

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ELPEDES Y SUNAS, ACCUSED-APPELLANT.

G.R. Nos. 137106-07. January 31, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Rape is condemnable. It becomes twice reprehensible if committed against one's flesh and blood.[1] The despicability of incestuous rape which figuratively scrapes the bottom of the barrel of moral depravity[2] is depicted in all its sordidness in the instant case brought to this Court for automatic review.

On the basis of two (2) sworn criminal complaints executed by the offended party, accused Jose Elpedes y Sunas was charged with the crime of Rape in two (2) Informations.

The Information in Criminal Case No. Ir-4688[3] alleges -

That on or about the 11[th] day of February 1997, at Brgy. Bacolod, Municipality of Bato, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with his own daughter ALMA S. ELPEDES, a minor against her will and consent, to the damage and prejudice of the offended party.

ACTS CONTRARY TO LAW.

On the other hand, the Information in Criminal Case No. Ir-4689[4] avers -

That sometime in the year 1991, at Barangay Bacolod, Municipality of Bato, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with his own daughter ALMA S. ELPEDES, a 9 year old girl, against her will and consent, to the damage and prejudice of the offended party.

ACTS CONTRARY TO LAW.

Upon arraignment, accused entered a plea of "Not guilty." [5] The cases, which were consolidated, thereafter proceeded to joint trial.

After trial, the court a quo rendered judgment finding accused guilty beyond reasonable doubt of one count of rape, while acquitting him of the other charge, thus:

Finally, this Court is convinced in Crim. Case No. Ir-4688 involving the incident on February 11, 1997, the evidence of the prosecution has clearly and sufficiently established the factual and legal basis for a finding of guilt beyond reasonable doubt of the crime charged, accordingly this Court in the performance of its sworn duty has no choice but to impose upon the accused Jose Elpedes the mandatory supreme penalty of death pursuant to Art. 335 of the Revised Penal Code, as amended by Republic Act 7659.

However, in Criminal Case No. Ir-4689 which allegedly happened in 1991, the evidence not being convincing as it is not supported by a clear and substantial evidence except for the claim of Alma who was only 9 nine years old when the rape was committed by her father and as heretofore stated, this Court entertains doubt on the culpability of the accused, and consequently he is acquitted of the crime charged in the information.

SO ORDERED.

Pursuant to Article 47 of the Revised Penal Code and Rule 122, Section 10 of the Rules of Court, the case was elevated to this Court on automatic review. Accused-appellant assails his conviction on the grounds that:

I

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE ALLEGEDLY COMMITTED ON FEBRUARY 11, 1997 (No. Ir-4688) DESPITE THE FACT THAT THE COMPLAINING WITNESS CATEGORICALLY TESTIFIED DURING THE TRIAL THAT SHE WAS SEXUALLY VIOLATED ON AUGUST 11, 1997.

II

THE LOWER COURT ERRED IN GIVING DUE WEIGHT TO TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE APPARENT INCONSISTENCIES THEREIN.

III

ASSUMING THAT THERE WAS NO DISCREPANCY OF THE MATERIAL DATES, THE LOWER COURT LIKEWISE ERRED IN IMPOSING THE PENALTY OF DEATH DESPITE THE FAILURE TO SPECIFICALLY ALLEGE IN THE INFORMATION THAT THE VICTIM WAS UNDER 18 AT THE TIME OF THE COMMISSION OF THE RAPE.

The versions of the incidents of both Prosecution and Defense, as culled from their respective evidence, was summarized thus by the trial court:

Alma S. Elpedes, testified in substance, that she is 15 years old as she was born on October 12, 1982[6] as shown in the Certificate of Live Birth issued by the Municipal Civil Registrar of Bato, Camarines Sur.[7] She signed the complaint now marked as Exhibit A-Crim Case No. Ir-4688 and Exhibit A-Crim. Case No. Ir-4689. Her father is Jose Elpedes, the accused in the 2 above-entitled cases.[8]

