

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSELINDO CUTAMORA AND ALLAN CUTAMORA,
ACCUSED-APPELLANTS.**

G.R. Nos. 133448-53. October 06, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-brothers Roselindo and Allan Cutamora were each charged with three (3) counts of rape committed against their nieces Virginia Cutamora, Gina Cutamora and Beatriz Cutamora Tampos. The Informations read:

Crim. Case No. 647:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon sworn complaint originally filed by the offended party, accuses ROSELINDO CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1989 up to May, 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Virginia Cutamora when she was seven (7) years old until she became eleven (11) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 651:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ALLAN CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1989 up to 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Virginia Cutamora when she was seven (7) years old until she became eleven (11) years old against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 648:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ROSELINDO CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1991 up to 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Gina Cutamora when she was six (6) years old until she became eight (8) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 649:

"The undersigned Prosecutor III, as Officer-in-Charge, Officer of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ALLAN CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1991 up to 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Gina Cutamora when she was six (6) years old until she became eight (8) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 646:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon a sworn complaint originally filed by the offended party, accuses ROSELINDO CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1990 up to 1993, inside the house of Uldarico Cutamora, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Beatriz Tamos y Cutamora when she was ten (10) years old until she became thirteen (13) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Crim. Case No. 650:

"The undersigned Prosecutor III, as Officer-in-Charge, Office of the Provincial Prosecution, Agusan del Sur, upon sworn complaint originally filed by the offended party, accuses ALLAN CUTAMORA of the crime of RAPE, committed as follows:

That sometime in the year 1990 up to 1993, at Kalaitan, Bayugan, Agusan del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge repeatedly with his niece one Beatriz Tamos y Cutamora when she was ten (10) years old until she became thirteen (13) years old, against her will.

CONTRARY TO LAW: (Article 335, Revised Penal Code)

Government Center, Prosperidad, Agusan del Sur, Philippines, September 8, 1993."

Accused-brothers entered a plea of "not guilty" to all the charges. Trial on the merits thereafter ensued.

The prosecution satisfactorily established that the complaining witnesses, Virginia Cutamora, Gina Cutamora, and Beatriz Tamos y Cutamora were all staying at the house of their grandparents Uldarico and Cedra Cutamora at Kalaitan, Bayugan, Agusan del Sur. Also residing with them were their uncles, accused Roselindo and Allan Cutamora.

Virginia Cutamora was first sexually assaulted by her uncle Roselindo Cutamora when she was only seven (7) years old. She was ordered to bow down her head after which accused Roselindo, having removed his pants and briefs, inserted his penis into her anus. She felt excruciating pain but could not do otherwise. Having satisfied himself, Roselindo warned Virginia not to tell on him or she would be hurt.

The following day, Virginia suffered the same fate at the hands of accused Allan Cutamora. While inside the room, Virginia was made to lie down. Allan took off his clothes, mounted her and made push and pull movements. The accused then warned her not to tell on him else she would be killed.

Roselindo and Allan repeatedly performed those bestial acts on Virginia until she became eleven (11) years old.

In 1991, Gina Cutamora was then six (6) years old. At such a tender age, she already suffered at the hands of her uncles Roselindo and Allan Cutamora. It was daytime when she was first ravished by accused Allan inside the house of her grandparents. Gina was made to lie down while accused Allan positioned himself on top of her and made push and pull movements.

Roselindo took his turn the following day. After all the other members of the household have left for the farm, he molested Gina inside their kitchen.

Beatriz was only ten (10) years old when she was subjected to the lustful desires of Roselindo. Her ordeal at the hands of Roselindo lasted until she was thirteen (13) years old. Everytime she was raped, it was always at knife point. Roselindo warned her not to tell on him else she would be killed.

Accused Allan likewise did not spare Beatriz. Beatriz's first sexual assault at the hands of Allan happened inside their kitchen. Beatriz could not recall how many times she was assaulted. She did not divulge to anybody her ordeal because she feared for her life.

Accused-appellants denied the charges filed against them. They averred that the accusations thrown against them are devoid of any basis and are utterly meritless. They maintained that they were at their farm at the time of the supposed incidents.

After an exhaustive assessment of the evidence presented by both parties, the trial court found the two accused guilty as charged and accordingly sentenced them, thus:

"In Crim. Cases Nos. 646, 647 and 648, accused Roselindo Cutamora is sentenced to:

- 1] Three separate penalties of reclusion perpetua;
- 2] Indemnify Virginia Cutamora, Gina Cutamora and Beatriz Tamos the amount of P50,000.00 each;
- 3] Pay Virginia Cutamora, Gina Cutamora and Beatriz Tamos P20,000.00 each representing moral damages; and
- 4] Indemnify Virginia Cutamora, Gina Cutamora and Beatriz Tamos P30,000.00 each for exemplary damages.

