PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL SALALIMA Y GARCIA, ACCUSED-APPELLANT.

G.R. Nos. 137969-71. August 15, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us for automatic review is the consolidated decision of the Regional Trial Court of Lianga, Surigao del Sur, Branch 28, promulgated on February 10, 1999, in Criminal Case Nos. L-1449, L-1450 and L-1451 finding appellant guilty of three counts of rape and sentencing him to suffer in each case the maximum penalty of death. In said decision the trial court decreed:

> 1. In Criminal Case No. L-1449, accused Rafael Salalima y Garcia guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659 and he is hereby sentenced to suffer the maximum penalty of Death by Lethal Injection. To pay the victim Miladel Escudero P50,000.00 as moral damages and to pay the costs.
>
> 2. In Criminal Case No. L-1450, accused Rafael Salalima y Garcia guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659 and he is hereby sentenced to suffer the maximum penalty of Death by Lethal Injection. To pay the victim Miladel Escudero, P50,000.00 as moral damages and to pay the costs.
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> 3. In Criminal Case No. L-1451, accused Rafael Salalima y Garcia guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659 and he is hereby sentenced to suffer the maximum penalty of Death by Lethal Injection. To pay the victim Miladel Escudero P50,000.00 as moral damages and to pay the costs.
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> Pursuant to Section 22 of Republic Act No. 7659, let the criminal records in Criminal Cases Nos. L-1449, L-1450 and L-1451 be forwarded to Supreme Court of the Philippines for automatic review within twenty (20) days but not earlier than fifteen days after the promulgation of these judgments.
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> SO ORDERED.[1]

These consolidated cases herein stem from separate informations dated March 21, 1997. Prosecutor Zacharias Joven charged appellant with three (3) counts of rape allegedly committed as follows:

> CRIMINAL CASE NO. L-1449
>
> The undersigned Prosecutor, upon a sworn complaint originally filed by the offended party, MILADEL Q. ESCUDERO and her mother Mrs. Erenita Salalima, hereby accuses RAFAEL SALALIMA y GARCIA of the crime of RAPE committed as follows:
>
> That sometime during the month of March, 1996 or thereabout, in the residence of spouses Laudemir Salalima and Erenita Salalima in Sitio Ebo, Barangay Tambis, Municipality of Barobo, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by the use of force

and intimidation, armed with a sharp pointed bolo, ordered Miladel Q. Escudero to removed her underwear and to lay down on the floor and with lewd designs, taking advantage of the tender age of the offended party, a thirteen (13) year old minor, did then and there willfully, unlawfully and feloneously have carnal knowledge with Miladel Q. Escudero against her will, to the damage and prejudice of the victim.

CONTRARY TO LAW. (In violation of Article 335 of the Revised Penal Code as amended by RA No. 7659).

CRIMINAL CASE NO. L-1450

The undersigned Prosecutor, upon a sworn complaint originally filed by the offended party, MILADEL Q. ESCUDERO and her mother Mrs. Erenita Salalima, hereby accuses RAFAEL SALALIMA Y GARCIA of the crime of RAPE committed as follows:

That sometime during the month of April, 1996 or thereabout, in the residence of spouses Laudemir Salalima and Erenita Salalima in sitio Ebo, barangay Tambis, municipality of Barobo, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by the use of force and intimidation, armed with a sharp pointed bolo, ordered Miladel Q. Escuedro to removed her underwear and to lay down on the floor and with lewd designs, taking advantage of the tender age of the offended party, a thirteen (13) year old minor, did then and there willfully, unlawfully and feloneously have carnal knowledge with Miladel Q. Escudero against her will, to the damage and prejudice of the victim.

CONTRARY TO LAW. (In violation of Article 335 of the Revised Penal Code as amended by R.A. No. 7659).

CRIMINAL CASE NO. L-1451

The undersigned Prosecutor, upon a sworn complaint originally filed by the offended party, MILADEL Q. ESCUDERO and her mother Mrs. Erenita Salalima, hereby accuses RAFAEL SALALIMA Y GARCIA of the crime of RAPE committed as follows:

That sometime during the month of May, 1996, or thereabout, in the residence of spouses Laudemir Salalima and Erenita Salalima in sitio Ebo, barangay Tambis, municipality of Barobo, province of Surigao del Sur, Philippines and within the jurisdiction of the Honorable Court, the above-named accused by the use of force and intimidation, armed with a sharp pointed bolo, ordered Miladel Q. Escudero to removed her underwear and to lay down on the floor and with lewd designs, taking advantage of the tender age of the offended party, a thirteen (13) year old minor, did then and there willfully, unlawfully and feloneously have carnal knowledge with Miladel Q. Escudero against her will, to the damage and prejudice of the victim.

