

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLY MARQUEZ, ACCUSED-APPELLANT.

G.R. Nos. 137408-10. December 08, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For automatic review by the Court is the conviction of accused Willy Marquez, for three (3) counts of rape^[1] committed against five-year old Maria Cristina Agustin. The three (3) similarly worded informations, all dated February 17, 1998 allege:

That on or about the month of October 1997, at Brgy. Bacayao, Municipality of Guimba, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and taking advantage of his superior strength, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of one MARIA CRISTINA AGUSTIN, a five year old girl, against her will, to her damage and prejudice.

CONTRARY TO LAW.

Upon arraignment, accused entered a plea of "not guilty" in all three (3) cases. The case thereafter proceeded to trial.

After trial, the court a quo rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the prosecution having established the guilt of the accused Willy Marquez beyond reasonable doubt, this Court hereby sentences him to suffer the penalty of DEATH for each crime he has committed in Criminal Cases Nos. 1536-G, 1537-G and 1538-G. Further, the accused Willy Marquez is likewise ordered to indemnify the offended party the amount of P150,000.00 as moral damages.

IT IS SO ORDERED.

The prosecution established that sometime in October 1997, the minor victim, Maria Cristina Agustin, was forcibly dragged by accused-appellant from her house in Bacayao, Guimba, Nueva Ecija to the banana plantation situated at the back of the house. There, accused-appellant undressed Maria Cristina, spat on her vagina, and had sexual intercourse with her. After the rape, accused-appellant warned the victim not to tell anybody what he did to her.

On another occasion also in October 1997, accused-appellant again dragged Maria Cristina to the banana plantation where he raped her. This was repeated still in October 1997, when accused-appellant raped Maria Cristina a third time at the banana plantation.

It was only on January 8, 1998 when Maria Cristina confided to her mother in detail what appellant did to her. Upon the advice of the police, Maria Cristina was brought by her parents to the Cabanatuan Provincial Hospital for medical examination.

Dr. Cora Lacurom, who examined Maria Cristina, found an old healed hymenal laceration at 6:00 o'clock position, which could have been inflicted through forced sexual intercourse committed in or about October 1997.[2]

Denying he had anything to do with the offenses charged, accused-appellant testified that during daytime for the whole month of October 1997 he was at his place of work hauling palay hay for Honofre Arenas at Barangay Bacayao, Guimba, Nueva Ecija.[3] He further claimed that he worked from Monday to Sunday from 6:00 a.m. to 5:30 p.m. and had a break time which lasted from 12:00 noon to 2:00 p.m.[4] Aside from hauling palay hay, accused-appellant's work included pasturing the cows and cleaning their wastes.[5] During break time, accused would hang out at the workshop (talyer) of his employer's brother-in-law which was just in front of his workplace.[6] After his dismissal from work, he would proceed to the workshop of the brother-in-law in order to learn.[7]

In his Brief, accused-appellant raises the lone assigned error that -

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO STATE IN THE (3) INFORMATIONS THE PRECISE DATES OF THE COMMISSION OF THE ALLEGED RAPES.

In support of the foregoing error, accused insists in sum that the three (3) informations charging him with three (3) counts of rape suffer from "constitutional and procedural infirmities" in that the "the date and time of the offenses charged are ... indefinite to give [him] an opportunity to prepare for his defense." [8] Accused-appellant specifically alludes to the phrase "on or about the month of October, 1997," the dates of commission of the crimes as alleged in the informations in Criminal Cases Nos. 1536-G, 1537-G and 1538-G.[9]

The argument is not novel and is bereft of merit.

