

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS AWING Y ABAYON, ACCUSED-APPELLANT.

G.R. Nos. 133919-20. February 19, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On February 24, 1998, appellant Carlos Awing y Abayon was found guilty of two (2) counts of rape, committed against private complainant, Maricar Awing, his own stepdaughter. For each count, he was sentenced to death. Hence this automatic review of both Criminal Cases Nos. 39, 869-97 and 39, 870-97 decided by the Regional Trial Court of Davao City, Branch 33. Appellant is the husband of complainant's mother, Maribel Arjente. He and Maribel were legally married on January 20, 1996, after having lived together for thirteen (13) years.

Complainant is the daughter of Maribel by a certain Rafael Esteban. She was born on November 15, 1983, when her mother was already living with appellant. Maricar grew up recognizing appellant as her own father. The union of Carlos and Maribel produced six (6) children, namely, Maricel, Marilou, Carlos, Jr., Carlito, Marites, and Marilyn, all surnamed Awing. At the time of the alleged offenses, the Awings resided in a one-room house in Pioneer Drive Compound, Bajada, Davao City. Appellant was irregularly employed, taking in odd manual jobs every now and then, while his wife took in laundry. More often than not, Carlos stayed at home to watch the children, while his wife went out to earn their daily keep.

On October 29, 1997, the City Prosecutor of Davao City filed two separate informations charging appellant with rape. In Criminal Case No. 39, 869-97, the indictment reads:

That on or about June 01, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his step-daughter Maricar Awing, without her consent and against her will.

CONTRARY TO LAW.[1]

In Criminal Case No. 39, 870-97, the charge sheet reads similarly except for the date of the offense, "sometime in November 1996." [2]

On November 24, 1997, appellant was arraigned in both cases, with the assistance of counsel de parte. The charges were separately read to him in the Cebuano dialect, the language known and understood by appellant. He pleaded not guilty to both charges. Trial on the merits soon ensued.

As the accusations were founded on a common set of facts involving the use of common evidence, the cases were jointly tried.

Complainant's testimony was summed up by the trial court, thus:

[I]t was in November of 1996 that her stepfather first raped her. It happened at about 7:00 o'clock in the

evening in their house. Her brother and sisters were then asleep, while her mother was out of the house and someplace else. At that time she was reading a book when her Papa (she calls the accused Papa) came up to her, held her hand and made [her] to go down to their kitchen. (pp. 12-16, t.s.n., Dec. 8, 1997) and told to lie down. He made her lie down, which she followed because otherwise he will get angry. She tried to resist but was boxed on her stomach. Then he undressed her of her shortpants and t-shirt. He also undressed totally. He held her hand and covered her mouth, and then had sex with her (pp. 2-3, t.s.n., Dec. 9, 1997[7]).[3]

x x x

The last time the accused had sex with her, was on June 1, 1997, also at about 7:00 o'clock in the evening. He had sex with her on the floor of the their house. Only the two of them were in the house, her mother and siblings were not around. (pp. 3-4, t.s.n., Dec. 9, 1997). When asked how did he have sex with her, she answered that it was done in the same manner as the first.[4]

Maricar claimed that appellant had sex with her on many occasions. Even prior to November 1996, while she was still a small girl, appellant made advances on her by touching and fondling her legs, breasts, and vagina. She did not complain to her mother because he threatened Maricar that something will happen to her and her family if she would tell anybody. When she resisted, he would box her.

On October 2, 1997, appellant with Maricar in tow went to see Ricardo Mese, who was their purok leader and who testified for the prosecution. Maricar was then already visibly pregnant. Mese declared that appellant wanted his assistance to determine who impregnated her. When asked, she refused to answer and just cried. After several promptings, she declared that her boyfriend, a certain (Antonio or Tony) Hernandez, was responsible. Mese, however, doubted her statement since she kept on looking at appellant before answering his queries.

