

## EN BANC

[ G.R. No. 167756, April 09, 2008 ]

### THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRY NAZARENO, APPELLANT.

#### DECISION

##### REYES, R.T., J.:

IN this rape case, the Court is confronted with remedial questions on (a) specificity of dates in the Information; (b) quantum of proof; and (c) concurrence of allegation and proof.

For Our final review is the Decision<sup>[1]</sup> of the Court of Appeals (CA) affirming with modification appellant's conviction for rape of his two minor daughters.

#### The Facts

In line with Our ruling in *People v. Cabalquinto*,<sup>[2]</sup> the real names of the rape victims will not be disclosed. We will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

Private complainants AAA and BBB are the legitimate daughters of appellant Jerry Nazareno with CCC. AAA was born on April 30, 1983.2-a BBB, the second child of the union, was born on June 24, 1984.2-b At that time, appellant and CCC were yet to wed. It was only in 1987 that the couple formally tied the knot in simple church ceremonies. Three more children sprang from the marriage since then.<sup>[3]</sup>

Sometime in 1990, AAA was inside a room in their house located at *Barangay Codon*, Municipality of San Andres, Province of Catanduanes. All of her siblings were playing in their yard. Unexpectedly, appellant entered the room, and without saying a word, held AAA tightly. He then directed AAA to crouch on the floor and raise her buttocks (*baka-bakahan*). While in that position, appellant removed the girl's short pants and underwear. He then proceeded to remove his own undergarments. Subsequently, appellant forcibly entered AAA from behind, inserting his penis into the girl's vagina. She was seven.<sup>[4]</sup>

Appellant threatened AAA not to reveal what happened to her to anyone; or else, she and the rest of her family would be killed. Expectedly, AAA suffered in silence. She feared for her life as well as that of her mother and siblings.<sup>[5]</sup>

AAA's ordeal with her father became a regular fare. Appellant would rape her

whenever they were left alone in the house.<sup>[6]</sup> CCC was rarely home because she attended to farm work and accepted laundry jobs from neighbors to support the family. Appellant was jobless and stayed at home.<sup>[7]</sup>

On March 25, 1996, appellant again imposed his bestial urges on AAA. AAA distinctly remembered the incident because she graduated from primary school on that day. At around 2:00 p.m., appellant and AAA were left alone in the house. He told AAA to remove her shorts and panty. Appellant then asked her to crouch on the floor and raise her buttocks. Just as he did before, appellant positioned himself behind the girl and then inserted his penis into her vagina. All that time, appellant's hands were clutching the girl's back.<sup>[8]</sup> Coincidentally, AAA's graduation from elementary school also marked the end of appellant's sexual abuses.

BBB suffered the same fate as her older sister AAA. Sometime in January 1992, appellant and BBB were left alone in their house. Suddenly, appellant told BBB to kneel on all fours (pig *baka-baka*).<sup>[9]</sup>

Appellant then removed BBB's shorts and panties. He then removed his *maong* pants. Appellant positioned himself at BBB's rear and then inserted his penis into the young girl's vagina. At the time of the rape, BBB was only seven years old and was a Grade II pupil.<sup>[10]</sup>

Appellant continued raping BBB, using the girl for his sexual gratification every other day. From BBB's account, appellant would rape her fifteen times in a month. Every time, appellant would threaten her that he would kill all of them should she tell anyone what was happening between them.<sup>[11]</sup>

On October 27, 1998, AAA and BBB found the courage to tell their mother CCC what appellant had been doing to them. AAA accidentally found that BBB was likewise being subjected to sexual abuses by their father. Gathering strength from one another, AAA and BBB tearfully recounted to their mother their individual ordeals. CCC was devastated.<sup>[12]</sup>

On December 6, 1998, appellant again attempted to force himself on BBB. He inserted his finger into BBB's vagina. BBB felt extreme pain from the nails protruding from her father's fingers. That was the last time appellant abused BBB.<sup>[13]</sup>

On February 16, 1999, CCC, with AAA and BBB, secretly went to the Municipal Building of San Andres, Catanduanes to file a complaint against appellant for the rape of AAA and BBB. AAA and BBB were immediately attended to by personnel from the Department of Social Welfare and Development. The two were later examined at the JMA District Hospital by Dr. Erlinda H. Arcilla.

CCC testified as to the age of the victims AAA and BBB at the time of the commission of the crimes. She affirmed that AAA was born on April 30, 1983 while BBB was born on June 24, 1984.<sup>[14]</sup> CCC narrated that she was shocked when she heard her two daughters complain that they were raped by their own father. She knew appellant to be temperamental. He would hit AAA and BBB at the slightest provocation. She failed to act immediately on her daughters' plight for fear of her

husband. CCC was convinced that appellant might make good his threats to kill all of them.<sup>[15]</sup>

Dr. Arcilla narrated that she examined both AAA and BBB on February 16, 1999. During her examination, she uncovered old healed hymenal lacerations on both AAA and BBB at the 3 o'clock, 6 o'clock and 9 o'clock positions. The lacerations suggested that the two girls were no longer in a virgin state.<sup>[16]</sup>

On March 17, 1999, appellant Jerry Nazareno was indicted for violation of Article 266-A of the Revised Penal Code in Criminal Case No. 2638 for the rape of BBB. The information reads:

That sometime and between January 1992 up to December 06, 1998, in *Barangay* Codon, Municipality of San Andres, Province of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence and intimidation did then and there willfully, unlawfully, feloniously and repeatedly made sexual intercourse with his daughter BBB at the age of 7 through 14 years old against her will.