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.[10] The records of these cases reveal that accused-appellant did not ask for a bill of particulars in accordance with Rule 116, Section 10 of the Rules of Court,[11] which provides that:

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 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.[12] It is too late in the day for accused-appellant to raise this issue because objections as to matters of form or substance in the information can not be made for the first time on appeal.[13] Be that as it may, the exact date of the commission of the crime is not an essential element of the crime.[14] In *People v. Jesus Gianan y Molina*, [15] the Court pointedly stated that:

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 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*, [16] 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.[17]

x x x x x x x x

Indeed, this Court has held that the allegation that rapes were committed "before and until October 15, 1994,"[18] "sometime in the year 1991 and the days thereafter,"[19] and "on or about and sometime in the year 1988"[20] constitute sufficient compliance with Rule 110, Section 11. In any event, even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during trial and any objection based on this ground must be deemed waived as a result of accused-appellant's failure to object before arraignment. Accused-appellant's remedy was to move either for a bill of particulars[21] or for the quashal of the information on the ground that it does not conform substantially to the prescribed form.[22]

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, while Section 11 thereof states that -

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 ours)

In view of the gravity of the penalties imposed on accused-appellant, the Court must once again defer to the following guiding principles in the review of rape cases: 1.] to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; 2.] considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and 3.] the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.[23] Corollary to the foregoing legal yardsticks is the dictum that 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.[24]

The Court has said time and again that in reviewing rape cases, it will be guided by the settled realities that an accusation for rape can be made with facility. While the commission of the crime may not be easy to prove, it becomes even more difficult for the person accused, although innocent, to disprove that he did not commit the crime. In view of the intrinsic nature of the crime of rape where only two persons are normally involved, the testimony of the complainant must always be scrutinized with great caution.[25] Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.[26]

Guided by these principles, the Court has meticulously scrutinized the testimony of complaining witness Maria Cristina Agustin and ultimately reached the conclusion that the acts charged did in fact occur. Maria Cristina's testimony on the acts of rape perpetrated against her by accused-appellant is clear and could have only been narrated by a victim subjected to those sexual assaults. Nowhere is accused-appellant's bestiality detailed than in the following narration of the victim, who was six years old[27] at the time she was called to testify at the witness stand:

FISCAL:

Q

Now, do you still remember if sometime in October 1997 this Willy Marquez did something bad to you?

A

Yes, sir.

Q

What did he do to you this Willy Marquez?

A

He brought me to the banana plantation (sagingan), sir.

Q

That place where there were banana plants, is it situated near your house?

A

Yes, sir.

Q

At the back of your house or in front of your house?

A

At the back, sir.

Q

What were you doing during the first time that Willy Marquez brought you to the banana plantation or the place where there were bananas? Were you outside the house or inside the house?

A

Outside, sir.

Q

You were doing what at that time? Were you playing or doing something at that time?

A

Playing, sir.

Q

What time of day was that, in the morning or in the afternoon or in the evening?

A

Afternoon, sir.

Q

And you said Willy Marquez brought you to that place where there were bananas, what did he do to you when you reach[ed] the place where there were bananas?

A

He took off my clothes, sir.

Q

After taking off your clothes, what did Willy Marquez do to you?

A

He took off his clothes, sir.

Q

After he took off his clothes, what did he do next?

A

He spit, sir (dinuraan).

Q

Willy Marquez spit on what?

A

My private part, sir.

Q

Your vagina?

A

Yes, sir.

Q

After spitting on your vagina, what did he do?

A

He inserted, sir.

Q

What did he insert?

A

His private part, sir.

Q

He inserted his penis into your vagina?

A

Yes, sir.

Q

What did you feel when he inserted his penis into your vagina?

A

I got hurt, sir.

Q

What did you do when Willy Marquez was inserting his penis into your vagina?

A

Nothing, sir.

Q

What did he tell you, this Willy Marquez?

A

That I should not tell anybody, sir.

Q

Did he threaten you or was he trying to scare [you] that you should not tell this to anybody?

A

Yes, sir.

Q

And you were scared of him?

A

Yes, sir.

Q

Now, after that first experience with Willy Marquez, did he repeat the same act in October 1997?

A

Yes, sir.

Q

How many times did he do that to you?

A

Three (3) times, sir.

Q

Now on the second occasion that he did that again to you, where did he do it?

A

Also in the place where there were banana plants, sir.

Q

The third time that he did that to you in the same month, October 1997, where did he do that?

A

Also in the place where there were banana plants, sir.

Q

The second time that Willy Marquez brought you to the place where there were bananas, what did he do to you?

A

Also the same, sir.

Q

He inserted his penis into your vagina?