The following morning, Mese brought Maricar to the barangay captain of Agdao, Davao City. The latter, however, could not make sense of her story and turned her over to the Davao City Social Services and Development Office (CSSDO). Prosecution witness Susan Lopez Ale, a social worker, interviewed her there. Maricar's mother was present and in her presence, Maricar stated that her boyfriend was responsible for her pregnancy. Ale sensed that something was wrong, however, since Maricar kept on crying and looking at her mother during the interview. She then brought Maricar to a room where only the two of them could talk. It was there that Maricar disclosed that she was four (4) months pregnant and that appellant was responsible for her condition. She was advised to file a case and told to return to the CSSDO.

When she failed to return to the CSSDO, the barangay captain of Agdao, Davao City was duly informed. The CSSDO indorsed the matter to the Davao City Police Command Criminal Investigation Group (CIG) for investigation. SPO3 Oscar Ochavillo of the CIG interviewed Maricar. She revealed that appellant had raped her sometime in November 1996.

The police investigators then brought Maricar to the Davao City Health Office where Dr. Danilo Ledesma examined her. He found her positive for pregnancy. He also noted that her hymen had an old superficial and a healed deep laceration at the 3 o'clock and 6 o'clock positions, respectively, and that the hymenal orifice, originally annular, admitted a tube 3.0 cms. in diameter.[5]

On November 26, 1997, Maricar delivered twins. She claimed that appellant fathered her children as they looked like him.

Appellant admitted having sexual relations with private complainant. However, he denied having forced or threatened the latter into carnal submission. His version was summed up by the trial court, as follows:

[T]he defense of the accused is that it was Maricar Awing who seduced him into having sexual relationship with the latter. Testifying in his behalf, he admitted that he has had sexual intercourse with Maricar Awing as

early as January 1996, but he maintained that it was consensual, and that Maricar by then was already 14 years old (pp. 5-6, t.s.n., Jan. 19, 1998). (Being born in November of 1983, Maricar was only 12 years and two months old at the time). He claimed that it was Maricar who made the first move (siya ang mag-una-una) by baring her breast. He admonished her but she repeated the display of her breast a few days later (p. 13, t.s.n., Jan. 19, 1998[8]). He admitted that he had sex (with her) in November 1996 and on June 1, 1997, and in between these periods up to September 1997 (p. 35, t.s.n., Jan. 19, 1998) when Maricar was already pregnant. He admitted he was the one who caused the pregnancy of Maricar (p. 22, t.s.n., Jan. 19, 1998). He declared that their sexual liaisons over the period of time from November 1996 was with the consent of Maricar (pp. 14-16, t.s.n., Jan. 19, 1998). He convinced her to have sex with him by "properly and heartfully" (minatarong) requesting her, which consent she readily gave (p.5, t.s.n., Jan. 19, 1998). On cross-examination he admitted that Maricar grew up recognizing him as her father, and he took care of Maricar as if she was his own child (p. 32, t.s.n., Jan. 19, 1998). But by 12 years of age she knew he is not her real father (p.34, t.s.n., Jan. 19, 1998). He does not regret having sex with Maricar but admitted having committed a crime because of her (p. 41, t.s.n., Jan. 19, 1998).[6]

The defense also presented complainant's younger sister, Maricel Awing, to corroborate his claim that complainant actually initiated the sexual relationship between her and appellant. The trial court synthesized Maricel's testimony as follows:

Maricel Awing...testified that it was Maricar who bared her breasts to her father saying 'Pa, you look at my breasts, they are very sweet (lami).' Maricar was reprimanded by her father but she just laughed it off. She admonished Maricar but she just laughed. Maricar did this seven (7) times. She did not tell their mother because she is afraid of Maricar who would quarrel with her and place her inside the aparador (pp. 4-8, t.s.n., Jan. 20, 1998). Aside from showing her breasts, Maricar touches the crotch (pondillo) of their father's trouser(s) (pp. 10-11, t.s.n., Jan. 20, 1998). The baring of the breasts was done on different occasions (p. 23, t.s.n., Jan. 20, 1998).

