

FIRST DIVISION

[G.R. No. 153008, May 20, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LARRY
CACHAPERO Y BASILIO, APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

Time is not an essential element of rape. An information that states the *approximate* rather than the precise time it was committed is sufficient in form. Any perceived formal defect in the information must be raised before arraignment, either through a bill of particulars or a motion to quash; otherwise, objection to such defect shall be considered waived.

The Case

Larry Cachapero y Basilio appeals the January 15, 2002 Decision^[1] of the Regional Trial Court (RTC) of Camiling, Tarlac (Branch 68), in Criminal Case No. 98-68 Cam, finding him guilty of rape as follows:

"WHEREFORE, in view of the foregoing, accused **LARRY CACHAPERO y [BASILIO]** is hereby found **GUILTY** beyond reasonable doubt of the crime of **RAPE**, under Article 266-A of the Revised Penal Code, in relation to R.A. No. 7610, and is hereby sentenced to suffer the penalty of reclusion perpetua, with its accessory penalties, and [is hereby further] directed to pay the victim the sum of P50,000.00 as civil indemnity, the sum of P50,000.00 as moral damages and another sum of P25,000.00 as exemplary damages."^[2]

The Information^[3] dated December 1, 1998, charged appellant in these words:

"That sometime in March 1998, in the Municipality of Camiling, Province of Tarlac, 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 and intimidation succeed in having sexual intercourse with Anna Laurence Toledo, a 7-year old minor."^[4]

Upon his arraignment on October 2, 2000,^[5] appellant, assisted by his counsel de oficio,^[6] pleaded not guilty. After trial in due course, the court a quo 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 in the following manner:

"Sometime in March 1998, complainant Anna Toledo, who was seven (7) years old, went to play with Lorena Cachapero and Dino Cachapero at a nearby house in Barrio Bancay 1st, Camiling, Tarlac.

"During that occasion, appellant Larry Cachapero, brother of Lorena, made her lie down and removed her shorts and panty. He inserted his penis into her sexual organ and she felt pain. Larry told her not to tell her parents because he might be scolded.

"On September 2, 1998, witness Conchita Donato was conducting a remedial class in Reading to her Grade I and II students. While they were reading the word 'tagtuyot' or 'saluyot,' one of her students Jocelyn Meneses told her that Anna was sexually abused by 'Manong Larry.'

"She then ordered the students to leave the room and asked Jocelyn and Anna to stay behind. She confronted Anna and asked her the truth. Anna covered her face with her two hands, cried, and said yes. The teachers had a conference, after which they decided to report the matter to the parents of Anna.

"On September 3, 1998, Anna's mother brought her to the Camiling District Hospital where she was examined. Dr. Mercedes B. Gapultos, a Medico Legal Officer, examined Anna and came out with the following report:

'Findings:

Pelvic Exam: - Mons pubis undeveloped,
no pubic hairs

- Old hymenal lacerations
noted at 3:00 o'clock and
9:00 o'clock positions.

- No abrasions, contusions
noted in the perineum.'

"Dr. Gapultos testified that she found old hymenal lacerations and that it may be caused by many factors like penetration of the hymen by a hard object, or by an object forcibly entered."^[7] (Citations omitted)

Version of the Defense

Interposing the defenses of denial and alibi, appellant tersely relates his version of the facts in these words:

"Accused Larry Cachapero testified that at the time of the alleged incident, he was in their house together with his father and mother. He denied seeing the private complainant on that day. He alleged the case

was filed against [him] because of the long standing feud between his mother and the mother of the private complainant.”^[8] (Citations omitted)

Ruling of the Trial Court

According to the trial court, testimony coming from an innocent child like the victim was credible and sufficient to convict appellant of rape, more so because the testimony was supported by medical findings.

The lower court thus brushed aside the claim of appellant that he was falsely accused. It held that, whatever feud may have existed between the mother of the rape victim and the accused, no woman in her right mind would unnecessarily expose her minor daughter to the humiliation and stigma of a public trial. Citing Section 3(b)(1) of RA No. 7610, ^[9] it added that the sexual abuse of the victim prejudiced her development.

Hence, this appeal.^[10]

Issues

In his Brief, appellant raises the following issues for our consideration:

“I.

