

## SECOND DIVISION

[ G.R. No. 174065, February 18, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLY CANARES Y ALMANARES, ACCUSED-APPELLANT.**

### DECISION

**BRION, J.:**

We review in this petition for review on *certiorari*<sup>[1]</sup> the decision (dated May 31, 2006)<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01263 that affirmed with modification the decision (dated March 17, 2003)<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 18, Tagaytay City in Criminal Case No. TG-3255-99. The RTC found the accused-appellant, Rolly Canares y Almanares (*Canares*), guilty beyond reasonable doubt of *statutory rape*.

Canares was charged in two separate Informations for rape and attempted rape in relation with Republic Act No. 7610 (the Child Abuse Law). These Informations respectively state:

Criminal Case No. TG-3255-99

That sometimes (sic) between the year 1992 to 1995 at Barangay Sabutan, Municipality of Silang, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of the victim who was then nine (9) years old, did, then and there, willfully (sic), unlawfully and feloniously, have carnal knowledge of one AAA<sup>[4]</sup>, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.<sup>[5]</sup>

Criminal Case No. SC-3261-00

That on or about the 25<sup>th</sup> day of March, 1999, at Brgy. Sabutan, Municipality of Silang, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs by means of force, violence and intimidation and taking advantage of his superior strength over the person of the victim who was sixteen (16) years old, did, then and there, willfully, unlawfully and feloniously attempt to have carnal knowledge of one AAA, against her will and consent, the above-named accused, having thus commenced the commission of the crime of Rape directly by overt acts but which nevertheless did not produce it by reason of causes other than accused

own spontaneous desistance, that is, by reason of the timely arrival of BBB who hit the head of herein accused with a base (sic) thereby preventing him from further consummating the crime, to the damage and prejudice of said AAA.

CONTRARY TO LAW.<sup>[6]</sup>

Canares, with the assistance of counsel *de oficio*, pleaded not guilty to both charges.<sup>[7]</sup> The trial court ordered a joint trial since the same parties and similar subject matters and antecedent events were involved. At pre-trial, the parties made no admission or stipulation of facts.<sup>[8]</sup> The prosecution marked its documentary evidence with the reservation to present additional evidence in the course of the trial.<sup>[9]</sup> The defense did not mark any documentary evidence.

At the trial proper, the prosecution presented the following as witnesses: AAA (the alleged victim), BBB (the victim's aunt), and Dr. Bernadette Madrid (the Director of the Philippine General Hospital [PGH] Child Protection Unit). The defense relied on the sole testimony of Canares who simply denied any sexual intercourse with AAA.

### **The Background Facts & Developments**

AAA was born on September 8, 1982 and was only about 9 or 10 years old when Canares, a helper in AAA's grandmother's house at Barangay Sabutan, Silang, Cavite, allegedly first sexually abused her. Living with AAA and her grandmother in the house were her uncle and 7 younger cousins. The sexual intercourse took place at around midnight sometime in 1992; AAA could no longer recall the exact date. AAA and her cousins were then the only occupants in their grandmother's house and were in bed sleeping. AAA awoke and found Canares lying beside them. Canares undressed her, removed her shorts and panty, and then had sexual intercourse with her by inserting his penis into her genital organ. AAA felt pain and bled but kept the incident to herself because Canares threatened to kill her.<sup>[10]</sup>

Canares allegedly repeated the sexual abuse more than ten times between the first incident in 1992 and 1995. He stopped from 1996-1999.<sup>[11]</sup> AAA attributed the gap to the lack of opportunity on Canares' part; her uncle was then always at home.<sup>[12]</sup> Canares also began working as a tricycle driver and subsequently went to the province where he temporarily stayed.<sup>[13]</sup> Except for the sexual abuse in 1992, AAA could no longer remember the details of the other incidents. She was certain, however, that there was penile penetration in every incident.<sup>[14]</sup>

