PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REMEGIO TAGANNA, ACCUSED-APPELLANT.

G.R. Nos. 137608-09. July 06, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

REMEGIO TAGANNA was charged with two (2) counts of rape[1] allegedly committed against his daughter Maria C. Taganna. Both Informations were filed on 25 February 1998. In a joint Decision by the Regional Trial Court, Br. 30, Basey, Samar, he was convicted of two (2) counts of rape and meted two (2) death sentences. He was also ordered to pay the complaining witness P100,000.00 as moral damages for both cases.[2]

On 15 June 1997, midnight, Maria Taganna, a twenty-eight (28) year old widow, was in bed beside her four (4) children and a younger brother who were sound asleep. Without prior notice to them, accused-appellant Remegio Taganna went up their house and entered the room where they were sleeping. Forthwith he lasciviously embraced Maria who could not bear the loathsome advances of her father. She cried in anguish as her father took off his clothes, mounted her, forcibly removed her panty and copulated with her. According to Maria, it did not take long for his organ to enter her vagina.[3] After gratifying his lust, accused-appellant walked away as if nothing happened.

At the trial, Maria narrated that she did not immediately report the matter to the authorities but only after she became pregnant and people began wagging their tongues about her embarrassing condition. Only her father could have been responsible for her unwanted pregnancy because she was a widow and had had no sexual encounter with any other man since her husband's death. She also testified that she had a miscarriage three (3) months into her pregnancy.

According to Maria, that incident was not the first time she was molested by her father. She was in her early teens when her father first shattered her innocence. Although she had long forgotten the exact day and year and was even unsure whether she was twelve (12) or fifteen (15) years old at that time, one thing was certain - she was in Grade IV in Brgy. Sawa when her father first ravished her. She was then at the porch of their house hanging clothes when her father approached her, removed her panty and had sexual intercourse with her while standing. Although her mother was inside the house, she did not witness the sexual assault as she had just given birth and could not stand up. While she told her mother about what happened, the latter remained skeptical as she could not believe that her husband could have sex with his very own flesh and blood.

Accused-appellant denied the charge. He said that the first incident of rape, which could have taken place when Maria was in Grade IV, could not have possibly happened because at that time she was staying with his uncle Dominador in Brgy. Palaypay which was about two and a half (2 [1]/2) kilometers from their house in Brgy. Sawa where she was attending school, and that she never went back to their house in Brgy. Sawa during that year as she was also attending to the store of his uncle.

As regards the alleged rape on 15 June 1997, as a member of the CAFGU, he never left the camp since he was on

duty from 7:00 o'clock in the evening to 6:00 o'clock the following morning. He theorized that Maria must have only been prompted to accuse him of rape after he advised her to amicably settle with the killers of her husband, an advice to which she violently reacted. She even cursed him so that he had to drive her out of his house.

In convicting accused-appellant, the trial court rationalized -[4]

> x x x a woman would normally not go to Court and open herself to the ridicule and shame of having been raped, and much less, would a daughter come forward and falsely accuse her own father of that dastardly act, if the same is not true x x x x the evidences (sic) in the instant case show that complainant had decided to forget about the first rape perpetrated upon her by her father when she was only 12 years old; which simply proves the soundness and wisdom of such a principle and which is presumably the reason why the same has always been followed and repeatedly enunciated.
>
> x x x the accused in the instant case has miserably failed to disprove the charges - not one of his alleged companions on the night of the second rape came forward in his defense; in fact, one of them (Sofronio Gayon) flatly refused to acknowledge the subpoena when the same was served upon him for his appearance herein. Even his own wife, who could have helped him disproved (sic) the first rape, and who in fact did not believe her daughter (complainant) when the latter told her about it, had already abandoned him (accused) and had left for parts unknown.
>
> So, since there is no reason at all for the Court not to believe the complainant's testimony, and conversely, there being no grounds (sic) at all for the Court to give credence to the futile attempt of the accused to counter his daughter's accusation against him, the inevitable conclusion is that on the strength of the complainant's sole testimony, the prosecution herein was able to prove beyond reasonable doubt the guilt of the accused Remegio Taganna on the two (2) counts of rape upon his own daughter/complainant, Maria Taganna. The fact that the complainant could no longer recall the exact date of the first, is of no moment because of the long lapse of time that had passed since x x x x