In the year 1991 (the month she could not recall) she was only 9 years old when she was raped by her father, Jose Elpedes. She was then a grade II pupil. She recalled that she was then in their house in Bacolod, Bato, Camarines Sur when she was raped by her father. She did not go to school that day because she was told by her father to watch over her younger brother. Aside from her father, together with her in the house were her younger brothers and grandmother who was old and already blind.[9] The rape was committed when her father removed her shorts and panty and she was forced to lie down and he inserted his penis in her vagina. At the time she was raped, her mother was also in the house doing the laundry.[10]

On February 11, 1997, she was raped again in the house when she was already 14 years old.[11] At the time of the rape her mother was in Manila. This rape incident was committed when her father undressed her, strangled and boxed her.[12] As a result of the rape on February 11, 1997 she got pregnant. When she told her mother of the pregnancy and that it was her father who impregnated her she would not believe [her] but instead even beat her until her body became swollen.[13] As she was already pregnant and could no longer go to school because in her condition she could hardly walk and her stomach was painful she was brought to Barangay Tapayas, Balatan, Camarines Sur by her mother to the house of her uncle, Orlando Santor[14] where she gave birth to a child on October 12, 1997. The child was, however, dead when it was delivered. She was then brought by her uncle to the Center for Girls in Sorsogon under the care of the DSWD.

On cross-examination, she testified that the rape incident on February 11, 1997 happened at nighttime while the first rape in 1991 was done in the daytime. On February 11, 1997 when she was raped by her father she was sleeping in one of the 4 rooms in the house together with her sister Jocelyn. When she was being raped she tried to rouse and tell her sister, she did not mind but just pretended to sleep. Although inside her room there was no light but outside the room was a light that enabled her to recognize her father who was then in short pants without [his] shirt on. While her father was raping her she could not resist him because he was strong and she was boxed and strangled causing her to lose consciousness. When she regained consciousness she saw her father sitting outside at the balcony. When her brothers woke up she did not tell them of what her father did to her because her father threatened to kill her. At that time he made the threat he was then poking a nipper at her back. Despite that she was already showing signs of pregnancy by vomiting and her stomach was getting bigger, her mother did not have her examined by a doctor.[15]

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The accused testifying in his own behalf denied the charges against him. He claimed that when he was so insistent in asking Alma who impregnated her and she refused to reveal the one responsible, he beat her and that was the reason Alma ran away from home. In beating her on the buttocks he only used his bare hands.[16] Alma ran away from home and went to her uncle's house in Tapayas, Balatan, Camarines Sur. He claimed that his house in Bacolod, Bato Camarines Sur is big measuring 10 x 10 meters with 4 rooms. He testified that Alma slept with her sister Jocelyn, and brothers Michael, Junior and Vicente. He also said that he seldom slept in his house as he went out fishing and spent the night at the lakeshore.

On the evening of February 11, 1997, he was at home. The room where he and his children slept was always lighted with one 40-watt fluorescent lamp because his children were still small.[17] He knew that Alma had a miscarriage on October 12, 1997 because her cousin went to the house. Before October 9, 1997 he did not know that Alma was pregnant because she was going to school and he seldom saw her as he was always out of the house.[18]

In support of his cause, accused-appellant first insists that he can not be convicted of rape committed on February 11, 1997 because the victim testified that she was raped on August 11, 1997. He points out that the victim never testified that she was raped on February 11, 1997, as alleged in the information in Criminal Case No. Ir-4688, and claims that he can not be convicted as charged when the evidence shows that rape was committed on a date other than that indicated in the information.

The argument is neither novel nor persuasive.

The remedy against an indictment that fails to allege the time of commission of the offense with sufficient definiteness is a motion for bill of particulars.[19] The record reveals that accused-appellant did not ask for a bill of particulars in accordance with Rule 116, Section 10 of the Rules of Court,[20] which provides:

SEC. 10. Bill of particulars. - Accused may, at or before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial. The motion shall specify the alleged defects and details desired.

