

## EN BANC

[ G.R. Nos. 140411-13, December 11, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AVELINO LATAG Y DITA ALIAS "PAUTO," APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

As a rule, the precise time of the commission of the rape need not be alleged in the complaint. Although appellant is guilty of rape, the death penalty imposed by the trial court should nonetheless be reduced to *reclusion perpetua*, because the Information failed to allege his relationship with the victim.

### The Case

For automatic review before this Court is the May 10, 1999 Decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Lipa City (Branch 12) in Criminal Case No. 0460-97, finding Avelino Latag y Dita guilty beyond reasonable doubt of rape. The decretal portion of the Decision reads:

"WHEREFORE, x x x.

"x x x

x x x

x x x

"Anent Crim. Case No. 0460-97, the Court finds Avelino Latag y Dita alias 'Pauto' guilty beyond reasonable doubt, as principal, of the crime of Rape, as defined and penalized under Article 335, par. 3 of the Revised Penal Code, as amended by Republic Act. No. 7659 and sentences him to suffer the supreme penalty of DEATH [and] to pay the costs of this suit. In addition, he is also ordered to indemnify Stephanie Sarmiento and/or her heirs the sum of P75,000.00, to pay the amount of P10,000.00, as moral damages, pursuant to Article 2219(3) of the Civil Code and the sum of P5,000.00, as exemplary damages pursuant to Article 2229 of the same Code, in order that this case may serve as an object lesson to the public - that no uncle may ever again deprive his niece of 'the right to grow up and discover the wonder of womanhood in the normal way.'"<sup>[2]</sup>

Appellant was charged with two counts of rape, one in the criminal Complaint filed by Charen May L. Sarmiento and in another, by Stephanie L. Sarmiento. The Complaints, both dated June 24, 1997 and docketed as Criminal Case Nos. 0458-97 and 0460-97, respectively, read as follows:

### **Criminal Case No. 0458-97**

"That on or about the 5<sup>th</sup> day of April, 1997 in the evening, at Sitio

Santol, Barangay Nangkaan,<sup>[3]</sup> Municipality of Mataasna Kahoy,<sup>[4]</sup> Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge of the said twelve (12) year-old girl, Charen May Sarmiento y Latag, against her will and consent."<sup>[5]</sup>

### **Criminal Case No. 0460-97**

"That sometime in the month of April, 1997, at Sitio Santol, Barangay Nangkaan, Municipality of Mataasna Kahoy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge of the said ten (10) year-old girl, Stephanie Sarmiento y Latag, against her will and consent."<sup>[6]</sup>

During his arraignment on August 27, 1997,<sup>[7]</sup> appellant, with the assistance of his counsel,<sup>[8]</sup> pleaded not guilty to both charges. 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:

"Stephanie L. Sarmiento was born in Manila to the Spouses Virgilio and Babylita Latag Sarmiento. Stephanie and her brothers and sisters lived with their parents in Paco, Manila until they transferred to Sitio Santol, Brgy. Nangkaan, Mataas na Kahoy, Batangas in their maternal grandparents' house. In June 1996, the Spouses Sarmiento left all their children at said house as Virgilio had to attend to his occupation as a taxi driver in Manila.

"In April, 1997, at night, appellant Avelino Latag raped Stephanie. Stephanie at that time was only ten (10) years old. On that night of April, 1997, Stephanie was sleeping with her brothers and sisters, Charen May (12), Daisy (4), Reginalyn (3), Jandie (1) and Jenevecher (7), and their Tiya Nancy (10) and Tiyo Ronaldo (11) at the second floor of the house. While Stephanie was sleeping, appellant removed her short pants and panty which roused her from sleep. After appellant removed his short pants and briefs, he placed himself on top of her and inserted his penis into her vagina.

"Stephanie tried to resist by removing his penis from her vagina, but when she tried to remove it, appellant would box her. She felt pain in her vagina when appellant succeeded in inserting his penis into her vagina. She was not able to shout because everytime she would attempt to do so, appellant would slap her. Appellant stayed on top of her for

about one (1) minute. While she was being abused, her grandparents, brothers and sisters, and her aunt and uncle, were sound asleep. After raping her, appellant went back to the lower portion of the house where he normally slept. Stephanie was able to recognize appellant Avelino Latag because of the lighted kerosene lamp placed on top of the cabinet at the place she had been sleeping.

"After the incident, Stephanie reported the incident to her older sister, Charen May. The sisters reported the incident to their maternal grandparents but they did not believe the children.

"Stephanie and Charen May submitted themselves to a medical examination on May 8, 1997 at the Lipa City District Hospital before Dr. Alex Agato. Upon internal examination of Stephanie, Dr. Agato found her vaginal opening inflamed and admitted the 5<sup>th</sup> digit of his examining finger, right hand, with difficulty up to 2 cms. in depth. Dr. Agato also noted that the hymen was absent, which was not natural, and its absence was due to penetration of an object, probably a finger or a penis. Dr. Agato also found that the vaginal opening could be seen and not coopted, something unusual for a ten (10) year-old girl because normally for her age, the vaginal opening can hardly be seen. Dr. Agato issued a medico-legal certificate in favor of Stephanie Sarmiento dated May 8, 1997 and concluded that she was no longer a virgin."<sup>[9]</sup> (Citations omitted)

### **Version of the Defense**

On the other hand, the version of the defense is as follows:

"Enrique Latag averred that Stephanie Sarmiento is his granddaughter, while Avelino Latag is his son. Stephanie and her sister Charen Mae arrived in their house sometime in the month of June and lived with him at Nagkaraan, Mataasnakahoy, Batangas for almost one (1) year. He was the one who supported them.

