

## EN BANC

[ G.R. No. 138742, June 15, 2004 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHARLIE ESPINOSA, APPELLANT.

#### DECISION

##### **CALLEJO, SR., J.:**

This is an automatic review of the Decision<sup>[1]</sup> of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 183-M-98 convicting the appellant Charlie Espinosa of rape, sentencing him to suffer the penalty of death, and ordering him to pay P50,000.00 as damages.

On February 6, 1998, a Criminal Complaint was filed, with the Regional Trial Court of Malolos, Bulacan, charging the appellant with aggravated rape, the accusatory portion of which is worded as follows:

The undersigned complainant, Marilou Arcangel, assisted by her mother, Amelita Arcangel, under oath (sic) accuses Charlie Espinosa of the crime of rape, penalized under the provisions of Article 335 of the Revised Penal Code, as amended, committed as follows:

That in (sic) or about the month of August 1996, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a fan knife and with the use of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the said Marilou Arcangel, 14 years of age, against her will.

Contrary to law.<sup>[2]</sup>

During arraignment, the appellant entered a plea of not guilty. Trial of the case ensued.

##### **The Case for the Prosecution<sup>[3]</sup>**

One evening in August 1996, Marilou Arcangel, then 14 years of age, together with her five (5) siblings, were sleeping on the floor in their house in Sta. Barbara, Baliuag, Bulacan. Their mother, Amelita Arcangel, was at work wrapping bread at a bakery, while their father, Rafael Arcangel, had gone also to fetch their mother in the tricycle he drove. Marilou's uncle, the appellant, was temporarily vacationing at their house at the time.

At around midnight, Marilou was awakened when she heard a window open. She then felt that somebody was on top of her, and was nonplussed when, as she

opened her eyes, saw the appellant looming above her. The appellant was armed with a fan knife and held Marilou by her wrists. She tried to resist, but the appellant told her he would kill her if she did so. He warned Marilou that if she told anyone of the incident, he would kill her and her family.

The appellant then removed Marilou's shorts, underwear and upper garment. He also removed his clothing. He inserted his penis into Marilou's vagina and made push-and-pull movements (nag-u-unday). After satiating his sexual desire, he threatened Marilou anew not to report to anyone what he had just done to her, otherwise, he would kill all of them. The appellant then left. Marilou cried profusely, traumatized by the incident.

Marilou did not report the incident to her mother because she was afraid that the appellant might make good on his threat to kill her and her family. She did not tell her father of the incident, as he was, likewise, doing "things" to her that she could not bear. On several occasions, she caught her father and another uncle peeping while she was taking a bath; on several other occasions, her father touched the sensitive parts of her body.

Marilou left their house and went to stay with one of her classmates. When her classmate's mother asked why she left their house, Marilou finally narrated her harrowing experience. Thus, Amelita, Marilou's mother, found out about the incident through the mother of her daughter's classmate.

Amelita then went to the barangay authorities and reported the incident. In the meantime, Marilou went to Pulo, San Rafael, Bulacan, to stay with her relatives there.

On February 11, 1997, Marilou went to the police station in Baliuag, Bulacan and reported that she was raped by the appellant and narrated the incidents relative thereto. P/Insp Edilberto L. Velasquez, Jr., the Deputy Chief of Police of the Baliuag PNP, prepared a request from the Director of the PNP Crime Laboratory RECOM 3, that a medico-legal examination be conducted on Marilou to determine the extent of the sexual abuse committed against her.<sup>[4]</sup> Dr. Eduardo O. Gueco, Chief Medico-Legal Officer of the PNP Crime Laboratory, Region III, conducted an examination on Marilou. He also prepared a Medico-Legal Report, which contained the following findings:

GENITAL:

PUBIC HAIR: Absence of pubic hair

LABIA MAJORA: Full, convex and coaptated

LABIA MINORA: Light brown and slightly hypertrophied

HYMEN: Presence of deep healed lacerations at 6 and 11 o'clock and shallow, healed laceration at 1 o'clock position.

EXTERNAL VAGINAL ORIFICE: Offers strong resistance to the introduction of the examining index finger.

VAGINAL CANAL: Narrow with prominent vaginal folds.

CERVIX: Normal in size and consistency with menstrual blood oozing from its os.

PERI-URETHRAL AND VAGINAL SMEARS: Negative for the presence of spermatozoa.

REMARKS: Subject is in non-virgin state physically. [5]

### **The Case For The Appellant**

The appellant testified that he was a resident of Salinas, Cavite. Sometime in 1996, he and his wife went to the house of Rafael Arcangel in Sta. Barbara, Baliuag, Bulacan, to visit his mother-in-law.

The second time the appellant went to Sta. Barbara, Baliuag, Bulacan was on February 28, 1997, this time to fetch his mother-in-law so that someone would take care of his child in Cavite. During the said visit, he and his brothers, Rafael and Gorgonio, had a drinking session. They got drunk and slept outside the house. The three of them were arrested at around 8 a.m. of the next day on Marilou's complaint of rape. According to the appellant, the charge of rape against him was just a ploy of Marilou's mother, Amelita, to force him not to talk about her affair with Julio, another of the appellant's brothers. He learned of this motive of Amelita's from Julio, after the latter had gotten so drunk during their drinking session with Rafael and Gorgonio.

