

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENJAMIN HILET Y MERCADEJAS, APPELLANT.

*G.R. Nos. 146685-86. April 30, 2003*

Ponente: YNARES-SANTIAGO, J.

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### YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65, finding appellant Benjamin Hilet y Mercadejas guilty beyond reasonable doubt of two counts of statutory rape, sentencing him to suffer the penalty of Reclusion Perpetua for each count and ordering him to pay the victim the amount of P100,000.00 as moral damages and the costs of suit.

Appellant was charged with two counts of rape committed against the daughter of his common-law wife in two separate Informations which read:

In Criminal Case No. 99-329:

That sometime in March 17, 1999 at about 2:00 o'clock in the afternoon, at Sitio Banase, Barangay San Vicente, Municipality of Bulan, Province of Sorsogon and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, through force and intimidation, and taking advantage of the tender age of the victim, had carnal knowledge of eleven year old Richele J. Cosada, who is a virgin of good reputation, his step-daughter who was left in his care, against her will and without her voluntary consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the stepfather of the child-victim.

ACTS CONTRARY TO LAW.[2]

In Criminal Case No. 99-330:

That sometime in 1998 at Sitio Banase, Barangay San Vicente, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously, through force and intimidation, and taking advantage of the tender age of the victim, had carnal knowledge of ten-year old RICHELE J. COSADA, who is a virgin of good reputation, his step daughter who was left in his care, against her will and without her voluntary consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the stepfather of the child-victim.

ACTS CONTRARY TO LAW.[3]

Appellant pleaded not guilty to the charges, after which the two criminal cases were jointly tried.

Sometime in 1998, ten year-old Richelle Cosada was told by appellant, the common-law husband of her mother, whom she looked up to with respect and treated as her own father, not to go to school but to stay home and watch the house. At about 10:00 in the morning, while her mother was out selling fish, Richelle saw appellant

sharpening his bolo. Moments later, appellant dragged her towards the bedroom. There, he undressed himself and removed her clothes. He made her lie on the floor, placed the bolo beside her and warned her not to tell anyone otherwise he will kill her. He lay on top of her and repeatedly thrust his penis into her vagina. She cried and pleaded for him to stop because she felt pain, but he did not heed her. After appellant satisfied his lust, Richelle noticed that her vagina was bleeding. She kept the ordeal to herself out of fear for appellant's threats.

In the afternoon of March 17, 1999, appellant ordered Richelle's older brother, Allan, to gather firewood and her younger brother, Sonny, to play outside. Again, Richelle saw appellant sharpening his bolo. Thereafter, he brought her to the same room where she was first abused. After he undressed himself, he removed her shorts, laid her on the floor and placed the bolo on her side. Then, he had sexual intercourse with her. Richelle pleaded for appellant to stop but he did not listen to her. Her vagina felt painful and it bled.

That same day, Richelle felt appellant's sexual abuses to be unbearable and finally confided to her mother, Nenita Cosada, what happened. The following day, Nenita asked their neighbor, Mateo Guañizo, to report the incident to the police, who immediately proceeded to the house of appellant. They invited him to the police headquarters for questioning.

Thereafter, the victim underwent medical examination. Dr. Estrella Payoyo, the Municipal Health Officer of Bulan, Sorsogon, found old hymenal lacerations at 2, 6, and o'clock positions but no fresh laceration. The victim's vagina admitted one finger with resistance and when Dr. Payoyo removed her finger, there was blood.

Appellant denied the charges against him. He alleged that his common law wife and Mateo Guañizo were lovers and made up the charges against him. He claimed that when he came home after fishing on March 16, 1999, he saw Nenita and Mateo come out of his house. Mateo was half-naked with his shirt hung on his shoulder. When he was about 15 meters away, Mateo pointed a .22 caliber long barrel gun at him. He ignored him and went directly to their house, where he saw Nenita's panties on the floor of the bedroom. When he confronted Nenita, she explained that Mateo went to their house to look at some wedding pictures. A heated altercation ensued between him and Nenita. The following day, he left the house at 4:00 a.m. to go fishing and returned at noon to eat lunch. Shortly after he finished his lunch, the police, accompanied by Mateo Guañizo, arrived and invited him to the station.

