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[G.R. No. 128888, December 03, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHARITO ISUG MAGBANUA, ACCUSED-APPELLANT.

D E C I S I O N

KAPUNAN, J.:

Before the Court for automatic review is the decision[1] rendered by the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46,[2] in Criminal Case No. R-3996, finding accused-appellant Charito Isug Magbanua guilty of the crime of rape against his own daughter and sentencing him to suffer the supreme penalty of death and to indemnify the victim in the amount of P50,000.00 as damages.

In an Information filed on 29 May 1996, Charito Magbanua was charged with the crime of rape allegedly committed as follows:

> That sometimes (sic) on (sic) the year 1991 and the days thereafter, in Barangay Pawican, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Poblica Magbanua, against her will and consent.
>
> CONTRARY TO LAW.[3]

Upon his arraignment on 23 July 1996, appellant entered a plea of "NOT GUILTY."[4] Thereafter, trial on the merits ensued.

The prosecution presented three witnesses, namely: Poblica Magbanua, the complaining witness; Leonilo Magbanua, the uncle of Poblica and older brother of appellant; and Dra. Arlene Sy, the physician who examined Poblica and issued the medical certificate.

The evidence for the prosecution is detailed as follows:

Poblica Magbanua, the complaining witness, is the eldest among the seven (7) children of appellant with his wife, Aniceta Magbanua.[5] She was eighteen (18) years old, single, jobless and a resident of Ilin, San Jose, Occidental Mindoro, at the time of the trial.

Poblica testified that in the year 1991, when she was barely thirteen (13) years old and not yet having her menstrual period, she was sexually abused by appellant, her own father.[6] It was around noon when appellant first molested her. She averred that appellant approached her and poked a knife at her.[7] Appellant then removed

her panty and laid her down. Thereafter, he took off his own underwear and placed himself on top of Poblica. He directed his penis towards her vagina and pushed up and down.[8] Poblica felt appellant's penis enter her vagina.[9] During the sexual encounter, she experienced pain in her vagina. Unable to resist appellant because the knife was constantly pointed at her, she could only cry. After the sexual intercourse, appellant warned Poblica not to tell anyone about what happened. Appellant then dressed up while Poblica put on her underwear. She then noticed that blood oozed from her vagina.[10] She narrated that her defilement did not end there. Since then until 1995, appellant continuously abused her several times a month.[11] The sexual assaults usually took place at noontime when she was left alone with appellant while her mother went to town to buy their basic needs and while her brother and sisters were at the house of their grandmother which was quite far from their house.

As a result of the frequent sexual violations, Poblica became pregnant. She gave birth to a baby boy on 15 November 1995[12] at the house of her grandmother where she temporarily transferred. She named the child Roger Roldan Magbanua and registered his birth with the local civil registry without stating the name of the natural father in the certificate of birth.[13] When asked about the identity of the father of the child, Poblica categorically answered that it was appellant who sired the baby. She explained that appellant fathered the child since he was the one who abused her from 1991 until she became pregnant.[14]

According to Poblica, she did not report the rape incidents to her mother because appellant threatened to kill her.[15] When her mother noticed her pregnancy and asked her about the supposed father, she did not tell her that it was appellant who authored her pregnancy. Instead, as suggested by appellant, she named one Ricky Pacaul as the one who impregnated her. However, later on, she claimed that she does not know any person by that name.[16]

Three months after she gave birth, she went to live with her Uncle Leonilo and his wife at Malvar Street, San Jose, Occidental Mindoro. She stayed with them and did not return any more to their residence at Pawican. While there, she disclosed to her aunt the harrowing experience she had in the hands of her father. Her uncle learned about her story and assisted her in filing the complaint for rape against appellant. She went to the police station where she voluntarily executed a "Sinumpaang Salaysay"[17] before SPO2 Resurrecion Atlas concerning the rape incidents.[18]

Prosecution witness Dr. Arlene S. Sy, Rural Helath Physician of San Jose, Occidental Mindoro, testified that she examined Poblica on 20 February 1996.[19] In the course of her physical examination of Poblica, she made the following findings:

P.E.:
Vagina admits 2-3 fingers
Hymen not intact, with cervicitis

Grms. Staining: with pus cells
RBC moderate
Negative to spermatozoa.[20]

Dr. Sy explained that Poblica's vagina admits two (2) to three (3) fingers with less degree of resistance because its orifice was already wide and elastic as a result of the entry of a foreign object.[21] At the time of the examination, Poblica's hymen was no longer intact and based on the cervical discharge she collected from the patient, it showed signs of cervicitis, an infection of the cervix.[22] According to Dr. Sy, cervicitis could have been sustained from the delivery of the child. When asked by the trial court to clarify this point, she averred that cervicitis may also be contracted through sexual intercourse with a man having a venereal disease. However, she did not negate the possibility that cervicitis could also result from the delivery of a child and by the poor hygiene of the patient.

The last witness presented by the prosecution was Leonilo Magbanua. Leonilo testified that sometime in November 1995, his mother, Perpetua Magbanua informed him about the pregnancy of Poblica. Perpetua then requested him to convince Poblica to stay with him so that he would be in the position to elicit from her the identity of the person who caused her pregnancy. Leonilo agreed and talked with his niece who had then a three (3) month old son. Poblica acceded and stayed with Leonilo and his wife at Malvar Street, San Jose, Occidental Mindoro. While he was away at work in his store Poblica related to his wife that it was appellant who sired her child.[23] Upon learning this, he immediately summoned appellant to discuss the matter with him. However, appellant did not heed his invitation. Thereupon, he asked Poblica if she would like to file a complaint against his father. Poblica answered in the affirmative. He then assisted her in filing a complaint for rape against appellant. He, likewise, executed a "Sinumpaang Salaysay"[24] to the effect that Poblica told him that she was raped by her father.[25] During the cross-examination, he declared that he bore no grudge against appellant.