After trial, the court rendered a decision convicting the appellant, the dispositive portion of which reads as follows:

**WHEREFORE**, the foregoing considered, this Court hereby finds accused **CHARLIE ESPINOSA GUILTY** beyond reasonable doubt of the crime of Rape, and sentences him to suffer the penalty of DEATH and to pay the amount of P50,000.00 to private complainant Marilou Arcangel and the costs of the suit.

SO ORDERED. [6]

Hence this automatic review.

The appellant raises the following as assignment of errors:

#### I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE FACT THAT THE CRIMINAL INFORMATION FAILED TO STATE WITH PARTICULARITY THE TIME OF THE COMMISSION OF THE ALLEGED DEED.

#### II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE PENALTY OF DEATH ON THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE

CRIMINAL INFORMATION FAILED TO ALLEGE THE RELATIONSHIP BETWEEN THE VICTIM AND THE ACCUSED-APPELLANT.

### III

THE COURT GRAVELY ERRED IN NOT FINDING THAT THE TIMID AND PASSIVE CONDUCT AND ACTUATION OF THE PRIVATE COMPLAINANT DURING AND IMMEDIATELY AFTER THE SUPPOSED SEXUAL ASSAULT CAST SERIOUS DOUBT ON HER CREDIBILITY.<sup>[7]</sup>

#### **The Ruling of the Court**

Anent the first assigned error, the appellant posits that the criminal complaint filed against him in this case is defective. The complaint did not state with particularity the date the offense was committed, and instead, it was stated therein that the offense was committed "on or about the month of August 1996." According to the appellant, this is in violation of Section 11 of Rule 110 of the Revised Rules of Criminal Procedure.

The appellant's pose is bereft of merit.

In *People v. Lizada*,<sup>[8]</sup> this Court declared:

The Court does not agree with the accused-appellant. It bears stressing that the precise date of the commission of the crime of rape is not an essential element of the crime. Failure to specify the exact date when the rape was committed does not render the Information defective. The reason for this is that the gravamen of the crime of rape is carnal knowledge of the private complainant under any of the circumstances enumerated under Article 335 of the Revised Penal Code, as amended. Significantly, accused-appellant did not even bother to file a motion for a bill of particulars under Rule 116, Section 9 of the Revised Rules of Criminal Procedure before he was arraigned. Indeed, accused-appellant was duly arraigned under the Information and entered a plea of not guilty to the charge without any plaint on the sufficiency of the Information. Accused-appellant even adduced his evidence after the prosecution had rested its case. It was only on appeal to this Court that accused-appellant questioned for the first time the sufficiency of the Information filed against him. It is now too late in the day for him to do so. Moreover, in *People v. Salalima*, this Court held that:

"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 precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. In previous cases, we ruled that allegations that rapes were committed 'before and until October 15, 1994,' 'sometime in the year 1991 and the days thereafter,' 'sometime in November 1995 and some occasions prior and/or subsequent thereto'

and 'on or about and sometime in the year 1988' constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules of Criminal Procedure. ..."<sup>[9]</sup>

Indeed, in the case at bar, the criminal complaint states that the rape was committed "on or about the month of August 1996." Such an allegation in the criminal complaint as to the time the offense was committed is sufficient compliance with the provisions of Section 11, Rule 110 of the Revised Rules of Criminal Procedure. Besides, if the appellant was of the belief that the criminal complaint was defective, he should have filed a motion for a bill of particulars with the trial court before his arraignment.<sup>[10]</sup> The appellant failed to do so. It was only when the case was brought to this Court on automatic review that he raised the question of the supposed insufficiency of the criminal complaint, which is now too late by any reckoning.

The appellant points out that based on the complainant's testimony, she did not shout when she saw the appellant. She did not wake up her siblings, who were sleeping very near her, nor did she show any signs of resistance, and instead remained passive. Neither was it shown that the complainant showed signs of resistance when the alleged rape took place. As such, the complainant did not show the kind of resistance expected of a woman defending her honor and virtue.

We do not agree. As we had the occasion to state in *People v. Umayam*:<sup>[11]</sup>

Appellant then harps on the lack of any overt form of resistance to the sexual assault on the part of the victim. He argues that she should have at least touched or reached for her mother to awaken the latter. In fact, the girl did not even bother to shout despite the fact that her mouth was left uncovered.

We do not subscribe to appellant's suppositions. Never has this Court prescribed a uniform manner of behavior during or after a rape incident. We have been categorical in declaring that "[t]he workings of a human mind placed under emotional stress are unpredictable and people react differently—some may shout, some may faint, and some may be shocked into sensibility while others may openly welcome the intrusion." Yet, it can never be argued that the ones who apparently welcome it are sexual victims any less than the others.<sup>[12]</sup>

The appellant, likewise, points out that it took several months before the complainant filed the case of rape against him. The rape took place sometime in August 1996, while the victim reported the same only on February 11, 1997, or about five (5) months after the incident. According to the appellant, such delay in the filing of the case tainted the victim's credibility.

The appellant's contention is bereft of merit. In *People v. Geromo*,<sup>[13]</sup> this Court ruled that a seven (7) month delay in reporting the rape does not impair the credibility of the complainant. In the said case, it was elucidated, thus:

... Delay in revealing the commission of rape is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapist, for they prefer to silently bear the ignominy