

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TORIBIO GALIDO Y DE LA CRUZ, APPELLANT.

G.R. Nos. 148689-92. March 30, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

An information that fails to allege the use of force and intimidation in a rape case is cured by the failure of the accused to question before the trial court the sufficiency of that information; by the allegation in the original complaint that the accused is being charged with rape through force and intimidation; and by unobjected competent evidence proving that the rape was indeed committed through such means.

Statement of the Case

Toribio Galido appeals the April 20, 2001 Decision[1] of the Regional Trial Court (RTC) of Sorsogon, Sorsogon (Branch 53), in Criminal Case Nos. 96-4254, 96-4255, 96-4256 and 96-4257, convicting him of three counts of rape and one count of light threats. The dispositive portion of the assailed Decision reads as follows:

“WHEREFORE, by reason of the foregoing premises, judgment is hereby rendered against Toribio Galido y de la Cruz:

- Imposing the penalty of three (3) terms of reclusion perpetua – one for each of the three (3) counts of rape;
- Imposing the penalty of thirty (30) days of arresto menor for light threats;
- To pay Mary Grace Jamisola P150,000.00 for civil indemnity and another P150,000.00 as moral damages for the three (3) counts of rape at P50,000.00 for each count in the two (2) categories of damages; and
- To pay the cost.”[2]

Four separate Informations,[3] all dated September 11, 1996, charged appellant as follows:

Criminal Case No. 96-4254

“That on or about the 24th day of April, 1994 at Barangay Basud, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one Grace B. Jamisola, 14 years old, against her will and without her consent, to her damage and prejudice.”[4]

Criminal Case No. 96-4255

“That on or about the 7[th] day of January, 1996 at Barangay Basud, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one Grace B. Jamisola, 14 years old, against her will and without her consent, to her damage and prejudice.”[5]

Criminal Case No. 96-4256

“That on or about the 16[th] day of May, 1996 at Barangay Barayong, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, with lewd design, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with one Grace B. Jamisola, 14 years old, against her will and without her consent, to her damage and prejudice.”[6]

Criminal Case No. 96-4257

“That on or about the 8[th] day of August, 1996 at Barangay Basud, Municipality of Sorsogon, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously, by means of force, threat and intimidation, with lewd design, commence the commission of Rape, directly by overt acts of embracing and kissing one Grace Jamisola, with the intent of having carnal knowledge of her, and if the accused did not accomplish his purpose, that is, to have carnal knowledge of the said Grace Jamisola, it was not because of his own voluntary desistance but because the said offended party succeeded in resisting the criminal attempt of the said accused and because of the opportune discovery and presence of the members of the family of the offended party, to her damage and prejudice.”[7]

During his arraignment on December 17, 1996, appellant, assisted by his counsel,[8] pled not guilty to the charges.[9] After a joint trial of the cases, the lower court rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“In 1994, the victim, Mary Grace [Jamisola], was a twelve (12) year old Grade 6 student of Basud Elementary School who lived with her adoptive mother and the latter’s daughters in a one-room dwelling in Barangay Basud, Sorsogon, Sorsogon. Appellant lived six to seven meters away from the place where Grace lived.

“On April 24, 1994, around 11:30 in the morning, Mary Grace was alone in their house. She took a bath in the bathroom located adjacent to their house. She was still wrapped in a towel when she re-entered their abode. To her utter surprise, appellant who seemed drunk appeared inside their home. She asked him what he was doing there. Appellant did not answer instead he forcibly took her hand and pulled her. She screamed. Appellant then brought out a bladed weapon and poked it at her mouth. Without removing the weapon from her mouth, he then took off his shirt and tied it around her mouth and with another shirt tied her hands behind her back. Thereafter, appellant lowered down his shorts. She was able to escape briefly but he chased and boxed her. Grace kept on kicking him but appellant managed to force her to lie on the floor. Soon afterward, appellant laid on top of her and succeeded in having sexual knowledge of her. Grace cried in pain. Afterwards, appellant put on his clothes and left.

“On January 7, 1996, around one o’clock in the afternoon, Grace was again alone in their house. She had just taken a bath when appellant suddenly entered their home. Grace recalled what happened to her before and began to be afraid. She raised her right hand and pleaded to appellant not to abuse her again. She could not shout because he already poked a bladed instrument on her chest. Before long, appellant pushed her against the concrete wall of their house, which weakened her. He commanded her to lie on the floor. Thereafter, he pulled down his shorts, removed her panties and placed himself on top of her. He inserted his organ inside hers. Afterwards, he left. When Grace looked down, she saw blood on the floor which she supposed came from her.