CONTRARY TO LAW. (In violation of Article 335 of the Revised Penal Code as amended by R.A. No. 7659).[2]

Upon arraignment appellant, assisted by counsel, entered a plea of not guilty to all charges. Thereafter, trial on the merits ensued.

Complainant Miladel Q. Escudero, aged 15, with address at Poblacion, Barobo, Surigao del Sur, testified that sometime in March 1996, after her mother Erenita left for the poblacion to work, appellant Rafael Salalima arrived at her house to eat breakfast. Complainant went inside the room to take care of her younger sister Lovelymae. While she was in the room, appellant went inside while she went out of the room. When she returned to the room, appellant left and went to the mountain. Complainant slept with her younger sister in the room.

While asleep, she was awakened and felt on the left side of her neck a bolo held by appellant. Appellant told her not to shout or else he would kill her and her mother. When appellant started undressing her, she tried to move but appellant threatened her again with the bolo. After undressing himself, appellant put himself on top of

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complainant. Then he inserted his penis inside her vagina and commenced the motion of push and pull until he ejaculated. Complainant felt pain but could not resist nor shout because of fear. After satisfying his lust, appellant walked away, warning again complainant not to reveal what had happened, otherwise he will kill her and her mother.

Complainant recalled that she was also sexually abused by appellant the following month that year. It took place in the kitchen of their house while her mother was in the poblacion. According to her, while she was washing the plates, appellant was sitting on a bench. When she passed by, appellant blocked her way and pointed a bolo on her neck and told her not to shout. Afterwards, appellant undressed her and he removed his clothes too. He placed the bolo on the floor. Appellant inserted his penis in her organ while they were still standing. Appellant then lifted her by holding her thighs. After satisfying his lust, appellant warned her again not to report the incident or else she and her mother would be killed. She cried while she was being abused but she did not report to her mother because of appellant's threats.

The abuse was repeated in May 1996. She was sexually molested again in the room of their house. She testified that appellant threatened her with a bolo and then removed her pants and her panty. After removing also his pants, appellant put himself on top of her. She felt the pain while appellant's penis was being inserted in her vagina. She did not resist nor shout because she was afraid of his threats.

On cross-examination, complainant testified that the sexual assaults were all committed by appellant during daytime. When asked if the penis of appellant was able to penetrate her vagina, she frankly declared that in the first encounter only half of the penis penetrated her vagina but in the second and third incidents, appellant's entire penis penetrated her vagina. She testified that appellant, after abusing her, became jealous of her friend Robert though she had categorically stated that Robert is not her boyfriend.[3]

The mother of the victim, Erenita Salalima y Quiawan, testified that she was 33 years of age, manicurist by occupation and residing at Sitio Ebo, Barangay Tambis, Barobo, Surigao del Sur. She had two children by her first marriage to Pedro Escudero namely: complainant Miladel Escudero and Mark Escudero. She declared that complainant was born on April 20, 1983 in Tambis, Barobo, Surigao del Sur. After her first husband died, Erenita married Laudemir Salalima with whom she has two children, the first died while the second is named Lovelymae. Erenita also said that she personally knew appellant being her father-in-law. In fact, appellant lives with them and eats his meals in their house.

In December 1996, Erenita had an altercation with appellant. The quarrel became quite serious that appellant said something about his relation with complainant by telling Erenita, "Ang imong anak dugay na nakong nakuha, siguro buntis na" ("I have had sexual intercourse with your daughter a long time ago, maybe she is already pregnant"). When confronted by her mother, Miladel revealed the sexual abuses done to her by appellant. Asked why she did not reveal these abuses, complainant told her mother that appellant had threatened her. Erenita immediately brought complainant to the doctor for medical examination.[4]

Dr. Ma. Wilma Joji Yu, Chief of Hospital, Lianga District Hospital, examined the complainant. She later testified that the hymenal tags of complainant's genitalia were no longer prominent nor intact especially at 12:00 o'clock to 6:00 o'clock position. She opined that penetration had occurred and it could have been through sexual intercourse.[5]

On December 24, 1996 complainant, assisted by her mother, lodged complaints for rape against appellant. Afterwards, appellant was arrested and detained.

Appellant denied all the accusations against him. He claimed that he is physically incapable of doing the sexual

acts imputed to him as he was sickly and already 66 years old at the time the alleged crimes were committed. He declared that Erenita's husband, Laudimer, was his son and complainant called him "Lolo". According to him, he was charged with rape since Erenita had a grudge against him because of his refusal to join their religious sect, Iglesia ni Kristo. He also stated that Laudimer's first child fell and died while under the care of complainant. Apparently, Laudimer blamed complainant for the death of the baby. Appellant also recalled that sometime in March 1996, a Sunday afternoon, he fetched water and saw complainant and a young man in the waiting shed kissing each other. When complainant saw him, she shouted "Hala si Lolo" ("Beware, it's Lolo"), and they ran away separately. At home, complainant whispered to him not to call the attention of her mother about the incident. Nonetheless, he told Erenita what he saw that day but Erenita told him "You have no business what my daughter is doing".[6]

The trial court found the testimonies of witnesses for the prosecution credible. In contrast, it found appellant's denial flimsy. Accordingly, the court found appellant guilty as charged. Hence, this appeal.