A

Yes, sir.

Q

Did he tell you anything?

A

Yes, sir.

Q

What did he tell you?

A

I should not tell anybody, sir.

Q

The last time that he did that to you, where did he take you?

A

Also the place where there were banana plants, sir.

Q

What did he do to you that third time?

A

He did the same, sir.

Q

He inserted his penis into your vagina?

A

Yes, sir.

Q

And when finally did you tell your mother or father about what Willy Marquez did to you?

FISCAL:

I will refresh (sic) my question your Honor.

COURT:

Do it.

FISCAL:

Q

Did you finally tell your mother about what happened?

A

Yes, sir.

Q

What did you tell your mother?

A

The thing that Willy Marquez did to me, sir.

Q

When did you tell your mother, the first time Willy Marquez did that to you, the second time or the third time that he did that to you?

A

The witness nod[ded] her head the sign of approval the third time.[28]

In his defense, accused-appellant interposed alibi in all three (3) instances of rape, by claiming that during daytime for the whole month of October 1997 he was at his place of work hauling palay hay for Honofre Arenas at Barangay Bacayao, Guimba, Nueva Ecija.[29] He further alleged that he worked from Monday to Sunday from 6:00 a.m. to 5:30 p.m. and had a break time which lasted from 12:00 noon to 2:00 p.m.[30] Aside from hauling palay hay, accused-appellant's work included pasturing the cows and cleaning their wastes.[31] During break time, accused would hang out at the workshop (talyer) of his employer's brother-in-law which was just in front of his workplace.[32] After his dismissal from work, he would proceed to the workshop of the brother-in-law in order to learn.[33]

For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise impossible for him to be at the locus criminis at the time of the alleged crime.[34] In the case at bar, accused-appellant failed to prove and demonstrate the physical impossibility of his being at the scene of the crime at the approximate time of its commission. No less than accused-appellant himself admitted that his workplace was 250 meters away from the house of the victim.[35] Even his assertion that it took an hour to get to the victim's house because of the muddy condition of the road[36] can not discount the possibility of his presence at the scene of the crime. As an element of a credible alibi, "physical impossibility refers to the distance between the place where the accused was and when the crime transpired and the place it was committed, as well as the facility of access between the two places." [37] Accused-appellant's allegation that the road was muddy cannot be given credence, inasmuch as he himself admitted that it did not rain during the month of October 1997 because it was the height of the El Niño phenomenon.[38] In this connection, it must once again

be stressed that -

Alibi is almost always flawed not only by its inherent weakness but also by its implausibility. Easily susceptible of concoction and viewed invariably with suspicion, an alibi may be considered with favor only when established by positive, clear and satisfactory evidence. Significantly, where no one corroborates the alibi of an accused, such defense becomes all the weaker for this deficiency.[39] Neither can plain denial, a negative and self-serving evidence stand against the positive identification and categorical testimony made by a victim of rape.[40] A mere denial is seldom given greater evidentiary value than the testimony of a witness who creditably testifies on affirmative matters.[41]

All told, the proffered alibi of accused-appellant can not stand against the positive identification by the private complainant that he is the culprit. Basic is the rule that alibi which is easy to concoct can not prevail over the positive identification; what is more, appellant utterly failed to prove that it was physically impossible for him to be at the scene of the crime at the approximate time of its commission. Consequently, accused-appellant's defense of alibi can not prosper.[42] Indeed, the revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint.[43] Stated differently, it is most improbable for a five-year old girl of tender years, so innocent and so guileless as the herein offended party, to brazenly impute a crime so serious as rape to any man if it were not true.[44]

We now address the issue of the propriety of the penalty imposed. The trial court meted out the death penalty on accused-appellant pursuant to Section 11 [7], of Republic Act No. 7659, which was in force at the time of commission of the crime. The said law provides in pertinent part:

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

x x x x x x x x;

4. when the victim is a religious or a child below seven (7) years old.

