

EN BANC

[G.R. No. 134767, February 20, 2002]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLLY ESPEJON,
APPELLANT.**

DECISION

PANGANIBAN, J.:

The date or time of the commission of the rape need not be alleged with precision. It is enough for the information or complaint to state that the crime has been committed at a time as near as possible to the date of its actual commission. Failure to allege the exact date when the crime happened does not render the information defective, much less void.

The Case

On automatic review is the June 15, 1998 Decision^[1] of the Regional Trial Court (RTC) of Masbate, Masbate (Branch 44) in Criminal Case Nos. 8324 and 8379, finding Rolly Espejon guilty of rape and sentencing him to death. The decretal portion of the Decision reads as follows:

“WHEREFORE, premises considered, this court finds, viz:

“In Criminal Case No. 8324, the guilt of accused Rolly Espejon having been established by proof beyond reasonable doubt for the crime of RAPE committed by a father against his daughter Jovelyn A. Espejon who is under eighteen (18) years of age at the time of the commission of the crime, said accused is hereby sentenced to DEATH and to pay Jovelyn Espejon and her mother the sum of P50,000.00.

“In Criminal Case No. 8379, for lack of jurisdiction over the case against accused Rolly Espejon, the same is hereby ordered DISMISSED.”^[2]

Two separate Informations dated January 29, 1997 and February 28, 1997 charged appellant with rape allegedly committed as follows:

Criminal Case No. 8324:

“That sometime in the year 1995 and subsequent thereto, at Sitio Matungao, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, being the father and with moral ascendancy, with lewd design, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge [of] Jovelyn A. Espejon against her will and consent.”^[3]

Criminal Case No. 8379:

"That sometime in the year 1982 and dates subsequent thereto, at Sitio Matungao, Barangay Tugbo, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously [have] sexual intercourse with his own daughter, Lilibeth A. Espejon, against her will."^[4]

Assisted by his counsel,^[5] appellant pleaded not guilty during his arraignment on May 14, 1997.^[6] After a joint trial, the court *a quo* rendered its now-appealed Decision finding him guilty of rape in Criminal Case No. 8324 and dismissing Criminal Case No. 8379 for lack of jurisdiction.

The Facts

Version of the Prosecution

The Office of the Solicitor General, in its Brief,^[7] presents the factual incidents of the case in this manner:

"Appellant Rolly Espejon and his wife Elsie Abellar got married sometime in 1974. They were blessed with nine [9] children consisting of five [5] daughters and four [4] sons. This picture of a seemingly wholesome and happy family was shattered upon complaint of two [2] daughters, herein private complainants Jovelyn and Lilibeth Espejon, that appellant, their own father, had been sexually molesting them.

"Jovelyn recalls that appellant first raped her sometime in 1995 while she was only thirteen [13] years of age. At that time, her elder brother and sister were in Manila, and her mother was attending to the wake of her grandfather some 500 meters away from their house at Sitio Matungao, Tugbo, Masbate, Masbate. Appellant came home that night when Jovelyn's younger brothers and sisters were already fast asleep. He approached Jovelyn who was sleeping near the east portion of the 'gabay,' about five [5] meters away from where her siblings were sleeping and ordered her to remove her panty. Appellant told Jovelyn not to make any noise or he [would] cut off her neck. He [lay] on top of her and inserted his penis inside her vagina. Jovelyn felt pain but cried silently as she was afraid of her father. The sexual abuse continued for about one [1] hour. Appellant only stopped after Jovelyn felt that a sticky substance came out of his penis. Thereafter[,] appellant told Jovelyn not to tell anybody about the incident and repeated his warning that he [would] cut off her neck if she disobeyed.

"Appellant repeated the sexual [abuse] against Jovelyn two [2] more times during that period when her mother was out of their house attending to the wake of their grandfather. The second sexual assault occurred barely four [4] days after the first. After the burial of her grandfather, when her mother had already returned home, appellant continued raping her [on] six [6] more occasions. These subsequent

sexual assaults occurred during daytime. Appellant would bring Jovelyn to the bushes around seventy [70] meters from their house where he sexually molested [her].