The last incident that immediately gave rise to the present charges occurred on March 25, 1999. AAA met Canares at the stairs of her grandmother's house as Canares was on his way to the *bodega* of the house which he used as his sleeping quarters. He told AAA that he had something to tell her and pulled her towards the *bodega*. Inside, Canares embraced her and pulled down her shorts. AAA resisted and pushed against Canares as she also shouted for help. BBB - AAA's aunt - came to her rescue and hit Canares on the head with a flower vase.<sup>[15]</sup> Triggered by this incident, AAA disclosed to her mother and relatives the sexual abuse she had long suffered in the hands of Canares.<sup>[16]</sup>

On March 26, 2000, AAA went to the PGH Child Protection Unit for medical examination. The findings showed that she had a healed laceration at the 6:00 position of her hymen *indicating previous penetration*.<sup>[17]</sup> On March 27, 2000, AAA and BBB executed their respective *Sinumpaang Salaysay* about Canares' sexual abuses before the police authorities. After the Joint Preliminary Examination conducted before the Municipal Circuit Trial Court of Silang-Amadeo, Cavite on April 26, 1999, AAA lodged a formal complaint for rape and attempted rape against Canares.<sup>[18]</sup>

Canares denied the accusations against him.<sup>[19]</sup> He claimed that the charges were filed against him at the instance of AAA's grandmother and uncle because of the nonpayment of his salary as a farm hand and as a tricycle driver. AAA's uncle also allegedly failed to pay him a previous loan of P10,000.<sup>[20]</sup> He also claimed that it was impossible for him to rape AAA because she came to live at her grandmother's house only in 1997.<sup>[21]</sup> He argued that the rape could not have possibly occurred considering the number of people staying in the house; a shout from someone being assaulted could easily be heard in the house.<sup>[22]</sup>

The RTC gave greater credence to the prosecution's evidence, particularly, the testimony of AAA which it found to be straightforward, truthful, and convincing.<sup>[23]</sup> The trial court observed that AAA's young age and gender rendered it unlikely that she would concoct a story of defloration that would subject her to public trial and ridicule.<sup>[24]</sup> At the same time, the RTC rejected Canares' unsubstantiated denial and held that it cannot prevail over credible positive testimony.<sup>[25]</sup> The dispositive portion of the RTC decision reads:

WHEREFORE, finding the guilt of the accused ROLLY CANARES Y ALMARANES to be beyond reasonable doubt, the Court hereby sentences him to suffer imprisonment of RECLUSION PERPETUA. Accused is also ordered to indemnify the victim Catherine Amodente the sum of Php100,000.00 as moral damages. Costs against the accused.

SO ORDERED.<sup>[26]</sup>

The RTC acquitted Canares of the crime of attempted rape for the prosecution's failure to establish his guilt beyond reasonable doubt:

...From the preponderance of evidence presented, the prosecution failed to prove the guilt of the accused in this case beyond reasonable doubt. The court therefore ACQUITS the accused Rolly Canares of the crime of "Attempted Rape" and the case against him is DISMISSED.<sup>[27]</sup>

The CA affirmed with modification Canares' rape conviction, ruling as follows:<sup>[28]</sup>

**WHEREFORE**, the assailed Decision dated March 17, 2003 of the RTC, Branch 18, Tagaytay City, in Criminal Case No. TG-3255-99, is **AFFIRMED** with **MODIFICATION**, by reducing the award of moral damages from Php 100,000.00 to Php 50,000.00, and ordering the accused-appellant to pay AAA the amount of Php 50,000.00 as civil indemnity, in addition to moral damages.

SO ORDERED.<sup>[29]</sup>

In his Appeal Brief,<sup>[30]</sup> Canares raises the lone issue:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.

Canares contends that he should not have been convicted of rape because the Information was defective: it failed to specify with certainty when the alleged rape was committed. He argues that the allegation that the rape was committed "sometime between the year 1992 to 1995" is very broad, considering particularly AAA's testimony that she was raped more than 10 times. He posits that since the specific incident of rape for which he was convicted is uncertain, the doubt should be resolved in favor of his acquittal.