The failure to move for specifications or the quashal of the information on any of the grounds provided for in the Rules of Court deprives accused of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms but which sufficiently charges the accused with a definite crime.[21] It is too late in the day for accused-appellant to raise this issue now because objections as to matters of form or substance in the information can not be made for the first time on appeal.[22] Besides, the exact date of the commission of the crime is not an essential element of the crime.[23] In *People v. Gianan*, [24] the Court held:

It is settled that the time of the commission of rape is not an element thereof, as this crime is defined in Art. 335 of the Revised Penal Code. The gravamen of the crime is the fact of carnal knowledge under any of the

circumstances enumerated therein, i.e. (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented. In accordance with Rule 110, Section 11. As long as it alleges that the offense was committed "at any time as near to the actual date at which the offense was committed," an information is sufficient. Thus, in *People v. Bugayong*,^[25] it was held when the time given in the (information) is not the essence of the offense, the time need not be proven as alleged and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action. (Italics provided)

Indeed, under Rule 110, Section 6 of the Rules of Court, the information need only state "the approximate time of the commission of the offense." Section 11 thereof provides:

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. (Italics provided)

Accused-appellant next seeks to impugn the credibility of the victim by pointing out inconsistencies in her testimony with regard to the age and gender of the stillborn fetus.

These inconsistencies adverted to by accused-appellant do not detract from the stark fact that the victim was raped.

When a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.^[26] Guided by this dictum, the Court has meticulously scrutinized the testimony of complaining witness Alma S. Elpedes and ultimately reached the conclusion that the offense charged did occur. Alma's testimony on the act of rape perpetrated against her by accused-appellant is clear and could have only been narrated by a victim subjected to such a sexual assault.

Under rigorous cross-examination, private complainant remained steadfast and never wavered in her assertion that accused-appellant forced her to have sexual intercourse with him.^[27] On review, the Court finds that her testimony bears the hallmarks of truth. It is consistent in material points. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.^[28]

Accused merely raised denial as his defense. Such a defense is unavailing given the facts prevailing herein. The Court has consistently held that for alibi or denial to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the locus criminis. Alibi and denial are inherently weak defenses and unless supported by clear and convincing evidence, the same can not prevail over the positive declarations of the victim who, in a simple and straightforward manner, convincingly identified the accused-appellant as the defiler of her chastity. When assayed against the testimony of the private complainant who testified on affirmative matters^[29] such a hackneyed defense is reduced into a futile and pathetic attempt at exculpation. Denial is an inherently weak defense which becomes even weaker in the face of the positive identification by the victim of the accused-appellant as the violator of her honor.^[30]

The defense alleges that someone else and not the accused was the defiler of the victim's virtue and that she was forced by the police to point to him as the perpetrator of such a despicable crime. This contention, however, simply borders on the preposterous and is too unnatural to deserve faith and credence. Be that as it may, these claims pale into insignificance vis-à-vis the complainant's vehement disclaimer to the contrary.^[31] The gravity of

filing a case for incestuous rape is of such a nature that a daughter's accusation must be taken seriously. It simply goes against the grain of human experience for a girl to fabricate a story which would drag herself as well as her family to a lifetime of dishonor, unless that is the truth, for it is her natural instinct to protect her honor. More so, where her charges could mean the execution of her own father, as in this case.

In other words, the positive assertions of the victim that he raped her is entitled to greater weight.[32] While denial and alibi are legitimate defenses in rape cases, bare assertions to this effect can not overcome the categorical testimony of the victim.[33] Her testimony never wavered even after it had been explained to her that her father could be meted the death penalty if found guilty.[34] It certainly would take a most senseless kind of depravity for a young daughter to concoct a story of rape which would consign her own father to the supreme penalty of death if the same were not the truth.[35] Furthermore, no young girl of decent repute would allow the examination of her private parts or subject herself to the shame, embarrassment and humiliation of a public trial, if she has not in fact been raped.[36]

A word must, however, be made with regard to the other incidents of rape mentioned by private complainant during the course of her testimony. Each and every charge of rape is a distinct and separate crime so that each of the rapes charged should be proven beyond reasonable doubt.[37] Thus, private complainant's bare statements that she was raped on several other occasions by the accused-appellant is clearly inadequate and grossly insufficient to establish guilt of the accused-appellant insofar as the other acts of rape are concerned. In *People v. Garcia*,[38] the Court pointed out that -

x x x the indefinite testimonial evidence that complainant was raped every week is decidedly inadequate and grossly insufficient to establish the guilt of appellant therefor with the required quantum of evidence. So much of such indefinite imputations of rape, which are uncorroborated by any other evidence fall within this category.