In fine, accused-appellant poses the question of whether he should be convicted of rape committed "on or about the year 1984" under an Information filed only on 25 February 1998. The pivotal issue therefore is whether his conviction in Crim. Case No. 98-2233 can be sustained. To resolve this issue, the Court must determine whether the allegation in the Information vis-a-vis the time of the commission of the crime sufficiently apprised accused-appellant of the "nature and cause of the accusation against him."

We recall that although the complaining witness gave a detailed and graphic description of the manner with which the defendant defiled her, she had no recollection of the exact date when the first sexual abuse happened.[5] Thus -

> Q:
>
> Can you remember the year when you were still in Grade IV?[6]
>
> A:
>
> I cannot remember what year was that.
>
> Q:
>
> How about your age then, can you remember?
>
> A:
>
> I was, I think, 12 years old or 15.

It was on redirect-examination however that the prosecution was able to focus on the possible year when the first

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rape incident occurred -[7]

> Court:
>
> How old are you now?
>
> A:
>
> 28.
>
> Court:
>
> So, you were born in 1970?
>
> A:
>
> August 24, 1969.
>
> Court:
>
> So, when you were 12 years old it was in 1981?
>
> A:
>
> Yes, sir.
>
> Court:
>
> When you were sexually abused by your father in 1981 you said you left and went to Basey, when did you leave, that very evening?
>
> A:
>
> Two months after the incident.

But under our basic rules on criminal procedure, 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 incident of the offense, but the act may be alleged to have been committed at any time as near to the actual date when the offense was committed as the information or complaint will permit.[8] Accordingly, a variance of three (3) years between the time set in the indictment and that established by evidence during the trial constitutes an error so serious as to warrant a reversal of conviction on that score. While the precise date of the commission of the offense need not be stated with particularity nor is time an essential ingredient of rape, it must be stated as near to the actual date as the information will permit. This statutory dictum is designed for no other purpose than to afford the defendant an opportunity to prepare an intelligent defense and avoid surprise and substantial prejudice to the defense. To sustain the lower court's ruling in this regard would be to deprive accused-appellant of his constitutionally enshrined right to be informed of the accusation against him. It is to place upon him an unfair and unreasonable burden of preparing a defense on the basis of the averments in the Information only to put him off-balance in the midst of the trial with a totally new allegation for which he is hitherto unprepared to meet.

In People v. Openia[9] this Court disallowed for being prejudicial to the defense an amendment of the information which alleged that the offense was committed on or about 18 June 1952 but evidence showed that it was in fact supposedly committed in July 1947. The Court reasoned that "considering the variance sought to be introduced thereby would appear to be really unfair to the defendants, for as clearly explained by the court, 'it violates their constitutional right to be informed before the trial of the specific charge against them and deprives them of the opportunity to defend themselves.'"

In US v. Dichao[10] the Court ruled that while the precise date of the commission of the crime need not be alleged in the complaint or information, nevertheless, it should be as near to the actual date as the information of the prosecuting officer will permit, and when that is done, any date may be proved which does not surprise and substantially prejudice the defense.

Besides, we entertain serious doubt on the sufficiency and reliability of the evidence for the prosecution considering that the first rape was allegedly committed in 1981 according to the evidence, or in 1984 per allegation in the Information. The Court is not convinced that the guilt of the accused has been proved beyond reasonable doubt.