The above-quoted circumstance qualifies the crime of rape. As such, the same must be both alleged in the information and proved with competent and convincing evidence. Jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.[45]

In the case at bar, while the informations sufficiently allege the minority of Maria Cristina, the prosecution did not present proof to substantiate the age of the victim, such as her birth certificate. This becomes crucial considering that the prosecution must establish with moral certainty that the victim was below seven (7) years old at the time of the rape, to justify the imposition of the death penalty. Accordingly, the penalty imposed on accused-appellant must be reduced to reclusion perpetua.

The Court finally observes that while the trial court awarded moral damages, it did not award any indemnity ex delicto. A civil indemnity of P50,000.00 is automatically given to the offended party without need of further evidence other than the fact of rape.[46] Consistent, therefore, with present case law which treats the imposition of civil indemnity as being mandatory upon the finding of rape,[47] accused-appellant should likewise be ordered

to pay the amount of P50,000.00 for each count of rape. This civil indemnity is distinct from and awarded in addition to moral damages, the two being based on different jural foundations and assessed by the court in the exercise of sound discretion.[48]

This is not the first time that a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. To curb this disturbing trend, accused-appellant should likewise be made to pay exemplary damages,[49] which, in line with prevailing jurisprudence, is pegged at P25,000.00,[50] for each count of rape.[51]

WHEREFORE, the decision of the Regional Trial Court, Branch 33 of Guimba, Nueva Ecija, finding accused-appellant guilty of three (3) counts of rape in Criminal Case Nos. 1536-G, 1537-G AND 1538-G, is **AFFIRMED** with the **MODIFICATIONS** that accused-appellant is sentenced to suffer the penalty of reclusion perpetua for each of the three counts of rape, and is ordered to pay the offended party P150,000.00 as civil indemnity; P150,000.00 as moral damages and P75,000.00 as exemplary damages.

SO ORDERED.

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

[1] Criminal Cases Nos. 1536-G, 1537-G, 1538-G.

[2] Appellee's Brief, pp. 3-5; Rollo, pp. 67-69.

[3] TSN, 13 October 1998, pp. 3, 7.

[4] Ibid., p. 4.

[5] Id., p. 9.

[6] Id., pp. 4, 5, 8.

[7] Id., p. 5.

[8] Appellant's Brief, p. 5.

[9] Ibid.

[10] Rocaberte v. People, 193 SCRA 152 [1991].

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

[12] People v. Gutierrez, 91 Phil. 877 [1952]; People v. Villegas, 55 Phil. 507 [1931], citing U.S. v. Del Rosario, 2 Phil. 127 [1903]; U.S. v. Mack, 4 Phil. 185 [1904]; U.S. v. Sarabia, 4 Phil. 566 [1905]; U.S. v. Paraiso, 5 Phil. 574 [1906]; U.S. v. Aldos, 6 Phil. 381 [1906]; U.S. v. Eusebio, 8 Phil. 574 [1907] and U.S. v. Lampano, 13 Phil. 409 [1909].

[13] People v. Garcia, 281 SCRA 463 [1997].

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

[15] G.R. Nos. 135288-93, 15 September 2000, pp. 8-9.

[16] 299 SCRA 528 [1998]; see also *People v. Losano*, 310 SCRA 707 [1999].

[17] *People v. Bugayong*, *supra*.

[18] *Ibid*.

[19] *People v. Magbanua*, G.R. No. 128888, 3 December 1999.

[20] *People v. Santos*, G.R. Nos. 131103 & 143472, 29 June 2000.

[21] *Rocaberte v. People*, *supra*.

[22] *People v. Garcia*, *supra*.

[23] *People v. Alberto Restoles y Tuyo, et al.*, G.R. No. 112692, 25 August 2000, pp. 9-10, citing *People v. Sapinoso*, G.R. No. 122540, 22 March 2000, citing *People v. Antido*, 278 SCRA 425 [1997]; *People v. Felipe Hofileña y Taala*, G.R. No. 134772, 22 June 2000, p. 8, citing *People v. Sta. Ana*, 291 SCRA 188 [1998]; *People v. Ramirez*, 266 SCRA 335 [1997]; *People v. Teves*, 246 SCRA 236 [1995]; *People v. Guamos*, 241 SCRA 528 [1995]; *People v. Casinillo*, 213 SCRA 777 [1992].