It was nighttime, according to Maricel when, pretending to be asleep, she noticed her father and Maricar having sex at about a distance of 3 meters from her. They were enjoying the sexual act, both alternating on top of the other; Maricar was laughing while the accused was removing her shortpants and panty. She saw them six (6) times doing the sexual act, but she never told her mother because Maricar would punch her if she did (pp. 11-16, t.s.n., Jan. 20, 1998). She experienced goose-flesh at the sight of her father and Maricar doing the sexual act. Her father did not force or threaten Maricar to submit to her father's desire (pp. 17-18, t.s.n., Jan. 20, 1998).[7]

The trial court found complainant's testimony credible, observing that she "appears to be guileless, shy and...simple...and incapable of being a tease." [8] Describing appellant's version to be taxing to the court's credulity, it then convicted appellant, thus:

WHEREFORE, for all the foregoing, the Court finds the accused GUILTY beyond reasonable doubt of the crime of rape and accordingly sentences him:

- In Criminal Case No. 39,869-97, to suffer the maximum penalty of DEATH with its accessory penalties; to indemnify the offended party in the sum of P50,000.00; and to acknowledge and support the offspring; and to pay the sum of P25,000.00 as exemplary damages; and
- In Criminal Case No. 39,870-97, to suffer the maximum penalty of DEATH with its accessory penalties; to indemnify the offended party in the sum of P50,000.00; and to acknowledge and support the offspring; and to pay the sum of P25,000.00 as exemplary damages;

His immediate confinement in the national penitentiary at the National Bilibid Prison is hereby ordered.

Costs de officio.

SO ORDERED.[9]

Pursuant to Republic Act No. 7659, the cases are now before us for automatic review. In his brief, appellant assigns the following errors allegedly committed by the trial court:

I

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT USED FORCE AND INTIMIDATION ON BOTH OCCASIONS OF HIS SEXUAL ASSAULT AGAINST PRIVATE COMPLAINANT.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED AND IMPOSING UPON HIM THE EXTREME CAPITAL PUNISHMENT DESPITE THE FACT THAT THE INFORMATION IN CRIMINAL CASE NO. 39,870-97 FAILED TO STATE WITH DEFINITENESS THE TIME OF THE COMMISSION OF THE ALLEGED DEED.

III

THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF DEATH ON ACCUSED-APPELLANT DESPITE THE FACT THAT BOTH CRIMINAL INFORMATIONS DO NOT ALLEGE THE AGE AND RELATIONSHIP OF THE VICTIM VIS-À-VIS THE ACCUSED-COMPLAINANT.

The issues for our resolution are: (1) whether the information filed in Criminal Case No. 39, 870-97 was deficient; (2) whether the evidence presented by the prosecution was sufficient to support the conviction of appellant for two counts of rape; and (3) whether the trial court erred in imposing the death penalty for each count.

On the first issue, we have to inquire whether the information in Criminal Case No. 39, 870-97 violated Section 11, Rule 110 of the 1985 Rules of Criminal Procedure dealing with the "time of the commission of the offense." [10] Appellant insists that by stating only that the rape was committed "sometime in November 1996," the information in Criminal Case No. 39, 870-97 was too uncertain and indefinite. He stresses that this failure to state the specific time of commission of the alleged rape denied him the opportunity to adequately prepare his defense.

For the State, the Solicitor General argues that the time of the commission of the offense as stated in the information in Criminal Case No. 39, 870-97 is precise enough to afford, as it did, an opportunity for appellant to prepare his defense. Allegedly, the time "November 1996," is not indefinite, and as used in the information, sufficed to inform appellant of what he stood charged with and when he allegedly committed the misdeed.

Section 11 of Rule 110 of the 1985 Rules of Criminal Procedure is quite clear. It is not necessary that the precise time the act was committed be alleged in the complaint or information, except when "time is a material ingredient of the offense."

In *People v. Pagpaguitan*, [11] we have held that the exact date of the commission of the rape is not an essential element of the crime. In fact, the precise time when rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. Indeed, we have held that the allegations that rapes were committed "before or until October 15, 1994," [12] "sometime in the year 1991 and the days thereafter," [13] and "on or about and sometime in the year 1988," [14] constitute sufficient compliance with Rule 110, Section 11.