CONTRARY TO LAW.<sup>[17]</sup>

On May 3, 1999, another Information docketed as Criminal Case No. 2650, for the rape of AAA, was levelled against appellant. The indictment is worded thus:

That from sometime in January 1990 up to December 1998 in *barangay* Codon, municipality of San Andres, Catanduanes, and within the jurisdiction of the Honorable Court, the said accused, being the father of the complainant, did then and there willfully, feloniously and criminally repeatedly had sexual intercourse with her daughter AAA, then five years old up to the time when she was 15-years-old against her will.

CONTRARY TO LAW.<sup>[18]</sup>

The case for the People, which portrayed the foregoing facts, revolved around the combined testimonies of AAA, BBB, CCC, and Dr. Erlinda Arcilla of the JMA District Hospital in San Andres, Catanduanes.

The defense, anchored on denial, was summed up by the trial court in this wise:

The defense presented JERRY NAZARENO, the accused himself who testified that he is 34 years old, married, fisherman, a resident of Codon, San Andres, Catanduanes.

He denied having raped his daughters. He said that he sometimes beat his children because he is strict with them in their studies especially during weekdays. He did not want them to watch television during schooldays. Though he is strict, he could not molest the complainants because they are his daughters. He said that the reason why his daughters filed these cases against him was because his father-in-law wants him to be incarcerated for the reason that from the very start, he was opposed to his marriage to CCC, his daughter.

He also said that in December 1998, the last molestation of BBB, he was in the motor launch that plies the San Andres and Caramoran route.<sup>[19]</sup>

### **RTC and CA Dispositions**

On October 25, 2002, the trial court handed down a joint judgment of conviction, imposing upon appellant the capital punishment of death in both cases. The *fallo* of the RTC decision reads:

WHEREFORE, in view of all the foregoing, the prosecution having proved the guilt of the accused beyond reasonable doubt, he is sentenced to suffer the extreme penalty of DEATH for raping BBB in Criminal Case No. 2638 and the same penalty for raping AAA in Criminal Case No. 2650 in accordance with Article 335 of the Revised Penal Code as amended by R.A. 7659.

The accused is further ordered to indemnify both complainants the amount of Fifty Thousand Pesos (P50,000.00) each, to pay each of them the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and the cost of suit.

SO ORDERED.<sup>[20]</sup>

Conformably with the pronouncement in *People v. Mateo*<sup>[21]</sup> providing for an intermediate review by the CA of cases in which the penalty imposed is death, *reclusion perpetua* or life imprisonment, the Court issued a Resolution dated September 21, 2004,<sup>[22]</sup> transferring the case to the appellate court for appropriate action and disposition.

On February 22, 2005, the CA affirmed with modification the RTC judgment, disposing as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape as defined and penalized under Art. 335 of the Revised Penal Code as amended by Anti Rape Law of 1997, with the aggravating circumstance of relationship and minority, the decision of the court a quo sentencing him to death in both Criminal Cases Nos. 2638 and 2650 is hereby AFFIRMED. The award of civil indemnity is MODIFIED and INCREASED to P75,000.00 each, in both cases. The award of moral damages of P50,000.00 for each case is AFFIRMED. We also award P25,000.00 as exemplary damages in each case.

Let the records of this case be transmitted to the Supreme Court for appropriate action.

SO ORDERED.<sup>[23]</sup>

### **Issues**

On September 27, 2005, the Court resolved to require the parties to submit their respective supplemental briefs, if they so desired, within thirty (30) days from

notice. In a manifestation dated December 6, 2005, the Public Attorney's Office, representing appellant Jerry Nazareno, informed the Court that it is adopting its main brief on record.<sup>[24]</sup> The Office of the Solicitor General, for the People, similarly opted to dispense with the filing of a supplemental brief in its manifestation dated March 9, 2006.<sup>[25]</sup>

Appellant stands by the same lone error he raised before the appellate court:

THE TRIAL COURT ERRED (IN) NOT FINDING THAT THE INFORMATION(S) IN CRIMINAL CASE NO[S]. 2638 AND 2650 ARE INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS (SIC) FAILURE TO STATE THE PRECISE DATES OF THE COMMISSION OF THE OFFENSE CHARGED.<sup>[26]</sup> (Corrections and underscoring supplied)

### **Our Ruling**

In the main, appellant argues that the Informations charging him with the rape of AAA and BBB are defective for failure to state with specificity the approximate date of the commission of the offenses. According to him, the twin convictions have no basis in law because the People violated his constitutional right to be informed of the nature and cause of the accusations against him.

The argument is specious. An information is intended to inform an accused of the accusations against him in order that he could adequately prepare his defense. Verily, an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. Thus, to ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information should state the name of the accused; the designation given to the offense by the statute; a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense; and the place where the offense has been committed.<sup>[27]</sup> Further, it must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused, so that he can properly prepare for and undertake his defense.<sup>[28]</sup>

However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless time is an essential ingredient of the offense.<sup>[29]</sup> In *People v. Bugayong*,<sup>[30]</sup> the Court held that when the time given in the information is not the essence of the offense, the time need not be proven as alleged; and that 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.

In *People v. Gianan*,<sup>[31]</sup> the Court ruled that the time of the commission of rape is not an element of the said crime as it is defined in Article 335 of the Revised Penal Code. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated therein, i.e.: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented. In accordance with Rule 110, Section 11 of the 2000 Rules of Criminal Procedure, as long as it alleges that the