On August 30, 2000, the trial court rendered the appealed decision, disposing as follows:

WHEREFORE, premises considered, accused BENJAMIN HILET y MERCADEJAS having been found GUILTY beyond reasonable doubt of two (2) counts of STATUTORY RAPE defined and penalized under Article 266-A, paragraph 1 (d) of R.A. 8353 (Anti-Rape Law of 1997), amending Act 3815 and R.A. 7659, is hereby sentenced to two (2) indivisible penalties of RECLUSION PERPETUA regardless of the aggravating circumstances present (Art. 63, R.P.C.), said sentences shall be served successively pursuant to the provision of Art. 70, R.P.C. The period of time during which the accused underwent preventive imprisonment shall be credited in the service of his sentences consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. To indemnify the offended party Richelle Cosada in the amount of P100,000.00 as moral damages and to pay the costs of suit.

SO ORDERED.[4]

In the Appellant's Brief, the following assignment of errors were raised:

I

THE COURT A-QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT UNDER THE DEFECTIVE INFORMATION IN CRIMINAL CASE NO. 99-330 WHEREIN THE PROSECUTION

FAILED TO ALLEGE THE APPROXIMATE TIME OF THE COMMISSION OF THE CRIME CHARGED.

II

THE COURT A-QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

III

THE COURT A-QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDULOUS TESTIMONY OF THE WITNESSES FOR THE PROSECUTION.[5]

Appellant's argument that the information in Criminal Case No. 99-330 is defective for its failure to state the approximate time of the commission of the crime is untenable. An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof. The exact date of the commission of a crime is not an essential element of rape. Thus, in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The failure to specify the exact date or time when it was committed does not ipso facto make the information defective on its face.[6] In *People v. Miranda*,[7] we upheld the validity of the information which merely stated that the rape was allegedly committed "sometime in February 1988".

It is not necessary to state the precise time when the offense was committed except when time is a material ingredient of the offense. In statutory rape, time is not an essential element. What is important is that the information alleges that the victim was a minor under twelve years of age and that the accused had carnal knowledge of her, even if no force or intimidation was used or she was not otherwise deprived of reason. The time of commission of the offense stated in the information in Criminal Case No. 99-330 was sufficient to apprise appellant that he was being charged of rape committed against the victim while she was only ten years old and to afford him an opportunity to prepare his defense.

Appellant likewise assails the credibility of the prosecution witnesses, especially the victim. He claims that her testimony was incredulous and tainted with inconsistencies. First, during direct examination, she narrated that the alleged rape on March 17, 1999 occurred at 2:00 in the afternoon; but on re-direct examination she said that it happened in the morning. When she was asked to clarify this during re-cross examination, she declared that she was actually raped twice on March 17, 1999, once in the morning and once in the afternoon. Second, her testimony conflicts with that of her mother as to the whereabouts of her brother, Allan, at the time she was allegedly raped. While she stated that Allan was ordered by appellant to gather firewood, her mother testified that Allan left the house as early as noontime since he was ordered by appellant to buy some ice. Lastly, Nenita testified that she sent her son, Allan, to Mateo Guañizo's house to ask for help; but Mateo testified that nobody fetched him; rather Nenita Cosada requested him to seek assistance from the police authorities when he passed by their house on March 18, 1999.

It is well entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would affect the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, it was in a better position to decide the question of credibility.[8]

We find no reason to disturb the trial court findings that the victim's testimony was credible, candid and straightforward. The defense's imputation of ill-motive was likewise correctly disregarded for lack of evidence to support it. It is highly inconceivable that a young barrio lass, inexperienced with the ways of the world, would

fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial, and tarnish her family's honor and reputation, unless she was motivated by a potent desire to seek justice for the wrong committed against her.[9] We reiterate the truism that when a woman – more so if she is a minor – says she has been raped, she says in effect all that is necessary to prove that rape was committed.[10]

Worth noting also is the fact that the victim's testimony was interrupted by fits of crying, leaving no room for doubt that she was truthful in her narration of events and her sordid experience in the hands of appellant, whom she treated as her own father.[11]

