

THIRD DIVISION

[G.R. No. 171089, October 17, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO PASCUAL, ACCUSED-APPELLANT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Rogelio Pascual (appellant) was charged and convicted of the crime of Rape under an Information, which reads as follows:

The undersigned Provincial Prosecutor, on complaint of the offended party AAA,^[1] accuses Rogelio Pascual y Bayran @ Eyo of the crime of rape, penalized under the provisions of Art. 266-B in relation to Art. 266-A, par. 1(d) of the Revised Penal Code, as amended, committed as follows:

That on or about sometime during the year 1998 in the municipality of x x x, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused did then and there wilfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of the said AAA, a minor, 10 years of age, against her will and without her consent.

Contrary to law.^[2]

In a Decision dated January 31, 2001, the Regional Trial Court of Malolos, Bulacan, Branch 21, found appellant guilty of Statutory Rape, with the dispositive portion of the RTC Decision as follows:

WHEREFORE, all premises considered, this Court resolves and so holds that the accused is GUILTY beyond reasonable doubt of the crime of Statutory Rape penalized under Article 266-A and B of the Revised Penal Code, as amended by R.A. 7659. Accordingly, accused Rogelio Pascual y Bayran alias "Eyo" is hereby sentenced to suffer the penalty of Reclusion Perpetua. Further, he is ordered to indemnify AAA in the sum of P50,000.00; pay her P100,000.00 for moral damages and another P50,000.00 for compensatory damages.

With costs against the accused.

SO ORDERED.^[3]

Appellant appealed to this Court and in accordance with *People v. Mateo*,^[4] the case was transferred to the Court of Appeals (CA) for review.^[5]

On October 27, 2005, the CA rendered its Decision^[6] affirming with modification the RTC Decision dated January 31, 2001. The decretal portion of the CA Decision reads:

WHEREFORE, the foregoing considered, the assailed Decision is hereby AFFIRMED with the MODIFICATION that the award of moral damages is reduced to P50,000.00 while the award of compensatory damages is deleted. Costs against accused-appellant.

SO ORDERED.^[7]

Hence, the present appeal through the Public Attorney's Office (PAO), pursuant to Section 13, Rule 124 of the Rules of Court. Appellant adopted his Appellant's Brief filed with the CA, with the following Assignment of Errors:

THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE FATALLY DEFECTIVE INFORMATION UNDER WHICH HE WAS CHARGED, TRIED AND FINALLY, CONVICTED.^[8]

Appellant contends that the Information was defective in that the allegations contained therein states that the alleged rape occurred in 1998, while the victim's testimony during cross-examination states that it happened in 1997,^[9] thus meriting an acquittal for appellant.

The appeal is bereft of merit.

Failure to specify the exact date or time when the rape occurred does not *ipso facto* make the information defective on its face. When all the essential elements of the crime of rape are stated in the information, an accused is sufficiently apprised of the crime charged against him. Moreover, the precise time of the commission of the crime of rape is not an essential element of rape. Neither is the exact date of commission of rape an element of the crime for the gravamen of the offense of rape is sexual intercourse without consent.^[10]

This was reiterated in *People v. Sayao, Jr.*,^[11] which repudiated the argument that the information filed in that case was void for being vague and ambiguous as to the date of the commission of the crime, to wit:

x x x First, Rule 110, §11 provides that it is not necessary for the information to allege the exact date and the time of the commission of the crime if such is not an essential ingredient of the offense. In the crime of rape, the date of commission is not an essential element. Second, even if the information fails to specify the date of commission of the crime, accused-appellant waived objection on this ground because he failed to file either a motion for a bill of particulars or a motion to quash the information. Third, the vagueness of the information could not have prejudiced accused-appellant since his denial and alibi are so general that it cannot be said that his defense hinges on the date of commission.

This was recently affirmed in *People v. Nazareno*,^[12] ruling that:

In the case under review, the information in Criminal Case No. 2638 alleged that the rape of BBB transpired "sometime and between January 1992 up to December 6, 1998 in *Barangay* Codon, Municipality of San Andres, Province of Catanduanes." In Criminal Case No. 2650, the information averred that "from sometime in January 1990 up to December 1998 in *Barangay* Codon, Municipality of San Andres, Province of Catanduanes," AAA was raped by appellant. **To the mind of the Court, the recitals in the informations sufficiently comply with the constitutional requirement that the accused be informed of the nature and cause of the accusation against him.** (Emphasis supplied)

In the present case, the phrase "(T)hat on or about sometime during the year 1998 in the municipality of x x x with lewd designs, have carnal knowledge of the said AAA, a minor, 10 years of age, against her will and without her consent," is sufficient to apprise appellant of the charges against him. The fact that AAA testified that she was abused in 1997 does not render the Information void inasmuch as such testimony merely shows that the first time when she was first abused by appellant, thus:

Q. Madam Witness, you told the police that you cannot remember whether the assault against you was committed by the accused at around 1997 or 1998 or 1999 or 1996, am i correct?

A. No, sir.

Q. Are you telling us that you remember the year?

A. Yes, sir.

Q. And you remember the month?

A. No, sir.

Q. What year was that when you was [sic] first assaulted?

A. 1997, sir.^[13]

Her testimony, in fact, confirmed that the abuse continued up to 1998 -

Q. You stated that you were in Grade III when the accused abused you and you said you could recall it was in 1997, is it not a fact that your Grade III lasted from 1997 to 1998 are you aware of that?

A. Yes, ma'am.

Q. So the rape or abuses on you by the accused happened within 1997 up to 1998, do you agree with that?

A. Yes, ma'am.^[14]