 144.

[8] Id. at 145.

[9] Id. at 146.

[10] Id. at 150.

[11] TSN, 3 April 2003 and 19 June 2003.

[12] TSN, 12 February 2004.

[13] TSN, 20 January 2005.

[14] CA rollo, pp. 98-99.

[15] Id. at 39.

[16] Id. at 39-42.

[17] Section 4, Rule 110 of the Revised Rules of Criminal Procedure.

[18] Section 6, id.

[19] *Balitaan v. Court of First Instance of Batangas, Branch II*, 201 Phil. 311, 323 (1982).

[20] *People v. Magbanua*, 377 Phil. 750, 763 (1999).

[21] 450 Phil. 651, 671-672 (2003).

[22] *People v. Macabata*, 460 Phil. 409, 421 (2003), citing *People v. Aspuria*, 440 Phil. 41, 52 (2002); *People v. Morfi*, 435 Phil. 166, 177 (2002); *People v. Abellano*, 440 Phil. 288, 293 (2002).

[23] TSN, 8 August 2001, p. 5.

[24] Article 266-B x x x "The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating circumstances: 1) 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. x x x"

[25] *People v. Layugan*, G.R. Nos. 130493-98, 28 April 2004, 428 SCRA 98, 116.

[26] *People v. Biong*, 450 Phil. 432, 448 (2003); *People v. Invencion*, 446 Phil. 775, 792 (2003); *People v. Pagsanjan*, 442 Phil. 667, 687 (2002).

[27] CIVIL CODE OF THE PHILIPPINES, ARTICLE 2230: In criminal offenses, exemplary damages as part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances; *People v. Ramos*, 399 Phil. 455, 481 (2000); *People v. Manalo*, 444 Phil. 655, 674 (2003).

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