"Sometime in November 1996, Jovelyn's elder sister Lilibeth, the other complainant, arrived from Manila. Her mother was very happy and requested Lilibeth to stay home. However, Lilibeth refused and wanted to go back to Manila immediately. At this point, Lilibeth disclosed to her mother that appellant had raped her twice, the first was committed sometime in 1982 while she was still seven [7] years of age, and the second in 1989 when she was already fourteen [14] years old. And this was the reason why she had to leave for Manila in 1992.

"Lilibeth's revelation gave Jovelyn the courage to disclose that she was likewise being sexually abused by their father. Upon learning of this, their mother brought both Jovelyn and Lilibeth to the Municipal Health Office of Masbate for medical examination on November 30, 1996. xxx

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"Thereafter, private complainants executed their respective affidavits and complaints in support of the rape charges against the appellant."^[8]
(Citations omitted)

Version of the Defense

Appellant narrates his version of the facts in his Brief,^[9] as follows:

"**ROLLY ESPEJON** testified that he did not sexually abuse [his] two (2) daughters, Lilibeth and Jovelyn Espejon. They were only instigated by their mother. From 1982 up to 1992, when Lilibeth was still staying with them at Matungao, Tugbo, there was no instance that he had a quarrel against his wife o[n] something related to Lilibeth. The only time he had a quarrel with his wife was when he caught his wife and her paramour engaged in a sexual act inside their house which prompted him to box his wife who lost consciousness. He was not able to take hold of the paramour because he jumped out of the window. He caught them having an illicit affair on 10 November 1996 even prior to [the] arrival of Lilibeth on 15 November 1996."^[10]

The Trial Court's Ruling

The trial court gave credence to the testimony of the victim and rejected the denial put up by appellant. It explained its ruling as follows:

"This court [has] carefully analyzed the testimony of complainant Jovelyn who is the daughter of accused Rolly Espejon. She appears to be of tender age and definitely inexperienced in sexual matters to fabricate the charge against her own father for no reason at all. This court finds her testimony credible, natural and in accordance with the ordinary course of nature and the ordinary habits of life to such a degree that any minor inconsistencies in her testimony [may be] considered badges of veracity

or manifestations of truthfulness on material points in the testimony.

"The claim of the defense that the cases were concocted by Rolly's wife and children because Rolly caught his wife Elsie having sexual intercourse with her paramour Jaime Apaya in November 1995 is preposterous and obviously contrived. It appears to be his last ditch effort to save his neck for the grave injustice that the accused committed against his own family. It has to be rejected.

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"In rape, force need not always produce physical injuries. The absence of external signs of physical injuries on the body of the victim Jovelyn and the latter's failure to shout for help or her failure to immediately report it to her mother or the authorities do not negate rape. It is not necessary that force be employed. Intimidation is sufficient, and this includes the threat to kill her. Intimidation is addressed to the mind of the victim and, therefore, subjective. Its presence could not be treated by any hard and fast rule but must be viewed in the light of the victim's perception and judgment at the time of the crime. Jovelyn Espejon was only then 13 years old and the offender was her own father who ha[d] moral influence on her. One cannot expect her to cry out in public her personal anguish, humiliation and pain. Jovelyn Espejon should be looked upon with pity for the bestiality she went through [at] the hands of no other than her own father. Her courage failed her until such time when she learned that her other sister suffered the same fate as her from her father's hands."^[11]

The Issue

In this automatic review,^[12] appellant submits the following assignment of errors for our consideration:

"I

The court a quo gravely erred in convicting accused-appellant Rolly Espejon despite failure on the part of the prosecution to establish the actual date of the commission of the crime of rape.

"II

The court a quo erred in imposing the capital punishment of death."^[13]

The Court's Ruling

The appeal is partly meritorious. Appellant is guilty only of simple, not qualified, rape; thus, he should be sentenced to *reclusion perpetua*, not death.

First Issue:

Validity of the Information

At the outset, the Court notes that appellant does not contest the sufficiency of the prosecution evidence. Neither does he challenge the credibility of the victim and her