That the information in this case alleged that rape took place on or about November 1996 is sufficient to inform appellant of the charge against him in Criminal Case No. 39, 870-97. Note that during direct examination,

appellant stated that he had sexual intercourse with private complainant six (6) times in November 1996.[15] Under cross-examination, he modified his answer a bit and owned four (4) instances of coitus with the victim during November 1996.[16] These declarations clearly show that appellant properly understood the offense charged in Criminal Case No. 39, 870-97, and had the opportunity to prepare his defense, alleging that the sexual acts were consensual. We find that appellant cannot now validly complain that he was taken by surprise by the charge against him.

Moreover, even if the information in Criminal Case No. 39, 870-97 lacked an allegation of actual day and time of the commission of the rape, the defect, if any, could be deemed cured by the evidence presented during the trial. Moreover, we find that any objection based on this ground had been waived as a result of appellant's failure to object to the information before arraignment. Appellant could have moved for either a bill of particulars or quashal of the information for failure of the information to substantially conform to the prescribed form.[17] However, he did not choose to do either step. It is now too late in the day for him to claim on appeal that the information against him was defective and that he ought to go scott free for that reason.

The gravamen of the offense of rape as defined by Article 335 of the Revised Penal Code is sexual intercourse with a woman against her will or without her consent.[18] In this case, it is not disputed that appellant had sexual relations with the victim. However, he interposes the defense that these acts were consensual, done with neither force nor intimidation, and were initiated by private complainant herself. Having admitted to having had carnal knowledge of complainant several times, appellant now bears the burden of proving his variant of the "sweetheart defense," which could be an illicit but consensual affair.[19]

In his defense, appellant tries to portray the thirteen (13) year-old victim as an erotically accomplished Lolita and a brazenly enticing Salome with morals so flexible or judgment so depraved so as to be willingly deflowered by a man she considers her own father. Appellant's tale, however, is simply too incredible and fantastic to be believed. It is contradicted by findings of the trial court. Recall that the trial court described private complainant as a "guileless, shy and a simple girl," "incapable of being a tease." [20] The court below likewise found that "(t)here is no proof presented by the accused that Maricar had been so corrupted by her environment and by salacious and titillating materials in print, radio, and television as to make her so depraved and sexually amoral as to entice and seduce her own stepfather." [21] As against these findings, all appellant can offer are self-serving statements portraying complainant as an oversexed young Jezebel. Evidence to be believed should proceed not only from the mouth of a credible witness, but must also be credible, reasonable, and in accord with human experience in itself.[22] It is the common experience and observation of mankind that no daughter in her right mind would consent to have carnal knowledge with her own father or stepfather.[23] Thus, the trial court did not err in giving credence not to appellant's hollow protestation but to complainant's testimony that she was threatened and boxed into being appellant's sex slave. No girl would concoct a story of sexual assault, undergo gynecological examination, or subject herself and her family to the trauma and embarrassment concomitant to criminal prosecution unless she speaks the truth.[24]

On the second issue, appellant insists that the trial court erred in finding that the mass of the evidence supports his guilt for two counts of rape. He points to certain portions of the victim's testimony which show that there was no physical struggle or resistance on her part, which would show her vehement and obstinate refusal to submit to appellant's desires. According to appellant, lack of resistance or struggle shows that the carnal acts took place with mutual consent.

For the appellee, the Office of the Solicitor General (OSG) argues that the victim's claim of rape must be given full weight and credence. For one, it is supported by the medical report. Moreover, granting *arguendo* that the victim's resistance to his sexual advances was neither that obstinate nor tenacious, it should nonetheless be borne

in mind that appellant, whom she considered and recognized as her father, exerted an overwhelming moral ascendancy over her. Citing *People v. Casil*, 241 SCRA 285 (1995) and *People v. Robles*, 170 SCRA 557 (1989), the OSG submits that actual force or intimidation need not even be employed for rape to be committed by a father or stepfather against his own daughter - the overpowering influence of the former over the latter suffices.