In their Brief,<sup>[31]</sup> the People maintain that Canares' rape conviction is backed by the evidence on record. The argument that the Information was defective should also fail because the allegation of the exact date and time of the rape is not a material point in charging the accused of rape. In any case, this alleged defect was cured when AAA testified that Canares raped her "in one evening of 1992."<sup>[32]</sup>

### **The Court's Ruling**

We find no reason to overturn the conviction of Canares and hereby confirm his guilt for the crime of statutory rape committed against AAA sometime in 1992.

### **The Procedural Issue**

The argument that the Information in Criminal Case No. TG-3255-99 is defective for the prosecution's failure to allege the date and time of the rape is far from novel. We have repeatedly met and debunked this line of argument in rape cases.

An information, under Section 6, Rule 110 of the 2000 Revised Rules on Criminal Procedure, is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the *approximate date* of the commission of the offense; and the place where the offense was committed. Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed except when the date of commission is a material element of the offense. The offense may thus be alleged to have been committed on a date as near as possible to the actual date of its commission. At the minimum, an indictment must contain all the essential elements of the offense charged to enable the accused to properly meet the charge and duly prepare for his defense.<sup>[33]</sup>

Following these principles, we held in *People v. Bugayong*<sup>[34]</sup> that when the time given in the information is not the essence of the offense, such time does not need to be proven as alleged; the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations

and before the commencement of the action. We again emphasized this doctrine in the case of *People v. Rafon*,<sup>[35]</sup> when we held it unnecessary to state in the information the precise date when the offense was committed, except when it is an essential element of the offense.

*People v. Lizada*,<sup>[36]</sup> specifically involving the charge of rape, followed the above general principle; we stated that an information for rape is not rendered defective for failure to specify the exact date when the rape was committed. The reason for this is plain: the precise date of the commission of the rape is not an essential element of the crime.<sup>[37]</sup> **The gravamen of the crime of rape is carnal knowledge of the woman under any of the circumstances provided by law.**<sup>[38]</sup>

Thus, we have ruled that allegations of rape in the information committed, "sometime in the year 1991 and the days thereafter,"<sup>[39]</sup> "on or about and sometime in the year 1988,"<sup>[40]</sup> or "from November 1990 up to July 21, 1994,"<sup>[41]</sup> "sometime in the year 1982 and dates subsequent thereto," and "sometime in the year 1995 and subsequent thereto,"<sup>[42]</sup> all constitute sufficient compliance with Section 11 of Rule 110. In *People v. Salalima*, we also ruled that the allegation that the sexual assaults were committed, "sometime during the month of March 1996 or thereabout," or "sometime during the month of April 1996 or thereabout," and also, "sometime during the month of May 1996 or thereabout" substantially informed the accused of the crimes charged since all the elements of rape were stated in the informations.<sup>[43]</sup>

The situation in the present case can be directly compared with *People v. Bugayong*<sup>[44]</sup> where the information charged that the accused committed multiple rapes "before and until October 15, 1994." We found this allegation sufficient to convict the accused of rape committed in 1993 on account of the categorical statement in the private complainant's sworn affidavit of the year when the rape was committed. The Court found that this allegation substantially cured the perceived vagueness in the criminal charge and ruled that the accused has been sufficiently informed under the circumstances.<sup>[45]</sup>

In this regard, AAA unequivocally and repeatedly stated that the first sexual intercourse Canares had with her occurred sometime in 1992.<sup>[46]</sup> Following *Bugayong*, this statement removes from Canares any reason to complain that he was not adequately informed of the charge against him before he was arraigned. The Information referred to a rape that started in 1992 and this first incident was sufficiently narrated in AAA's statements before and after arraignment. Canares never raised this argument in any motion filed with the trial court before his arraignment. He likewise fully participated in the trial on the merits without raising this argument; he cross-examined the prosecution witnesses and formally objected to the prosecution's offer of evidence. Raised for the first time in this appeal, we can only label the argument as a desperation move that is too late in the day for the defense to make.<sup>[47]</sup>

We add that while AAA testified that Canares had raped her more than 10 times, Canares was not charged for all ten rapes. The Information only sought to hold him