[24] *People v. Penaso*, G.R. No. 121980, 23 February 2000, pp. 5-6; *People v. Garces, Jr.*, G.R. No. 132368, 20 January 2000, pp. 9-10; *People v. Borja*, 267 SCRA 370, 379 [1997]; *People v. Ramirez*, 266 SCRA 335, 348 [1997].

[25] *People v. Jimmy Mijano y Tamora*, G.R. No. 129112, 23 July 1999, 311 SCRA 81.

[26] *People v. Emil Babera y Rabanera*, G.R. No. 130609, 30 May 2000, p. 8, citing *People v. Dacoba*, 289 SCRA 265 [1998] and *People v. Gagto*, 253 SCRA 455 [1996].

[27] TSN, 17 August 1998, p. 2.

[28] TSN, 17 August 1998, pp. 3-6.

[29] TSN, 13 October 1998, pp. 3, 7.

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

[31] *Id.*, p. 9.

[32] *Id.*, pp. 4, 5, 8.

[33] *Id.*, p. 5.

[34] *People v. Altabano*, G.R. No. 121344, 29 October 1999, 317 SCRA 708, citing *People v. Umali*, 242 SCRA 17 [1995], citing *People v. Baylon*, 57 SCRA 114 [1974] and *People v. Hortillano*, *supra*.; see also *People v. Cabebe*, 290 SCRA 543 [1998].

[35] TSN, 13 October 1998, p. 7.

[36] *Ibid.*, p. 8.

[37] *People v. De Labajan*, G.R. No. G.R. No. 128870, 27 October 1999, 317 SCRA 557, citing *People v. Navales*, 266 SCRA 569 [1997], see also *People v. Javier*, 269 SCRA 181 [1997]; *People v. Amaca*, 277 SCRA 215 [1997] and *People v. Midtimod*, 283 SCRA 395 [1997].

[38] TSN, 13 October 1998, p. 10.

[39] *People v. Peralta*, 237 SCRA 218 [1994].

[40] *People v. Remoto*, 244 SCRA 506 [1995].

[41] *People v. Rodolfo Villaraza y Panis*, G.R. No. 131848-50, 5 September 2000, pp. 21-22, citing *People v. Paragua*, 257 SCRA 118 [1996].

[42] *People v. Pedro Gabiana y Carubas*, G.R. No. 123543, 5 August 2000, p. 9, citing *People v. Enrique Cabingas, et al.*, G.R. No. 79679, 28 March 2000, citing *People v. Batulan*, 253 SCRA 52 [1996].

[43] *People v. Melencio Bali-balita*, G.R. No. 134266, 15 September 2000, p. 12, citing *People v. Mengote*. 305 SCRA 380 [1999]; *People v. Victor*, 292 SCRA 186 [1998].

[44] *People v. Molas*, 286 SCRA 684 [1998].

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

[46] *People v. Pili*, 289 SCRA 118 [1998]; *People v. Caballes*, 274 SCRA 83 [1997]; *People v. Adora*, 275 SCRA 441 [1997]; *People v. Betonio*, 279 SCRA 532 [1997].

[47] *People v. Camilo Villanueva*, G.R. No. 135330, 31 August 2000, p. 15, citing *People v. Raffles*, G.R. No. 133477, 21 January 2000 and *People v. Bartolome*, G.R. No. 13387, 28 January 2000; *People v. Apostol*, G.R. Nos. 123267-68, 8 December 1999; *People v. Jerry Abalde*, G.R. No. 123113, 31 March 2000.

[48] *People v. Ignacio*, 294 SCRA 542 [1998].

[49] *People v. Gagto*, 253 SCRA 455 [1996].

[50] *People v. Renato Puzon y Juquiana*, G.R. Nos. 123156-59, 29 August 2000, p. 16, citing *People v. Guiwan*, G.R. No. 117324, 27 April 2000.

[51] *People v. Fernando Watimar*, G.R. Nos. 121651-52, 16 August 2000, p. 15, citing *People v. Romeo Arillas y Montero*, G.R. No. 130593, 19 June 2000, p. 11.

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