In his brief, appellant assigns the following errors:

> I
>
> THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT UNDER THE DEFECTIVE INFORMATIONS WHEREIN THE PROSECUTION FAILED TO ALLEGE THE APPROXIMATE TIME OF THE COMMISSION OF THE CRIMES CHARGED.
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> II
>
> THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.
>
> III
>
> THE COURT A QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE MAXIMUM PENALTY OF DEATH.[7]

The issues for resolution are:

(1) Whether or not the informations are defective;

(2) Whether or not the guilt of appellant was proved beyond reasonable doubt;

(3) Whether or not death penalty was properly imposed.

Appellant contends that the informations are defective because the date and time of commission of the crimes are not stated with particularity. He argues that the indefiniteness of the informations deprives him of his right to be informed of the offense charged against him and of the opportunity to prepare for his defense.[8]

Appellant's contention is bereft of merit.

Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. In previous cases, we ruled that allegations that rapes were committed "before and until October 15, 1994", "sometime in the year 1991 and the days thereafter", "sometime in November 1995 and some occasions prior and/or subsequent

thereto" and "on or about and sometime in the year 1988" constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules of Criminal Procedure.[9]

In this case, although the indictments did not state with particularity the dates when the sexual assaults took place, we believe that the allegations therein that the acts were committed "sometime during the month of March 1996 or thereabout", "sometime during the month of April 1996 or thereabout", "sometime during the month of May 1996 or thereabout" substantially apprised appellant of the crimes he was charged with since all the elements of rape were stated in the informations. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the cases filed against him. Accordingly, appellant's assertion that he was deprived of the opportunity to prepare for his defense has no leg to stand on.

Next, appellant challenges the credibility of complainant's testimony. He points out that during the second incident there was no longer threat when he was undressing the victim, yet she did not resist his advances. He added that in all instances complainant did not even attempt to arouse the attention of her relatives and neighbors considering that the incidents occurred at daytime.[10]

Appellant's claim that there was no tenacious resistance on the part of complainant fails to persuade. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety.[11] Intimidation includes the moral kind, such as the fear caused by threatening a woman with a knife.[12] As earlier stated, complainant was continuously threatened with death by appellant if she would resist and report his sexual advances. Complainant's obedience to appellant's satyric acts were all caused by her fear of appellant. Furthermore, the moral ascendancy exercised by appellant over complainant made his threat to her effective. Accordingly, complainant's lack of stiff resistance is justified.

Likewise, that complainant did not seek help while the sexual advances were being made on her is not too difficult to comprehend. Complainant's tender age and fear for life and safety against appellant's continuous threat that he will kill her and her mother are factors that have heavily cowed her into submission.

As regards appellant's claim that at his age and physical condition, it is improbable for him to engage in sexual acts, the same is merely self-serving. Other than appellant's assertion, there is no evidence presented to substantiate his alleged sexual dysfunction. At any rate, advanced age does not mean that sexual intercourse is no longer possible as age is not a criterion taken alone in determining sexual interest and capability of middle-aged and older people.[13]

Appellant also imputes ill motive on the part of complainant and Erenita in filing these cases. Appellant argues that it must have been his having reported the clandestine tryst of complainant with her boyfriend and his refusal to join the Iglesia ni Kristo which induced complainant and her mother to concoct the said cases.

The argument is shallow. Not a few accused in rape attributed the charges brought against them to family feuds, resentment or revenge. But such alleged motives have never swayed the Court from lending full credence to the testimony of the complainant who remained steadfast throughout her testimony especially a minor, as in this case.[14] We have scrutinized the records of this case, but we found no evidence showing that complainant had any improper motive to frame-up appellant. We are therefore constrained to give full faith and credit to complainant's testimony.