At any rate, the Court finds no reason to reverse the ruling of the trial court. The act of rape is rendered all the more heinous and reprehensible in this case inasmuch as the victim is merely a young lass of fifteen while her defiler is her father.

Nevertheless, while accused-appellant's guilt was proved beyond reasonable doubt, the Court finds the imposition of the death penalty against him unwarranted. The Court has consistently declared that the circumstances under the amendatory provisions of R.A. No. 7659, Section 11, the attendance of which would mandate the imposition of the single indivisible penalty of death, are in the nature of qualifying circumstances. As such, they should be alleged in the information and proved at the trial. Addressing the issue on the propriety of the punishment imposed, the trial court meted out the death penalty on accused-appellant pursuant to Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, whose pertinent portions state that:

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- 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.

The trial court imposed the penalty of death after taking into consideration the age of Alma who was then fourteen (14) years old[39] and the fact that accused-appellant is her father. A reading of the accusatory portion of the information, however, reveals that while the qualifying circumstance of relationship has been alleged therein, the averment on private complainant's minority has not been accurately pleaded in the indictment. The Revised Rules of Criminal Procedure, which took effect on December 1, 2000, now specifically require both qualifying and

aggravating circumstances to be alleged in the information,[40] viz:

SEC. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Defects in the crafting of informations especially in indictments for Qualified Rape prompted this Court to exhort public prosecutors to be more circumspect in the drafting thereof. Thus, in *People v. Nunez*:^[41]

Taking into account the growing number of cases where qualified rape under Section 11 of R.A. 7659, although proven during trial could still not be properly penalized because of defects in the Information, We urge the prosecuting fiscals who are charged with the responsibility of preparing Informations to state with particularity the attendant circumstances provided for under Section 11 of R.A. 7659. More specifically, in qualified rape, both the fact of minority of the victim and the actual relationship between the parties, as worded in R.A. 7659, must be alleged in the Information. Otherwise, We shall continue to fail both the law and the victim whom the law have sought to protect. (Emphasis and italics provided)

Given the circumstances of this case, the imposable penalty is reclusion perpetua. The failure to allege accurately the minority of the victim in the information bars accused-appellant's conviction for rape in its qualified form which is punishable by death.^[42] It must be borne in mind that the requirement for complete allegations on the particulars of the indictment is based on the right of the accused to be fully informed of the nature of the charges against him so that he may adequately prepare for his defense pursuant to the due process clause of the Constitution.^[43]

The Court notes that the court a quo neither awarded any indemnity ex delicto, which current jurisprudence has fixed at P50,000.00,^[44] nor moral damages on account of the rape. It must be stressed in this regard that civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases.^[45] Pursuant to controlling case law, the award of P50,000.00 ex delicto is mandatory upon the finding of the fact of rape.^[46] Moral damages are additionally awarded without need of pleading or proof of the basis thereof.^[47] This is because it is recognized that the victim's injury is concomitant with and necessarily resulting from the odiousness of the crime to warrant per se the award of moral damages.^[48]

The anguish and the pain a victim had to endure are evident.^[49] The Court need not belabor the fact that the offended party in a rape case is victim many times over. In our culture which puts a premium on the virtue of purity or virginity, rape stigmatizes the victim more than the perpetrator.^[50] Considering that the offender is the father of the victim, accused-appellant should likewise pay the victim exemplary damages,^[51] which pursuant to controlling case law, has been fixed at P25,000.00.^[52]

WHEREFORE, the judgment of the Regional Trial Court, finding accused-appellant guilty beyond reasonable doubt of the crime of rape, is **AFFIRMED** with the **MODIFICATIONS** that he is sentenced to suffer the penalty of Reclusion Perpetua and ordered to pay the offended party P50,000.00 as indemnity ex delicto; P50,000.00 as moral damages and 25,000.00 as exemplary damages.

SO ORDERED.

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

[1] *People v. Ramos*, 312 SCRA 137 (1999).

[2] *People v. Sangil*, 276 SCRA 532 (1997).

[3] *Rollo*, p. 11.

[4] *Ibid.*, p. 12.

[5] *Record*, p. 11.