"He came to know for the first time that his two (2) sons Yolito and Avelino Latag were charged with rape when Avelino was apprehended. Stephanie did not complain to him regarding the alleged rape committed by his sons. During the trial of these cases, he talked to Stephanie regarding the filing of these cases, but the latter just kept quiet.

"On the month of April 1997, his son Avelino lived at the house of his 'kumpare' because he was working with the latter's son.

"Avelino Latag denied the allegation that he raped Stephanie Sarmiento sometime in the month of April 1997. He was then living in the house of the 'kumpare' of his father.

"He claimed that Stephanie is his niece, being the daughter of his sister. Stephanie, together with her brothers and sisters, arrived in their house at Nagkaan, Mataasnakahoy, Batangas in order to reside thereat. There are seven (7) children of her sister. When Stephanie and her brothers

and sisters lived at Barangay Nangkaan, their father likewise lived at the house of his uncle Rogelio Tipan at Mataas Na Lupa. Whenever his brother-in-law would be scolded by his uncle, he would sleep in their house. His brother-in-law was staying in the house of his uncle because their house is very small.

"While his nieces and nephews were living in their house, he lived at the house of the `kumpare' of his father near the lakeshore at [S]itio Santol. He started living at the house of the `kumpare' of his father in February 1996 up to May 1997. He was then working with his father's `kumpare' in a construction. During the entire period of his stay at the house of his father's `kumpare', there was no occasion that he sleeps in their own house. It was always late in the evening when they came from work, so he did not have time to go home and sleep in their house.

"His brother-in-law had mauled his sister many times. The last time that his sister was mauled by his brother-in-law was on April 1997 in their house. He and his brother Yolito were then present, so they helped each other in likewise mauling their brother-in-law."<sup>[10]</sup> (Citations omitted)

### **Ruling of the Trial Court**

For insufficiency of evidence, the trial court acquitted appellant of the rape of Charen May. However, it found him guilty beyond reasonable doubt of raping Stephanie. The lower court held that he had sexually assaulted Stephanie during one night in April 1997.

The trial court, after carefully evaluating and observing the conduct and demeanor of Stephanie on the witness stand, found her credible. It gave weight and credence to her candid and sincere testimony because, aside from being clear and positive, it was devoid of any artificiality and infused with truth and sincerity. The court *a quo* found it unthinkable that a 10-year-old child would fabricate such a serious charge as rape against her own uncle and consequently expose herself to the humiliation and embarrassment of a medical examination and a public trial.

Discarding the denial and alibi proffered by appellant, the trial court held that these defenses were inherently weak and could not prevail over the positive and credible testimony of the victim. Appellant palpably failed to show that it was physically impossible for him to be at the scene of the crime at the time of its commission.

Hence, this automatic review before us.<sup>[11]</sup>

### **The Issues**

Appellant raises the following errors for our consideration:

#### **I.**

"The trial court gravely erred in not considering the Information in Criminal Case No. 0460-97 insufficient to support a judgment of conviction for failure of the prosecution to state the precise date of the

commission of the alleged rape, it being an essential element of the crime charged.

## II.

"The trial court gravely erred in imposing the penalty of death upon accused-appellant despite failure of the prosecution to allege in the information the relationship between the victim and accused-appellant on the assumption that he is guilty of the crime charged."<sup>[12]</sup>

### **The Court's Ruling**

We affirm the conviction of appellant for the crime of rape, but reduce the penalty to *reclusion perpetua* for the failure of the Complaint to allege his relationship with the victim.

### **First Issue:** **Date of Commission**

Appellant contends that Section 6<sup>[13]</sup> of Rule 110 of the Rules of Court requires that the approximate time of the commission of the offense must be stated in the complaint or information. According to him, this requirement was not followed in the instant case. He contends that since the sexual act in a crime of rape must be proved to have been committed during a precise date and time, the Complaint against him should have been considered fatally defective and, thus, void. He further argues that the doctrine laid down in *United States v. Javier Dichao*<sup>[14]</sup> applies to this case. In *Dichao*, we held that the allegation in the Complaint regarding the date and time of the rape was too indefinite to give the accused therein an opportunity to prepare his defense. In such a situation, the alibi of the accused would never be able to prosper.

Citing *Ilo v. Court of Appeals*,<sup>[15]</sup> appellant herein argues further that any evidence presented by the prosecution cannot cure this alleged fatal defect, as his right to be informed of the nature of the offense charged against him would be jeopardized. As the accused, his constitutionally protected right to be informed of the nature and cause of the accusation against him would be violated.

We find his arguments bereft of merit. Although the Complaint alleged that the crime was committed "sometime in the month of April, 1997," the trial court did not err in convicting him of rape.

*First*, the *precise* time or date of the commission of an offense need not be alleged in the complaint or information, unless it is an essential element of the crime charged.<sup>[16]</sup> In rape, it is not.<sup>[17]</sup> Section 11 of Rule 110 of the Rules of Court provides:

"SEC. 11. *Date of the 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