The court a quo erred in giving weight and credence to the testimony of private complainant which is full of inconsistencies.

“II.

The court a quo erred in finding accused-appellant guilty of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.

“III.

The court a quo erred in not considering the Information as insufficient to support a judgment of conviction for failure of the prosecution to state the precise date of commission of the alleged rape[,] it being an essential element of the crime charged.”^[11]

Simply put, appellant questions the sufficiency of (1) the Information and (2) the prosecution’s evidence.

The Court’s Ruling

The appeal has no merit; appellant’s conviction for statutory rape is affirmed, but the award of exemplary damages is deleted.

First Issue:

Sufficiency of Information

Contending that time is a material ingredient of rape, appellant argues that the Information was fatally defective for failing to state the precise hour when the crime was committed. Such infirmity, he added, jeopardized his right to be properly informed of the charge against him.

We disagree. The time of occurrence is not an essential element of rape.^[12] This being so, its *precise* date and hour need not be alleged in the complaint or information.^[13] Section 11 of Rule 110 of the Rules of Court provides:

"SEC. 11. Date of commission of the offense. – It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission."(Italics supplied)

The Information in this case alleged that the crime was committed "sometime in March 1998" which, according to private complainant, was more or less at the closing of the school year. ^[14] Being reasonably definite and certain, this approximation sufficiently meets the requirement of the law. After all, Section 6 of Rule 110^[15] of the Rules of Court merely requires that the information must state, among others, the *approximate* time of the commission of the offense.

Moreover, objections as to the form of the complaint or information cannot be made for the first time on appeal.^[16] If the present appellant found the Information insufficient, he should have moved before arraignment either for a bill of particulars, ^[17] for him to be properly informed of the exact date of the alleged rape; or for the quashal of the Information, on the ground that it did not conform with the prescribed form.^[18] Having failed to pursue either remedy, he is deemed to have waived objection to any formal defect in the Information. ^[19]

By cross-examining the prosecution witnesses and presenting evidence for the defense, appellant's counsel actively took part in the trial. Furthermore, the defense never objected to the presentation of the prosecution evidence^[20] proving that the offense had been committed in March 1998. Appellant has not shown that he was deprived of a proper defense, for he was in fact able to foist an alibi. It cannot be said, therefore, that his constitutionally protected right to be informed of the nature and cause of the accusation against him has been violated.

Second Issue: **Sufficiency of the Prosecution's Evidence**

Appellant contends that private complainant's testimony, which was tainted with material inconsistencies, should not have been received by the trial court with precipitate credulity. Calling the victim a coached witness, he points out that her answers were inconsistent on (1) whether or not she bled after the alleged rape and (2) what time she informed her mother about the incident.

Appellant's contentions are unconvincing. It is well-established that the testimony of a rape victim is generally given full weight and credit, ^[21] more so if she is a minor.

The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint.^[22] In so testifying, she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.

In this case, the victim was a young girl of seven years when she came forward to declare that appellant had raped her. At age nine, she narrated to the court the violation of her person in this manner:

“PROS. GUARDIANO [to Anna]:

Q Do you remember an incident that happened [i]n March, 1998 in relation [to] the accused?

A Yes, Sir.

Q [T]hat March, 1998, [is] that x x x, more or less, [about the] closing of the school year?

A Yes, Sir.

Q Can you tell us on that date, what did Larry Cachapero do to you?

A Larry Cachapero made [me lie] down and [he] remove[d] my panty and shorts, Sir.

Q Can you tell us if Larry Cachapero was the one who removed your panty and shorts?

A Yes, Sir.

Q After removing your panty and shorts, what did Larry Cachapero do after that?

A He had sexual intercourse with me, Sir.

Q Can you tell us what is [the] sexual intercourse [that] Larry Cachapero did to you?

A He just removed my shorts and panty and he sexually abused me, Sir.

Q How did he sexually abuse you?

A He made me [lie] down, Sir.

Q After he made you [lie] down, what did he do after that?

A He sexually abused me, Sir.

Q And did he put out his penis?

A Yes, Sir.

Q Did he place his penis touching your sex organ?

A Yes, Sir.

Q And did you feel any pressure when his penis touched your sex organ?

A Yes, Sir.

Q And that feels very painful?