“In yet another fateful day on May 16, 1996, around twelve thirty in the afternoon, Grace was on her way home from a barrio fiesta in Barangay Barayong, Sorsogon, Sorsogon. She was walking through an

infrequently traversed trail in the woods when she heard a tree branch snap. When she turned around, she saw appellant more or less eight (8) meters behind her. Grace ran uphill while shouting for help but to no avail. Appellant overtook her, grabbed her hands and pulled her hair. They both tumbled downhill but he chased her still and even boxed her on her shoulder. He then pulled out his knife and ordered her to lie on the grass. He covered her mouth, tied her up and undressed her. After undressing himself, appellant ravished the 14-year-old Grace again.

“In all three x x x occasions of sexual molestations, appellant threatened Grace not to tell anybody of the rape incidents or else he would kill her and her family. She frightfully complied.

“On August 8, 1996, around eleven o’clock in the evening, Grace, together with her two elder sisters, was sleeping inside their houses. Their mother was away for work. Grace was awakened when appellant covered her mouth with a shirt. He then poked a knife at her as he was undressing her. She tried to kick appellant but instead she hit her sister Rosalie. The latter woke up and when she beamed a flashlight on Grace she saw appellant poking a bladed weapon on Grace who was crying. Appellant immediately left. Grace was reduced to tears.

“The following day, August 9, 1996, around six o’clock in the evening, the victim’s mother, Remedios Juntalan Estiola, arrived home from work. One of the victim’s sisters, Rosalie, related to her the incident. She then summoned the victim who confirmed the tale. The victim likewise narrated that she was sexually abused since she was twelve. The victim and her mother then proceeded to the barangay captain who advised her to return the following morning and report the matter to the police authorities.

“The next morning, the victim went to the police station and executed a sworn statement. A criminal complaint was then formally filed.

“Afterwards, on August 15, 1996, the victim and her mother went to the Municipal Health Officer of Sorsogon, Dr. Liduvina Dorion, who conducted a physical and mental examination on the victim for which she issued two (2) Medical Certificates. The medical findings stated therein, in part, as explained by Dr. Liduvina Dorion on direct examination, were as follows: ‘Pelvic Examination—wide flourchet in [the area of the] developing [vulva] x x x; moderate pubic hair; IE shows healed lacerations at 6:00 and 10:00 o’clock over the vaginal orifice; easily admits one finger; great difficulty with two. Extremities—no significant findings.’

“The examining physician explained that the finding of ‘wide flourchet’ suggests that the penetration happened several times. The membrane covering the vagina or hymen, which is the first part that is lacerated is already absent. The healed lacerations indicate that they are more [than] two (2) weeks old. She concluded that indeed there was penetration.”[10] (Citations omitted)

Version of the Defense

In his Brief, appellant presents his version of the facts in the following manner:

“Accused Toribio Galido testified that during the farming season, he operated a hand tractor and during the harvest season he operated a thresher. December and January are the farming season. Harvest season is on March, April and May.

“On April 24, 1994 at around 1:00 p.m., he was operating the palay thresher at the place of his godfather. They began working at 7:00 a.m. until 5:00 p.m.

“The fiesta of Rocadel is on April 27, not April 24.

“If you are inside the house of Mary Grace and will shout, it will be heard by the nearest neighbor. There were 3 neighbors’ houses.

“The motive of the private complainant is that before, they requested him to testify on a case of a certain

Junior Jasoro but when he refused, they got angry with him. Junior was convicted of a crime and has already been transferred to the Bilibid Prison. Mary Grace is the complainant in the case against Junior.

“On January 7, 1996 at around 1:00 p.m., he was at the ricefield operating the tractor owned by Tio Lando del Rosario. The ricefield was about 1 and a half kilometers from the house of Mary Grace. He was with Otoy, his godbrother.

“He started working at around 5:00 a.m., and finished at 4:00 p.m. He took his lunch in the center of the ricefield.

“On May 16, 1996 at around 12:30 p.m., he was threshing the palay. This was the barangay fiesta at Barangay Bayoyong. He did not go to the fiesta because they were threshing the palay.