In Crim. Cases Nos. 649, 650 and 651, accused Allan Cutamora is sentenced to:

- 1] Three separate penalties of Reclusion Perpetua;

- 2] Indemnify victims Gina Cutamora, Virginia Cutamora and Beatriz Tamos the sum of P50,000.00 each;
- 3] Pay Virginia Cutamora, Gina Cutamora and Beatriz Tamos P20,000.00 each for moral damages; and
- 4] Indemnify Virginia Cutamora, Gina Cutamora and Beatriz Tamos P30,000.00 each representing exemplary damages.

With costs.[1]

In the instant appeal, accused-appellants impute the following errors on the part of the lower court:

- THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE INFORMATIONS INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS FAILURE TO STATE THE DATES OF THE ALLEGED COMMISSION OF SIX COUNTS OF RAPE, IT BEING AN ESSENTIAL ELEMENT OF THE CRIME CHARGED.
- ASSUMING ARGUENDO THAT THE INFORMATIONS ARE SUFFICIENT, THE LOWER COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT'S (sic) GUILT HAVE (sic) BEEN PROVEN BEYOND REASONABLE DOUBT.[2]

Accused-appellants submit that the date and time of the alleged commission of the rape incidents as stated in the six (6) informations were "vague and ambiguous" and "too indefinite to give herein appellants an opportunity to prepare their defense".[3]

This Court is not persuaded. Section 6, Rule 110 of the Rules of Court reads:

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 by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein 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. (Emphasis supplied)

The purpose of the above-quoted rule is to inform the accused of the nature and cause of the accusation against him, a right guaranteed by no less than the fundamental law of the land. Elaborating on the accused's right to be informed, this Court held in *Pecho v. People* (262 SCRA 518) that the objectives of this right are:

- To furnish the accused with such a description of the charge against him as will enable him to make the defense;
- To avail himself of his conviction or acquittal for protection against further prosecution for the same cause; and
- To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction if one should be had.

It is thus imperative that the Information filed with the trial court be complete to the end that the accused may suitably prepare his defense. Corollary to this, an indictment must fully state the elements of the specific offense alleged to have been committed as it is the recital of the essentials of a crime which delineates the nature and cause of the accusation against the accused.[4] An information is sufficient as long as it states the statutory designation of the offense and the acts or omissions constituting the same.[5] It is likewise sufficient if the time averred is near the actual date as the information of the prosecuting officer will permit, and since that was done in this case, it was not shown that the time proved did not surprise or substantially prejudice the defense.[6]

The Constitution specifically provides that the accused must "be informed of the nature and cause of the accusation against him, in order for him to prepare his defense." In *People v. Manalili*, this Court held:

"The hornbook doctrine in our jurisdiction is that an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him." [7]

The allegations in the informations filed in the instant case against all the accused are sufficient and complete. The names of accused Roselindo and Allan Cutamora were mentioned. The crime of rape was specially designated. The acts constituting the crime of rape were enumerated, i.e., that the accused-appellants had carnal knowledge with their nieces without their consent and against their will. Virginia Cutamora, Gina Cutamora and Beatriz Tamos y Cutamora were named as the offended parties. The approximate time of the commission of the offense was stated to be sometime "in the year 1990 up to 1993". The offense was committed at Kalaitan, Bayugan, Agusan del Sur.

The dates of the commission of the crimes are not "vague and ambiguous" or "too indefinite" as to deprive accused-appellants of their right to be informed of the charges filed against them. It should be noted that the victims continuously endured their ordeal at the hands of the accused-appellants from 1990 until 1993. Moreover, the victims were minors and, as such, are not expected to closely monitor the dates of their defilement. Besides, each of the accused-appellants was convicted only of one count of rape committed against Virginia, Gina and Beatriz.

A rape victim is not and cannot be expected to keep an accurate account of her traumatic experience. A court cannot expect a rape victim to remember every ugly detail of the appalling outrage especially so since she might in fact have been trying not to remember them. Rape victims do not cherish in their memories an accurate account of the dates, number of times and manner they were violated.[8] The precise time of the commission of the crime is not an essential element in the crime of rape[9] and therefore need not be accurately stated.[10]

More importantly, it is too late at this stage for the accused-appellants to raise the issue of sufficiency or insufficiency of the informations filed against them. They should have raised this issue prior to their arraignment. The records bear out that accused-appellants did not offer any objection in this regard before they entered their plea during the arraignment. Consequently, they are deemed to have waived any objection on this ground pursuant to Sec. 8 of Rule 117. The defense should have moved for a bill of particulars granting that the time of the commission of the offense was not sufficiently and definitely alleged.