In a prosecution for rape the complainant's credibility is the single most important issue since her testimony alone is sufficient to sustain a verdict of conviction.[25] Her testimony is vital and must be received with the utmost caution.[26] In the present cases, we have carefully examined private complainant's narration of her ordeal. She categorically testified that appellant boxed her on the stomach when she tried to resist,[27] then held her hand and covered her mouth while there was phallic penetration of her private parts.[28] She and the other members of her family were also threatened with harm should she report the matter.[29] These circumstance belie appellant's contention that their sexual relationship was consensual.

Private complainant's failure to put up further resistance against ravishment after she was boxed into submission should not be taken against her. First, note that the victim is a wisp of a girl standing only 144.5 centimeters (4'10") tall, weighing only 48.5 kilograms (106.7 lbs.).[30] She could not be expected to successfully resist a determined sexual assault by a strong and heavy man. Second, note also that a rape victim is not required to resist a penile invasion to the point of injury or death. In fact, the law does not even impose a burden of proving resistance on the part of the rape victim.[31] Third, recall that the victim had grown up knowing no father except the appellant. Even during the proceedings below, she continuously referred to him as her "Papa." Evidently, she recognized his authority and ascendancy over her. As pointed out by the Solicitor General, in a rape committed by a father or a stepfather against his daughter or stepdaughter, the former's moral ascendancy and influence prevails and can, in fact, substitute for violence or intimidation.[32] In these cases, what little will to resist was left in the victim after having been boxed was clearly eroded by the ascendancy and influence appellant exerted over her. Where resistance would be futile because of intimidation, then offering none at all does not mean consent to the phallic intrusion so as to make the victim's participation in the sexual act voluntary.[33]

Appellant stresses private complainant's failure to report her alleged ravishment immediately. He argues that it took all of twenty-one (21) months for the victim to come out in the open, thus making her story doubtful.

The Solicitor General points out that delay in filing the complaint should not be taken against the offended party, in view of the threats made by appellant against her and her family if she would reveal to anyone what he had done. It is not uncommon for young girls like Maricar to conceal for some time the assault against their virtue because of fear for their personal safety or lives.

We find appellant's claim that it took private complainant twenty-one (21) months to break her silence inaccurate. Recall that the first incident of alleged rape took place sometime in November 1996, while the last rape allegedly took place on June 1, 1997. Note that private complainant filed her sworn statement on October 27, 1997.[34] It thus took private complainant only eleven (11) months from the first rape to divulge her ordeal, not twenty-one (21) months as appellant insists.

Nor should the delay or vacillation be taken against her, as appellant would have us do. Delay does not necessarily impair the victim's credibility. Experience teaches us that many victims of rape never complain or file criminal charges against the rapist, preferring instead to bear the pain and ignominy in silence, rather than unveil their shame to the world or risk the offender making good on his threats.[35] As long as the delay or vacillation is adequately explained, said delay does not necessarily undermine the complaining witness' credibility.[36] Among reasons we have considered sufficient to explain delay are fear of reprisal, social humiliation, familial considerations, and economic reasons. In the present cases, recall that private complainant had been threatened

into silence for fear of possible harm to herself and to her family. Her reason for the eleven months' delay in reporting her ravishment is adequate. Said delay does not make her credibility suspect.

Appellant also faults the trial court for not giving credence to the supposed corroborative testimony of his daughter, Maricel Awing. In discounting Maricel's testimony, the trial court observed:

While it is true that Maricel Awing testified to having seen Maricar teasing her father, her testimony is suspect. In her affidavit she did not mention the things she testified to in court, and only mentioned in her affidavit to having seen her father and Maricar doing the sexual act only once (and) not six (6) times...[T]here are still contradictions between her affidavit and her testimony as to render her testimony in court less credible.