“They began their work at 7:00 a.m., at the home of Padrino Juanito. They finished at 4:00 p.m.

“It is not true that his son accompanied Grace because of the fact that they are angry with him for his refusal to testify against accused Junior.

“He denied that on August 8, 1996 at around 11:00 p.m., he tried to rape Mary Grace. How can he do that when Grace had companions inside the house. He was also sleeping at the time.

“Edgar Bonos testified that he was a barangay captain. He knows Brgy. Pocdol. April 27 is their barangay fiesta.”[11]

The Trial Court’s Ruling

The RTC gave full credence to the clear and positive testimony of private complainant. It found the “responses of x x x Grace during both her direct and cross testimon[ies] x x x prompt, direct to the point, simple and forthright. x x x. In fact, her responses during the cross examination tended to improve her recollection of her harrowing experience from the beastly acts of the accused. These characteristics of her testimony, to the mind of the court, are badges of truth.”[12]

The trial court rejected the defense of alibi proffered by appellant and observed that it was not physically impossible for him to be at the locus criminis when the alleged crimes were committed.[13]

As regards the charge of attempted rape, however, the trial court found that the prosecution “only proved beyond reasonable doubt the overt acts that the accused covered the mouth of the victim and poked a knife on her and was not able to proceed further. [Thus], the offense he committed is only light threats under Article 285 paragraph 1 of the Revised Penal Code x x x.”[14]

Hence, this appeal.[15]

The Issues

In his Brief, appellant submits the following assignment of errors for our consideration:

“I.

“The trial court gravely erred in finding the accused guilty beyond reasonable doubt of the crime of rape (3x) committed through force and intimidation under a fatally defective information.

“II.

“The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape (3x) notwithstanding the private complainant’s testimony was not credible or convincing.”[16]

The Court's Ruling

The appeal is devoid of merit.

First Issue:

Defective Information

Appellant avers that because the Informations on which he was arraigned and convicted did not allege the element of force or intimidation, he was deprived of his constitutional right to be informed of the nature and cause of the accusation against him. He insists that such failure was a fatal defect that rendered the Informations void.

As a rule, the accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information.[17] Otherwise, their constitutional right to be informed of the nature and cause of the accusation against them would be violated.[18]

In the present case, appellant correctly pointed out that the element of “force or intimidation” should have been expressly alleged in the Informations. This omission is not[19] fatal, however, because the Complaint[20] specifically accused him of three counts of rape committed by means of force and intimidation, as follows:

“That on or about the 24[th] day of April 1994, 7[th] day of January 1996 and 16[th] day of May 1996, at Bgy Basud and Barayong, in the [M]unicipality of Sorsogon, [P]rovince of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd desire, by means of force and intimidation, willfully, unlawfully and feloniously, did, then and there, have x x x carnal knowledge against GRACE B. JAMISOLA, adopted child of the undersigned Offended Party, a girl below 18 years of age, against the victim[’s] will.”

In *People v. Mendez*,[21] the Information against the accused therein also failed to state that the victim had been raped “through force or intimidation.” The former questioned the defective Information and claimed that he “cannot be validly convicted in an indictment that does not charge an offense.” Ruling squarely on the matter, the Court said:

“As correctly pointed out by ROSENDO, the information or complaint for rape should expressly allege the commission of the rape in the manner prescribed in Article 335. Hence, in the case of *People v. Oso* the allegation in the complaint that the accused had carnal intercourse with the offended woman ‘against her will’ or ‘without her consent’ is insufficient to warrant a conviction for rape, although the evidence proves the commission of the crime. However, in this case, the complaint filed by VIRGINITA expressly alleges that the rape was committed ‘by means of force,’ viz.:

x x x x x x x x

“What we have here is a complaint specifically accusing ROSENDO of rape committed ‘by means of force’ and an information that failed to allege this essential element. x x x The failure of the information to state that ROSENDO raped VIRGINITA ‘through force or intimidation’ is not a fatal omission in this case because the complaint alleged the ultimate fact that ROSENDO raped VIRGINITA ‘by means of force.’ So, at the outset, ROSENDO could have readily ascertained that he was being accused of rape committed through force, a charge that sufficiently complies with Article 335.”[22]

In the present case, appellant was informed at the outset that he was being charged with rape through force and intimidation. All the elements of the crime were sufficiently alleged in the Complaint, copies of which were given to him and attached to the records. The Complaint sufficiently supplied the deficiency of the Information as regards the particulars of the rape charge.