Accused-appellants next claim that the trial court erred in finding their guilt proven beyond reasonable doubt. This Court finds otherwise. The issue on this score really boils down to credibility. Ordinarily, this Court will not disturb the findings of the trial court as to the credibility of the witness as it has a better vantage point in observing his candor and behavior on the witness stand.[11] Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination.[12] Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[13]

In the case at bar, this Court finds the assessment of the trial court as to the credibility of the witnesses binding and conclusive, there being no tinge of arbitrariness or oversight. Besides, and more importantly, this Court finds it improbable for Virginia, Gina and Beatriz, who were all minors, naive and innocent to the ways of the world, to concoct and weave such sordid details of sexual assaults as can be told only by those who have been personally

subjected to it. Needless to say, it is settled jurisprudence that testimonies of child-victims are given full weight and credit, since 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 show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[14]

Moreover, victims' testimonies of their respective defilement were substantially corroborated by the results of the medical examination conducted on them by a medico-legal officer. The medical findings uniformly revealed that the victims had hymenal lacerations resulting from vulvar coitus.[15]

In addition, the defense failed to prove that the complaining witnesses were impelled by ill-motive as to file serious charges against them. The complainants' lack of ill-motive to file the rape charges is even more believable considering that their complaints were filed against their own kin. There is considerable receptivity on the part of this Tribunal to lend credence to complainants' vision of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a gruelling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control.[16]

Lastly, accused-appellants' denial and alibi are inherently weak and unreliable.[17] It becomes more suspect as accused-appellants themselves were not consistent as to the exact distance of the farm from their house. Accused-appellant Roselindo averred that the farm was 10 kilometers away from their house. On the other hand, accused-appellant Allan maintained that it was 500 meters away from their residence. Both accused-appellants failed to prove that they were at the farm or that it was physically impossible for them to be at the locus criminis at the time of the incident. In the absence of strong and convincing evidence, alibi could not prevail over the positive testimonies of the victim, who had no improper motive to testify falsely against accused-appellants.[18]

The trial court correctly sentenced each of the accused-appellants to three (3) separate penalties of reclusion perpetua considering that at the time of the commission of the offense, the imposable penalty for the crime of rape was reclusion temporal in its maximum period to death.

Also, the trial court was correct in ordering each of the accused-appellants to pay Virginia, Gina and Beatriz P50,000.00 as civil indemnity.[19] However, the award of P20,000.00 to each of the victims representing moral damages should be increased to P50,000.00 in line with recent jurisprudence.[20]

WHEREFORE, in view of the foregoing, accused-appellants Roselindo Cutamora and Allan Cutamora are found GUILTY beyond reasonable doubt of three (3) counts of rape. Accordingly, each is sentenced to three (3) separate penalties of reclusion perpetua; to pay Virginia Cutamora, Gina Cutamora, and Beatriz Tamos y Cutamora P50,000.00 each as civil indemnity; to pay Virginia Cutamora, Gina Cutamora, and Beatriz Tamos y Cutamora P50,000.00 each as moral damages.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Decision, p. 19; Rollo, p. 48.

[2] Brief for the Accused-Appellants, p. 1; Rollo, p. 75.

[3] Id., p. 11; Id., p. 85.

[4] People v. Bayya, G.R. No. 127845, March 10, 2000.

[5] People v. Pambid, G.R. No. 124453, March 15, 2000.

[6] People v. Castillo, G.R. No. 130205, July 5, 2000; citing U.S. v. Dichao, 27 Phil. 421 [1914].

[7] Ibid.

[8] People v. Historillo, G.R. No. 130408, June 16, 2000.

[9] People v. Arillas, G.R. No. 130593, June 19, 2000.

[10] People v. Castillo, supra.

[11] People v. Alicante, G.R. Nos. 127026-27, May 31, 2000.

[12] People v. Bayona, G.R. Nos. 133343-44, March 2, 2000.

[13] People v. Siao, G.R. No. 126021, March 3, 2000.

[14] People v. Lusa, 296 SCRA 288 [1998].

[15] Exhibits "A", "B", and "C", Records.

[16] People v. Castillo, supra; citing People v. Molina, 53 SCRA 495 [1973].

[17] People v. Hofileña, G.R. No. 134772, June 22, 2000.

[18] Ibid.

[19] People v. Dreu alias "Adang Dreu", G.R. No. 126282, June 20, 2000.

[20] Ibid; People v. de Guzman, G.R. No. 124368, June 8, 2000; People v. Hofileña, supra; People v. Siao, supra; People v. Arillas, supra; People v. Historillo, supra; People v. Antonio, G.R. No. 122473, June 8, 2000.

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