[6] Exhibit "C-2."

[7] Exhibit "C."

[8] Exhibit "C-3."

[9] TSN, 15 July 1998, p. 8.

[10] *Ibid.*, p. 9.

[11] *Id.*

[12] *Id.*, p. 10.

[13] *Id.*, p. 11.

[14] *Id.*, p. 13.

[15] *Id.*, p. 21.

[16] TSN, 3 December 1998, p. 4.

[17] *Ibid.*, p. 7.

[18] *Id.*, p. 8.

[19] *Rocaberte v. People*, 193 SCRA 152 (1991).

[20] Now Section 9, Rule 116 of the Revised Rules of Criminal Procedure.

[21] *People v. Gutierrez*, 91 Phil. 877 (1952); *People v. Villegas*, 55 Phil. 507 (1931), citing *U.S. v. Del Rosario*, 2 Phil. 127 (1903).

[22] *People v. Garcia*, 281 SCRA 463 (1997).

[23] *People v. Papaguitan*, 315 SCRA 226 (1999), citing *People v. Bugarin*, 273 SCRA 384 (1997); *People v. Hortillano*, 177 SCRA 729 (1989).

[24] G.R. Nos. 135288-93, 15 September 2000.

[25] 299 SCRA 528 (1998).

[26] *People v. Penaso*, G.R. No. 121980, 23 February 2000; *People v. Garces, Jr.*, G.R. No. 132368, 20 January 2000; *People v. Borja*, 267 SCRA 370, 379 (1997); *People v. Ramirez*, 266 SCRA 335, 348 (1997).

[27] TSN, 15 July 1998, pp. 14-21.

[28] *People v. Caratay*, 316 SCRA 251 (1999), citing *People v. Bonghanoy*, 308 SCRA 383 (1999).

[29] *People v. Acala*, 307 SCRA 330 (1999).

[30] *People v. Losano*, 310 SCRA 707 (1999).

[31] TSN, 10 February 1999, pp. 15-16.

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

[33] *People v. Martinez*, G.R. No. 130606, 15 February 2000, citing *People v. Masalihit*, 300 SCRA 147 (1998) and *People v. Taneo*, 284 SCRA 251 (1998).

[34] TSN, 15 July 1998, pp. 13-14; 10 February 1999, p. 23.

[35] *People v. Rivera*, 318 SCRA 317 (1999).

[36] *People v. Tabion*, 317 SCRA 126 (1999), citing *People v. Bersabe*, 289 SCRA 685 (1998) and *People v. Erese*, 281 SCRA 316 (1997).

[37] *People v. De Leon*, 319 SCRA 743 (1999).

[38] 281 SCRA 463 (1997).

[39] RTC Decision, p. 8.

[40] Revised Rules of Criminal Procedure, Rule 110.

[41] 310 SCRA 168, 183 (1999).

[42] *People v. Ponado*, 311 SCRA 529 (1999), citing *People v. Dimapilis*, 300 SCRA 279 (1998) and *People v. Median*, 300 SCRA 98 (1998).

[43] *People v. Villanueva*, G.R. No. 135330, 31 August 2000.

[44] *People v. De Guzman*, G.R. No. 124368, 8 June 2000; *People v. Salazar*, 258 SCRA 55 (1996); *People v. Caballero*, 258 SCRA 541 (1996); *People v. Abordo*, 258 SCRA 571 (1996); *People v. Babera*, *supra*.

[45] *People v. Decena*, G.R. No. 131843, 31 May 2000.

[46] *People v. Maglente*, 306 SCRA 546 (1999); *People v. Penaso*, *supra*.

[47] *People v. Prades*, 293 SCRA 411 (1998); *People v. Candelario*, 311 SCRA 475 (1999).

[48] *People v. Tabanggay*, G.R. No. 130504, 29 June 2000.

[49] *People v. Loriega*, G.R. Nos. 116009-10, 29 February 2000; *People v. Garces, Jr.*, G.R. No. 132368, 20 January 2000; *People v. Penaso*, *supra*.

[50] *People v. Hofileña*, *supra*, citing *People v. Villamor*, 297 SCRA 262 (1998).

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

[52] Ibid.

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