Furthermore, in *People v. Palarca*,[23] the Court held that the evidence presented during trial cured the failure of

the Information to allege specifically that the rape had been committed through force or intimidation.[24] Thus, the Court said:

“While the accusatory portion of the information failed to specifically allege that the rape was committed through force or intimidation, the prosecution was able to establish by evidence that accused-appellant was guilty of rape as defined under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended. x x x.

“In any event, accused-appellant failed to interpose any objection to the presentation by the prosecution of evidence which tended to prove that he committed the rape by force and intimidation. While generally an accused cannot be convicted of an offense that is not clearly charged in the complaint or information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused-appellant. x x x.”[25]

This ruling was recently reiterated in *People v. Torellos*.^[26] The Information therein, which had failed to allege that the rape had been committed through force and intimidation, was considered by the Court as merely defective. It ruled that the deficiency was cured by the failure of the accused to object to the sufficiency of the Information and by competent evidence presented during trial.

In the present case, the sufficiency of the Information’s was never questioned by appellant during trial. Neither did he object to the prosecution’s presentation and offer of evidence of force and intimidation. That evidence, which is now extant in the records, cured the defect of the Informations. Hence, he cannot now assail those Informations or claim a violation of his right to be informed of the nature and cause of the accusation against him.

Second Issue:

Credibility of Private Complainant

Appellant questions the identical narration by private complainant of the first two alleged occasions of rape. He casts doubt on her credibility, claiming that she gave her testimony in a mechanical and scripted manner.

We are not persuaded. In assessing the credibility of witnesses, we are guided by the following principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) one who testifies in a clear, positive and convincing manner and remains consistent during cross-examination is a credible witness.^[27]

After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we find no cogent reason to overturn the factual findings of the lower court. A careful scrutiny of the records and the transcripts shows that the RTC had ample opportunity to assess the credibility of private complainant. She narrated how appellant had overpowered her into submitting to his desires in this wise:

On the incident of April 24, 1994:

“Q:

What was he carrying when he held you and placed you on his lap?

A:

He was armed by a dagger.

Q:

What happened next after that?

A:

He tied me and placed a T-shirt on my mouth.

Q:

What did you do when your hands were tied and your mouth was covered?

A:

I kept on kicking him.

Q:

After you kicked him, what happened next?

A:

I was able to free from him but he was able to overtake me and boxed me.

Q:

What happened to you when you were boxed by him?

A:

I felt weak and commanded me to lie on a floor.

Q:

What happened after that?

A

He removed his clothes and placed himself on top of me.

Q:

When he placed himself on top of you, what did he do next?

A:

He inserted his organ into mine.”[28]

On the January 7, 1996, incident:

“Q:

When he closed the door of your house, what did you do next?

A:

He pushed me and tied my hands and placed a cover on my mouth.

Q:

When he did that to you, did you not shout?

A:

I could not shout, there was an object placed on my mouth and he kept on threatening me with a knife.

Q:

What did you do next when he was covering your mouth and threatening you with a knife?

A: He pushed me on the concrete wall of our house.

x x x x x x x x

Q:

After that, what happened next?

A:

He ordered me to lie on the floor.

x x x x x x x x

Q:

After he removed his shirt, what happened next?

A:

He placed himself on top of me.

Q:

When he placed [himself] on top of you, what did he do next?

A:

He placed his organ on my organ.”[29]

On the incident of May 16, 1996:

“Q:

What happened when he pulled his knife and kept on twirling it?

A:

He pulled me towards the woods.

Q:

When he pulled you towards the woods, what happened next?

A:

At the woods, he ordered me to lie on a grassy portion.

Q:

What happened when you were on that position?

A:

He covered my mouth.

Q:

After he covered your mouth, what did he do next?

A:

He tied me.

Q:

Then, what happened after that?

A:

He undress[ed] me after that.

Q:

When you were already undressed, what did he do next?

A:

He also undress[ed] himself?

Q:

After he undressed himself, what did he do?

