

## FIRST DIVISION

[ G.R. Nos. 146685-86, April 30, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENJAMIN HILET Y  
MERCADejas, APPELLANT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65, finding appellant Benjamin Hilet y Mercadejas guilty beyond reasonable doubt of two counts of statutory rape, sentencing him to suffer the penalty of *Reclusion Perpetua* for each count and ordering him to pay the victim the amount of P100,000.00 as moral damages and the costs of suit.

Appellant was charged with two counts of rape committed against the daughter of his common-law wife in two separate Informations which read:

*In Criminal Case No. 99-329:*

That sometime in March 17, 1999 at about 2:00 o'clock in the afternoon, at Sitio Banase, Barangay San Vicente, Municipality of Bulan, Province of Sorsogon and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, through force and intimidation, and taking advantage of the tender age of the victim, had carnal knowledge of eleven year old Richele J. Cosada, who is a virgin of good reputation, his step-daughter who was left in his care, against her will and without her voluntary consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the stepfather of the child-victim.

ACTS CONTRARY TO LAW.<sup>[2]</sup>

*In Criminal Case No. 99-330:*

That sometime in 1998 at Sitio Banase, Barangay San Vicente, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously, through force and intimidation, and taking advantage of the tender age of the victim, had carnal knowledge of ten-year old RICHELE J. COSADA, who is a virgin of good reputation, his step daughter who was left in his care, against her will and without her voluntary consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the

stepfather of the child-victim.

### ACTS CONTRARY TO LAW.<sup>[3]</sup>

Appellant pleaded not guilty to the charges, after which the two criminal cases were jointly tried.

Sometime in 1998, ten year-old Richelle Cosada was told by appellant, the common-law husband of her mother, whom she looked up to with respect and treated as her own father, not to go to school but to stay home and watch the house. At about 10:00 in the morning, while her mother was out selling fish, Richelle saw appellant sharpening his bolo. Moments later, appellant dragged her towards the bedroom. There, he undressed himself and removed her clothes. He made her lie on the floor, placed the bolo beside her and warned her not to tell anyone otherwise he will kill her. He lay on top of her and repeatedly thrust his penis into her vagina. She cried and pleaded for him to stop because she felt pain, but he did not heed her. After appellant satisfied his lust, Richelle noticed that her vagina was bleeding. She kept the ordeal to herself out of fear for appellant's threats.

In the afternoon of March 17, 1999, appellant ordered Richelle's older brother, Allan, to gather firewood and her younger brother, Sonny, to play outside. Again, Richelle saw appellant sharpening his bolo. Thereafter, he brought her to the same room where she was first abused. After he undressed himself, he removed her shorts, laid her on the floor and placed the bolo on her side. Then, he had sexual intercourse with her. Richelle pleaded for appellant to stop but he did not listen to her. Her vagina felt painful and it bled.

That same day, Richelle felt appellant's sexual abuses to be unbearable and finally confided to her mother, Nenita Cosada, what happened. The following day, Nenita asked their neighbor, Mateo Guañizo, to report the incident to the police, who immediately proceeded to the house of appellant. They invited him to the police headquarters for questioning.

Thereafter, the victim underwent medical examination. Dr. Estrella Payoyo, the Municipal Health Officer of Bulan, Sorsogon, found old hymenal lacerations at 2, 6, and o'clock positions but no fresh laceration. The victim's vagina admitted one finger with resistance and when Dr. Payoyo removed her finger, there was blood.

Appellant denied the charges against him. He alleged that his common law wife and Mateo Guañizo were lovers and made up the charges against him. He claimed that when he came home after fishing on March 16, 1999, he saw Nenita and Mateo come out of his house. Mateo was half-naked with his shirt hung on his shoulder. When he was about 15 meters away, Mateo pointed a .22 caliber long barrel gun at him. He ignored him and went directly to their house, where he saw Nenita's panties on the floor of the bedroom. When he confronted Nenita, she explained that Mateo went to their house to look at some wedding pictures. A heated altercation ensued between him and Nenita. The following day, he left the house at 4:00 a.m. to go fishing and returned at noon to eat lunch. Shortly after he finished his lunch, the police, accompanied by Mateo Guañizo, arrived and invited him to the station.

On August 30, 2000, the trial court rendered the appealed decision, disposing as follows:

WHEREFORE, premises considered, accused BENJAMIN HILET y MERCADEJAS having been found GUILTY beyond reasonable doubt of two (2) counts of STATUTORY RAPE defined and penalized under Article 266-A, paragraph 1 (d) of R.A. 8353 (Anti-Rape Law of 1997), amending Act 3815 and R.A. 7659, is hereby sentenced to two (2) indivisible penalties of RECLUSION PERPETUA regardless of the aggravating circumstances present (Art. 63, R.P.C.), said sentences shall be served successively pursuant to the provision of Art. 70, R.P.C. The period of time during which the accused underwent preventive imprisonment shall be credited in the service of his sentences consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. To indemnify the offended party Richelle Cosada in the amount of P100,000.00 as moral damages and to pay the costs of suit.

SO ORDERED.<sup>[4]</sup>

In the Appellant's Brief, the following assignment of errors were raised:

I

THE COURT A-QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT UNDER THE DEFECTIVE INFORMATION IN CRIMINAL CASE NO. 99-330 WHEREIN THE PROSECUTION FAILED TO ALLEGE THE APPROXIMATE TIME OF THE COMMISSION OF THE CRIME CHARGED.

II

THE COURT A-QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

III

THE COURT A-QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDULOUS TESTIMONY OF THE WITNESSES FOR THE PROSECUTION.<sup>[5]</sup>

Appellant's argument that the information in Criminal Case No. 99-330 is defective for its failure to state the approximate time of the commission of the crime is untenable. An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof. The exact date of the commission of a crime is not an essential element of rape. Thus, in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The failure to specify the exact date or time when it was committed does not *ipso facto* make the information defective on its face.<sup>[6]</sup> In *People v. Miranda*,<sup>[7]</sup> we upheld the validity of the information which merely stated that the rape was allegedly committed "sometime in February 1988".

It is not necessary to state the precise time when the offense was committed except when time is a material ingredient of the offense. In statutory rape, time is not an