However, we agree with appellant's assertion that the trial court erred in imposing on him the death penalty. Apparently, the trial court imposed the death penalty in each of the three cases because complainant was then only thirteen years old and "the offender is the father of [her] step-father so that the victim is a relative of the offender

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by affinity".[15] The trial court had in mind the first circumstance of the seventh paragraph of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659. It provides:

> ART. 335 When and how rape is committed. ---
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> x x x
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> 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.
>
> - When the victim is under the custody of the police or military authorities.
>
> - When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
>
> - When the victim is a religious or a child below seven (7) years old.
>
> - When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
>
> - When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
>
> - When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

But as consistently held by this Court in previous cases, the aforequoted seven new attendant circumstances partake the nature of special qualifying circumstances. Qualifying circumstances must be properly pleaded.[16] Moreover, under the first circumstance, the minority of the victim and the offender's relationship to the victim must be taken together and constitute only one special qualifying circumstance. Both must be alleged in the complaint or the information and duly proved by the quantum of proof in criminal cases to justify the imposition of the mandatory death penalty. Thus, even if the victim is below eighteen years of age and the offender is her parent or relative, but these facts are not alleged in the information, or that only one is so alleged, their proof as such by evidence offered during the trial cannot sanction the imposition of the penalty.[17]

Further, we shall now take into account recent developments in criminal procedure. Section 8, Rule 110 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, requires that the complaint or information shall specify the qualifying and aggravating circumstances of the offense. If not specified, these circumstances cannot be appreciated. This provision may be given retroactive effect in the light of the well settled rule that statutes regulating the procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent.[18]

As noted by appellant, the informations in these three cases failed to allege the relationship of appellant to complainant, hence, he cannot be convicted of rape under the first circumstance of paragraph 7, Article 335 of the Revised Penal Code, as amended by Section 11 of RA No. 7659.

We hasten to add that the relationship of complainant to appellant was not clearly established. Erenita stated that appellant is her father-in-law being the father of her second husband. Further, appellant said that complainant respects him and calls him "Lolo". Other than these declarations, we find no factual basis to conclude with certainty that appellant is legally related to complainant. It is doubtful whether the relationship between the offended party and the offender falls within the legally defined relationship determinative of the penalty to be

imposed. Strictly speaking, the offender in this case is neither parent, ascendant, step-parent, guardian nor relative by consanguinity or affinity within the third civil degree, of the victim. Nor is he the common-law spouse of the parent of the victim.

However, the prosecution proved that appellant committed the crime of rape with the use of a deadly weapon, a circumstance alleged in the information. Under our penal law, whenever the crime of rape is committed with the use of a deadly weapon, such as the knife used by appellant,[19] the penalty shall be reclusion perpetua to death, a penalty composed of two indivisible penalties. In the case at bar, there is neither mitigating nor aggravating circumstances that could be appreciated, thus, the lesser penalty of reclusion perpetua is imposed.

Finally, we affirm the trial court's award of moral damages of P50,000.00 in each of the three cases. The award of moral damages to a rape victim is proper even if there was no proof presented during the trial as basis therefor. In addition, civil indemnity must be awarded to the victim since it is mandatory upon finding of the fact of rape. The recent judicial prescription is that the amount shall be P50,000.00 for each count of rape if death penalty is not imposed.[20]

WHEREFORE, the appealed decision of the Regional Trial Court of Lianga, Surigao del Sur, Branch 28, is AFFIRMED with MODIFICATION. Appellant Rafael Salalima y Garcia is found guilty of three (3) counts of rape committed against private complainant Miladel Escudero, and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA as well as to pay the victim P50,000.00 as civil indemnity and another P50,000.00 as moral damages for each count of rape, and the costs.

SO ORDERED.

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

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[1] Rollo, pp. 29-30.

[2] Id. at 4-9.

[3] TSN, January 26, 1999, pp. 22-44.

[4] TSN, January 26, 1999, pp. 9-20.

[5] TSN, November 23, 1998, p. 3; RTC Records, p. 14.

[6] TSN, January 27, 1999, pp. 46-63.

[7] Rollo, pp. 46-47.

[8] Id. at 53-54.

[9] People vs. Gianan, G.R. Nos. 135288-93, September 15, 2000, p. 9; People vs. Magbanua, 319 SCRA 719, 730 (1999).

[10] Rollo, pp. 55-56.

[11] People vs. Padre-e, 249 SCRA 422, 429 (1995).

[12] People vs. Gecomo, 254 SCRA 82, 104 (1996).

[13] People vs. De La Cuesta, 304 SCRA 83, 93 (1999).

[14] People vs. Dacoba, 289 SCRA 265, 272 (1998).

[15] Rollo, p. 29.

[16] People vs. Garcia, 281 SCRA 463, 489 (1997); People vs. Ramos, 296 SCRA 559, 575 (1998).

[17] People vs. Navida, G.R. Nos. 132239-40, December 4, 2000, pp. 10-11.

[18] People vs. Arrojado, G.R. No. 130492, January 31, 2001, p. 21.

[19] People vs. Alquizalas, 305 SCRA 367, 379 (1999).

[20] People vs. Sandoval, G.R. Nos. 132625-31, December 18, 2000, p. 13.

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