On the other hand, the defense presented only one witness, the appellant himself. On the witness stand, appellant admitted that Poblica is his daughter, the latter being the eldest among his seven children.[26] However, he denied raping Poblica.[27] He pinned the commission of the crime on someone else. He claimed that, at one time, Poblica told him that it was a certain Ricky Pacaul who molested her.[28] He, likewise, disputed the allegation that he caused Poblica's pregnancy. Again he pointed to Ricky Pacaul as the culprit. However, appellant could not recall the time when Poblica allegedly revealed to him the identity of her aggressor. When subjected to cross-examination, he stated that he does not know any Ricky Pacaul.[29] He likewise admitted that despite the information he received regarding the identity of the person who allegedly molested her daughter, he did not find it necessary to locate him since they had no money to spend on the search for his whereabouts. He also did not attempt to investigate nor file a complaint against Ricky Pacaul. Finally, he alleged that he does not know of any reason why Poblica and his brother Leonilo testified against him and pointed to him as the perpetrator of the offense.[30] The defense tried to present appellant's wife and mother of Poblica, Aniceta Magbanua, but she refused to testify in appellant's favor.

After hearing the evidence from both sides, the trial court was convinced that appellant was guilty of the crime charged. The trial court believed the testimony of Poblica who positively identified appellant as the author of the sexual attack. The lower court rationalized that no daughter in her right mind would fabricate a rape charge against her own father unless the same had actually been committed. The

lower court opined that Poblica, being unschooled and illiterate, could not be sophisticated enough to ascribe such a heinous crime against appellant. The trial court also noted that Poblica had no axe to grind against him and, in fact, was only nobly motivated to tell her story in order to protect her younger female siblings from possible abuse from their father. Thus, in a Decision, dated 27 February 1997, the trial court convicted appellant of rape and sentenced him to death. The dispositive portion of the trial court's decision reads:

> WHEREFORE, finding the accused Charito Isug Magbanua, guilty beyond reasonable doubt of the crime of rape, described and penalized under Article 335 of the Revised Penal Code and Section 11 of Republic Act No. 7659, otherwise referred to as the Death Penalty Law, this Court hereby sentences him to suffer the capital penalty of DEATH.
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> The accused is ordered to indemnify the offended party, damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).
>
> The accused who is presently detained at the Provincial Jail at Magbay, San Jose, Occidental, Mindoro is ordered immediately transferred to the New Bilibid Prisons, Muntinlupa City.
>
> SO ORDERED.[31]

The above decision is now the subject of the present review.

In his brief, appellant imputes the following errors allegedly committed by the trial court, to wit:

> I
>
> THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE INFORMATION INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS FAILURE TO STATE THE PRECISE DATE OF THE OFFENSE, IT BEING AN ESSENTIAL INGREDIENT OF THE CRIME CHARGED.
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> II
>
> THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON ACCUSED-APPELLANT BY APPLYING RETROACTIVELY REPUBLIC ACT NO. 7659 (DEATH PENALTY LAW).[32]

Appellant faults the trial court in convicting him on the basis of an allegedly insufficient information for its failure to specify the exact dates when the rapes were perpetrated because it merely stated that these rapes were committed "sometimes (sic) on (sic) the year 1991 and the days thereafter." He asserts that since each sexual act is considered a separate crime, each of these acts should have been established as executed on certain dates or times and set forth in the information as such. He further argues that the indefiniteness of the information with respect to time could not have been cured by evidence presented by the prosecution in derogation of his right to be informed of the nature of the crime charged against him. In support of the above arguments, appellant cites the case of *US vs. Dichao*.[33]

Corollary to the first assignment of error, appellant contends that the trial court erred in imposing upon him the penalty of death. Since the information did not state the actual dates when the rapes took place, the sexual attacks on those unspecified dates should not have been considered as included within the coverage of Republic Act No. 7659 or the Death Penalty Law; thus, the Death Penalty Law should not have been applied retroactively in order to encompass the rapes which took place in 1991.

With respect to the allegation of insufficiency of the information, we find the contention devoid 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 date or time of the commission of rape is not a material ingredient of the said crime[34] because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. Infact, the precise time when the rape takes place has no substantial bearing on its commission.[35] As such, the date or time need not be stated with absolute accuracy.[36] It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission. The purpose of the requirement is to give the accused an opportunity to defend himself.

Section 11, Rule 110 of the Rules of Court states thus:

> Section 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 the 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.

Although the information did not state with particularity the dates when the sexual attacks took place, we believe that the allegations therein that the acts were committed "on (sic) the year 1991 and the days thereafter" substantially apprised appellant of the crime he was charged with since all the essential elements of the crime of rape were stated in the information. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the case filed against him. An information can withstand the test of judicial scrutiny as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof.[37]

Nevertheless, appellant insists that on the basis of *US vs. Dichao*, the information should have been considered as fatally defective, hence, void and incapable of supporting a judgment of conviction. The reliance of appellant in *US vs. Dichao* is misplaced. The *dictum* expressed by the Court therein is not applicable to the present case due to the difference in factual scenario. A careful study of the *Dichao* case reveals that what was questioned therein was an order of the trial court sustaining a demurrer to an information on the ground that it failed to substantially conform to the prescribed form when it did not allege the time of the commission of the offense with definiteness. The information therein stated that the sexual intercourse occurred "[o]n or about and during the interval between October, 1910, to August, 1912," which statement of time the Court described as "x x x so indefinite and uncertain that it does not give the accused the information required