It is thus not far-fetched to believe that Maricel was either coached by her mother to testify in the manner that she did to exculpate her father or simply imagined these things to save her father. It is but natural that Maricel would defend her father so that she, her brothers and sisters would not be deprived of his presence and material support especially so that they are living in direst need and extreme poverty.[37]

Where the issue is one involving the credibility of witnesses, findings of the trial court on such matters will not be disturbed on appeal unless the lower court did overlook, ignore, misapprehend, or misinterpret certain facts or circumstances so material such as to affect the outcome of the case.[38] It is the trial court which had the unique opportunity to observe the witness firsthand and note her demeanor, conduct, and attitude under grueling examination. It can thus be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief. In these cases, appellant cannot point to any convincing reason for the Court to disturb the trial court's assessment of Maricel's testimony. Its findings are conclusive and binding upon us.

On the third issue, did the lower court err in twice imposing capital punishment upon the appellant?

Section 11 of R.A. No. 7659 imposes the death penalty when the rape victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the victim's parent. Both the age of the offended party and her filiation or kinship with the accused must be alleged in the information as part of the constitutional right of the accused to be informed of the nature and cause of the accusation against him.[39]

The information sheets in Criminal Cases Nos. 39, 869-97 and 39, 870-97 show that while the charges correctly alleged that the victim in both cases is appellant's stepdaughter, they are silent as to her age. However, in his brief asking us to affirm the death penalty, the Solicitor General asks us to note that complainant's age at the time of the commission of the crimes was categorically stated as thirteen (13) years old in her affidavit which formed part of the informations filed. This we cannot consider proper or sufficient to supply the deficiency regarding age of the victim in the charges.

In *People v. Garcia*, 281 SCRA 463, 489 (1997), we held that qualifying circumstances which increase the penalty by the degree of the penalty, as opposed to aggravating circumstances which merely affect the period of the penalty, must be properly pleaded in the information. Information in this instance means "an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court." [40] It is not synonymous with complainant's affidavit.

Note further that at arraignment, what was read to appellant to ensure his understanding of the charges was not the complainant's affidavit, but the informations only. By omitting complainant's age in the accusatory portion of the informations, appellant was charged only with simple rape. It would be a denial of due process to convict appellant of qualified rape when the qualifying circumstance of age was not alleged in the informations on which he was arraigned. To hold otherwise would deprive the appellant of his constitutional right to be informed correctly of the nature and cause of the accusation against him.[41] Hence, the penalty imposed on appellant

should be modified to correspond to the offenses charged, namely, 2 counts of simple rape. Only the penalty of reclusion perpetua should be imposed on him for each count.

As to the indemnity ex delicto, the amount of P50,000.00 for each count of rape is in order, pursuant to current jurisprudence. In addition, another P50,000.00 for each count should be awarded to complainant as moral damages in accordance with case law.[42] The award of exemplary damages of P25,000.00 in each case should also be sustained, to deter fathers or stepfathers with perverse tendencies and aberrant sexual behavior, like appellant, from sexually abusing their daughters or stepdaughters.[43] However, the trial court erred in ordering appellant to acknowledge the twins as his children by the victim. Being a married man, he cannot be ordered to acknowledge the offspring of the crime as his.[44] However, he can be ordered to provide financial support to each child in the amount of P5,000.00 monthly, which appears to be reasonable.

WHEREFORE, the decision of the Regional Trial Court of Davao City, Branch 33, dated February 24, 1998 in Criminal Cases Nos. 39, 869-97 and 39, 870-97 is hereby MODIFIED. Appellant Carlos Awing y Abayon is found GUILTY beyond reasonable doubt of two (2) counts of simple rape. He is sentenced to suffer the penalty of reclusion perpetua for each count of rape. He is also ordered to pay the victim, Maricar Awing, the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages for each of the two (2) counts of rape. He is further ordered to give support to each of the two children of the complainant in the amount of P5,000.00 a month. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Records, p. 1.

[2] Id. at 2.

[3] Id. at 87-88.

[4] Id. at 90.

[5] Exhibit "A," Folder of Exhibits, p. 1; TSN, December 2, 1997, p. 9.

[6] Supra note 1, at 94-95.

[7] Id. at 96.

[8] Id. at 98.

[9] Id. at 105.