Moreover, the alleged inconsistencies in the testimonies of the prosecution witnesses do not impair their credibility, for they refer only to minor matters which do not affect the cause of the prosecution. To be sure, whether Allan was gathering firewood or not, or whether Mateo Guañizo was fetched in his house or not, are facts that do not touch upon the crux of the crime. We have held time and again that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen the witnesses' credibility because they discount the possibility of their being rehearsed.[12]

Against the overwhelming evidence of the prosecution, appellant only raised the defense of denial. It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Between the categorical and positive assertions of the prosecution witnesses and the negative averments of the accused which are uncorroborated by reliable and independent evidence, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[13]

Therefore, we affirm the trial court's finding that appellant was guilty beyond reasonable doubt of two counts of statutory rape, as well as its imposition of the penalty of reclusion perpetua for both counts. Although appellant is the common-law spouse of the mother of the victim, which is a special qualifying circumstance in rape which would have warranted the death penalty,[14] this fact was not alleged in the informations. The special circumstances of minority of the victim and relationship to the accused are in the nature of qualifying circumstances. These must be jointly alleged in the information in order to afford the accused his right to be informed of the nature and cause of the accusation against him.[15]

In the case at bar, what appears in the informations is that the victim is the step-daughter of appellant. This, however, was erroneous. A stepdaughter is the daughter of one's spouse by a previous marriage, or the daughter of one of the spouses by a previous marriage.[16] For accused-appellant to be considered the stepfather of the complainant, he must be legally married to complainant's mother. However, appellant and the victim's mother were not legally married; they lived only in common-law relation.[17]

Hence, appellant can only be convicted of simple statutory rape, as defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, to wit:

Article 266-A. Rape, When and How Committed. – Rape is committed –

1)

By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a)

Through force, threat, or intimidation;

b)

When the offended party is deprived of reason or otherwise unconscious;

c)

By means of fraudulent machination or grave abuse of discretion; and

d)

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. xxx. (underscoring ours)

Article 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua. xxx.

We likewise affirm the trial court's award of moral damages to the victim in the amount of P100,000.00, or P50,000.00 for each of the two counts of statutory rape, in accordance with recent case law.[18] However, consistent with current jurisprudence which mandates that civil indemnity ex delicto shall be awarded upon the finding of rape, appellant must be ordered to pay the victim the amount of P100,000.00, or P50,000.00 for each count of rape.[19]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65, in Criminal Cases Nos. 99-329 and 99-330, finding appellant Benjamin Hilet y Mercadejas guilty beyond reasonable doubt of two counts of statutory rape and sentencing him to suffer the penalty of reclusion perpetua in each case, and to pay the victim, Richelle J. Cosada, the total amount of P100,000.00 as moral damages for the two counts of rape, is **AFFIRMED** with the **MODIFICATION** that appellant is further ordered to pay the victim the total amount of P100,000.00 as civil indemnity for the two counts of rape.

Costs de officio.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

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[1] Penned by Judge Adolfo G. Fajardo.

[2] Rollo, p. 8.

[3] Id., p. 10.

[4] Id., p. 36.

[5] Id., pp. 50-51.

[6] People v. Espejon, G.R. No 134767, 20 February 2002.

[7] G.R. No. 142566, 8 August 2002.

[8] People v. Edem, G.R. No. 130970, 27 February 2002.

[9] People v. Cana, G.R. No. 139229, 22 April 2002.

[10] People v. Lachica, G.R. No. 143677, 9 May 2002.

[11] People v. Anggit, G.R. No. 133582, 27 September 2002.

[12] People v. Givera, G.R. No. 132159, 18 January 2001, 349 SCRA 513, 530.

[13] People v. Baroy, G.R. Nos. 137520-22, 9 May 2002.

[14] Art. 266-B. Penalties: xxx.

The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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. xxx.

[15] People v. Lavador, G.R. Nos. 139112-13, 20 February 2002.

[16] People v. Brigildo, G.R. No. 124129, 28 January 2000.

[17] People v. Baring, G.R. Nos. 130515 & 147090, 14 March 2001, 354 SCRA 371, 384.

[18] People v. Capili, G.R. No. 142747, 12 March 2002.

[19] People v. Solomon, G.R. Nos. 130517-21, 16 July 2002.

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