A:

He mounted on me and placed his organ inside mine.”[30]

It is not necessary that the force or intimidation employed in committing rape be so great or of such character as could not be resisted. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind.[31] By itself, the act of holding a knife is strongly suggestive of force or at least of intimidation. In the present case, threatening private complainant with a knife was sufficient to bring her into submission.[32]

Her seemingly identical narrations of the first two rapes does not detract from her credibility. Verily, the trial court was correct in its observation that the cross-examination, to which she was subjected, even tended to improve her recollection of the rape incidents.

Moreover, her testimony is supported by the findings of the medicolegal expert.[33] The Medical Certificates show that the victim had healed lacerations at the five o'clock and the seven o'clock positions of her vaginal orifice. This finding is consistent with penile invasion.[34] A rape victim's account is sufficient to support a conviction for rape if it is straightforward, candid and corroborated by the medical findings of the examining physician, as in the present case.[35]

Time and time again, we have said that a rape victim --especially one of tender age -- would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished.[36] Thus, when a woman -- more so if she is a minor -- says that she has been raped, she says in effect all that is necessary to show that rape was committed. And as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone.[37]

WHEREFORE, the appeal is DENIED and the RTC Decision AFFIRMED. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 22-34. Penned by Judge Boanerges C. Candolea.

[2] RTC Decision, p. 13; rollo, p. 34.

[3] Signed by Assistant Provincial Prosecutor Amado D. Dimaano and approved by Provincial Prosecutor Jose L. Madrid.

[4] Rollo, p. 8.

[5] Id., p. 10.

[6] Id., p. 12.

[7] RTC Decision, p. 2; rollo, p. 23.

[8] A certain Atty. Laguna, whose first name does not appear in the records.

[9] See Order dated December 17, 1996; records, p. 26.

[10] Appellee's Brief, pp. 5-10; rollo, pp. 122-127.

[11] Appellant's Brief, pp. 8-9; id., pp. 68-69.

[12] RTC Judgment, p. 9; id., p. 30.

[13] Id., pp. 11 & 32.

[14] Id., pp. 12 & 33.

[15] This case was deemed submitted for resolution on February 20, 2003, upon this Court's receipt of appellant's Reply Brief, signed by Attorneys Amelia C. Garchitorea and Teresita S. de Guzman of the Public Attorney's Office (PAO). Appellee's Brief -- signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitors General Carlos N. Ortega and Josefina C. Castillo, and Associate Solicitor Catherine Joy R. Mallari -- was received by the Court on December 23, 2002. Appellant's Brief was filed on August 16, 2002.

[16] Appellant's Brief, p. 1; rollo, p. 61. Original in upper case.

[17] *People v. Lopez*, 346 SCRA 469, November 29, 2000; *People v. Larena*, 309 SCRA 305, June 29, 1999.

[18] *Ibid.*

[19] *People v. Mendez*, 335 SCRA 147, 154, July 5, 2000.

[20] Records, p. 1.

[21] *Supra* at 19.

[22] Id., pp. 153-154, per Gonzaga-Reyes, J.

[23] 382 SCRA 741, May 29, 2002.

[24] See also *People v. Villamor*, 297 SCRA 262, October 7, 1998.

[25] Id., pp. 747-748, per Ynares-Santiago, J.

[26] GR No. 143084, April 1, 2003.

[27] *People v. Santos*, 394 SCRA 113, December 17, 2002; citing *People v. Penaso*, 383 Phil. 200, February 23, 2000.

[28] TSN, June 1, 1998, pp. 5-6.

[29] Id., pp. 8-9.

[30] Id., pp. 11-12.

[31] *People v. Alfeche*, 355 Phil. 776, August 17, 1998; *People v. Marabillas*, 362 Phil. 688, February 18, 1999; *People v. Cesista*, 386 SCRA 233, August 6, 2002.

[32] *People v. Tolentino*, 352 SCRA 228, February 19, 2001; *People v. De la Peña*, 354 SCRA 186, March 12, 2001.

[33] Dr. Liduvina Dorion.

[34] TSN, May 19, 1997, p. 7.

[35] *People v. Gabawa*, GR No. 139833, February 28, 2003; *People v. Cañaveral*, 386 SCRA 54, August 1, 2002; *People v. Arillas*, 389 Phil. 284, June 19, 2000.

[36] *People v. Ramirez*, 334 Phil. 305, January 20, 1997; *People v. Mendoza*, 392 SCRA 667, November 26, 2002; *People v. Plurad*, 393 SCRA 306, December 3, 2002.

[37] *People v. Mendoza*, *supra*.

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