[10] SEC. 11. Time of the commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

[11] 315 SCRA 226, 240 (1999).

- [12] *People v. Bugayong*, 299 SCRA 536, 537 (1998)
- [13] *People v. Magbanua*, 319 SCRA 719, 730-731 (1999).
- [14] *People v. Santos*, G.R. Nos. 131103/143472, June 29, 2000, pp. 8-9.
- [15] TSN, January 19, 1998, p. 16.
- [16] *Id.* at 34.
- [17] *People v. Gianan*, G.R. Nos. 135288-93, September 15, 2000, pp.9-10, citing *Rocaberte v. People*, 193 SCRA 152 (1991) and *People v. Garcia*, 281 SCRA 463 (1997).
- [18] *People v. Docena*, G.R. Nos. 131894-98, January 20, 2000, p. 7, citing *People v. Igat*, 291 SCRA 100 (1998).
- [19] *People v. Cepeda*, G.R. No. 124832, February 1, 2000, p. 7, citing *People v. Palma*, 308 SCRA 466 (1999).
- [20] *Supra* note 8.
- [21] *Ibid.*
- [22] *People v. Manambit*, 338 Phil. 57, 91 (1997).
- [23] *People v. Traya*, G.R. No. 129052, May 31, 2000, p. 6.
- [24] *People v. Veloso*, G.R. No. 130333, April 12, 2000, p. 6, citing *People v. Vergel*, 316 SCRA 199 (1999).
- [25] *People v. Antolin*, G.R. No. 133880, April 12, 2000, p. 8, citing *People v. Antonio*, 233 SCRA 283 (1994), *People v. Gagto*, 253 SCRA 455 (1996), and *People v. Lao*, 249 SCRA 137 (1995).
- [26] *People v. Penaso*, G.R. No. 121980, February 23, 2000, p. 5, citing *People v. Domogoy*, 305 SCRA 75 (1999).
- [27] TSN, December 9, 1997, pp. 2, 13.
- [28] *Id.* at 3.
- [29] *Id.* at 13.
- [30] TSN, December 2, 1997, p.9.
- [31] *People v. Sancha*, G.R. Nos. 131818-19, February 3, 2000, p. 18 citing *People v. Cantos, Sr.*, 305 SCRA 786 (1999).
- [32] *People v. Traya*, G.R. No. 129052, May 31, 2000, p. 15, citing *People v. Casil*, 241 SCRA 285 (1995).
- [33] *People v. Mitra*, G.R. No. 130669, March 27, 2000, p. 10, citing *People v. Agbayani*, 284 SCRA 315 (1998), *People v. Pamor*, 237 SCRA 462 (1994), and *People v. Matrimonio*, 215 SCRA 613 (1992).
- [34] Records, pp. 5-7.
- [35] *People v. Razonable*, G.R. Nos. 128085-87, April 12, 2000, p. 8, citing *People v. Gecomio*, G.R. No. 126169, December 21, 1999.
- [36] *People v. Mitra*, *supra* at 12.
- [37] Records, pp. 98-99.

[38] *People v. Brigildo*, G.R. No. 124129, January 28, 2000, p. 10, citing *People v. Basao, et al.*, 310 SCRA 743 (1999), *People v. Alojado*, 305 SCRA 236 (1999), and *People v. San Juan*, 337 Phil. 375 (1997).

[39] *People v. Gianan*, supra at 18, citing *People v. Campaner*, G.R. Nos. 130500/143834, July 26, 2000, and *People v. Licanda*, G.R. No. 134084, May 4, 2000.

[40] Rules of Court (1985), Rule 110, Sec. 4.

[41] *People v. Cajara*, G.R. No. 122498, September 27, 2000, p. 11, citing *People v. Moreno*, 294 SCRA 728 (1998).

[42] *People v. Garcia*, G.R. Nos. 137379-81, September 29, 2000, pp. 15-16.

[43] *People v. Docena*, supra at 11, citing *People v. Matrimonio*, 215 SCRA 613 (1992).

[44] *People v. Caratay*, 316 SCRA 251, 271 (1999).

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