However, as regards Crim. Case No. 98-2236 (G.R. No. 137609), we cannot subscribe to the contention of accused-appellant that his conviction for the second rape allegedly committed on or before the 15th of June 1997 is erroneous in view of the failure of the prosecution to establish that he employed force or intimidation. It is highly unlikely and even ludicrous to suggest that the complainant would welcome the unfathomable depravity of her very own father with open arms. The victim, as can be gleaned from her testimonies, was a decent and righteous person. Despite her being a widow for a number of years, she remained faithful to her late husband and did not lead a disgraceful life, much less maintain any sexual liaison with any other man until her father's bestiality bore an unwanted result. Moreover, accused-appellant's contention is totally baseless for as borne out by the following exchange, the complaining witness was in fact petrified when the rape was going on which provided accused-appellant the occasion to go about his bestiality with impunity -[11]

> Q:
>
> You said that the perpetrator after allegedly abused (sic) you went outside the house, did you shout?
>
> A:
>
> No, because I was scared (underscoring supplied).

While instinct spurs victims to wrench themselves from perilous situations by fleeing from their aggressors, others become virtually catatonic because of shock. Even if there was no force or violence employed on the complainant, the moral influence exerted by accused-appellant sufficed to make the crime rape. The moral influence by accused-appellant over his daughter, even in her adulthood, cannot be gainsaid.

For the accusations against him, accused-appellant can only interpose the defense of alibi which, aside from his bare denials, was entirely unsubstantiated. Alibi is one of the weakest defenses an accused can invoke, and the courts have always looked upon it with caution, if not suspicion, not only because it is inherently unreliable but also because it is easy to fabricate.[12]

Corollary, accused-appellant argues that the death penalty should not have been imposed on him for being contrary to RA 7659 which provides that such penalty shall be imposed only when the victim is under eighteen (18) years old and the offender is her parent.

We agree. Section 11 of RA 7659, which amended Art. 335 of The Revised Penal Code, provides that the death penalty shall be imposed if the crime of rape is committed, inter alia, 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 victim. At the time of the rape on 15 June 1997, the complaining witness was already twenty-eight (28) years old. Consequently, in Crim. Case No. 98-2236, accused-appellant should only be convicted of simple rape, and his penalty should only be reclusion perpetua, and not death.

WHEREFORE, the assailed Decision is MODIFIED:

(a) In Crim. Case No. 98-2233 (G.R. No. 137608), accused-appellant Remegio Taganna is ACQUITTEDon the ground of inadequacy of evidence to prove the guilt of the accused beyond reasonable doubt, and that the Information charging him with rape was violative of his constitutional right to be sufficiently informed of the nature and cause of the accusation against him; and,

(b) In Crim. Case No. 98-2236 (G.R. No. 137609), accused-appellant Remegio Tagana is held GUILTY only of SIMPLE RAPE and accordingly sentenced to reclusion perpetua, not death. He is ordered to pay complaining witness Maria C. Taganna the amount of P50,000.00 as civil indemnity and another P50,000.00 as moral damages. Costs de oficio.

SO ORDERED.

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

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[1] In Crim. Case No. 98-2233 (now G.R. No. 137608) the crime of rape was allegedly committed by the accused "on or about the year 1984," while in Crim. Case No. 98-2236 (now G.R. No. 137609), the crime of rape was allegedly committed by the accused "on or about the 15th day of June 1997."

[2] Decision penned by Judge Godofredo P. Quimsing, RTC-Br. 30, Basey, Samar.

[3] TSN, 9 October 1997, p. 19.

[4] Rollo, pp. 62-63.

[5] TSN, 15 July 1998, p. 14.

[6] The elementary grade she was in when she claimed to have been first abused by her father.

[7] TSN, 12 July 1998, p. 17.

[8] Sec. 11, Rule 110, 1985 Rules on Criminal Procedure.

[9] 98 Phil. 699 (1956).

[10] 27 Phil. 421 (1914).

[11] TSN, 15 July 1998, p. 13. In the preliminary investigation she alleged that her father used a knife (pisao) and threatened her with bodily harm if she resisted.

[12] People v. Azugue, G.R. No. 110098, 26 February 1997, 268 SCRA 711.

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