

EN BANC

[G.R. No. 142566, August 08, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SALVADOR MIRANDA Y CAPE, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

For automatic review by this Court is the decision of the Regional Trial Court, 5th Judicial Region, Branch 57, Libmanan, Camarines Sur imposing the death penalty on the accused-appellant, Salvador Miranda for raping his fourteen-year old daughter, Teresita.

The Information reads as follows:

The undersigned 4th Assistant Provincial Prosecutor of Camarines Sur, upon a sworn complaint filed by Teresita L. Miranda, hereby accuses SALVADOR MIRANDA y DOE for the crime of RAPE defined and penalized under Article 355 of the Revised Penal Code in relation to R.A. 7659, committed as follows:

That sometime in February, 1998 at Sitio Sampaloc, Barangay Banga Caves, Municipality of Ragay, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force and intimidation, and while armed with a fan-knife, did then and there, willfully, unlawfully and feloniously have sexual intercourse with his 14 year old daughter, TERESITA L. MIRANDA against her will, to her damage and prejudice.

ACTS CONTRARY TO LAW.^[1]

When arraigned on October 25, 1998, the accused-appellant pleaded "not guilty." Pre-trial was waived so trial ensued. The prosecution presented the victim and the medico-legal officer as witnesses. The medico-legal report was offered as their documentary evidence. For the defense, only the accused-appellant testified on his own behalf.

On January 17, 2000, the RTC rendered its decision with the following dispositive portion:

WHEREFORE, in view of the foregoing, this Court finds the accused, SALVADOR MIRANDA, GUILTY beyond reasonable doubt of the crime of Rape, as defined and punished under Article 335 of the Revised Penal Code as amended, and hereby sentences him to the supreme penalty of DEATH. He is likewise directed to pay his daughter damages of Fifty Thousand Pesos (P50,000.00), exemplary damages of Thirty Thousand Pesos (P30,000.00) and to pay the costs of this suit. Considering his old

age, however, this Court hereby recommends that the penalty be commuted to *Reclusion Perpetua*.

Let the record of this case be forwarded to the Supreme Court on automatic review.^[2]

The facts as found by the trial court are as follows:

Sometime in February 1998, Teresita (Tessie) did not go to school. Her other siblings were in school, while the older ones who were already married lived in their respective houses. Her mother was washing clothes near her brother's place, while her father was engaged in a drinking bout with four men. At about 12:00 noon, her father, smelling a gin, went inside their house, and pulled her towards the room. Tessie was not able to shout or make any sound, afraid that her father might hurt her. Her father removed her T-shirt and shorts and then undressed himself. He made her lie down on the floor, then he laid down also and inserted his penis into her vagina. The initial, unwelcome and detestable experience was excruciating that Tessie cried. She was still naked when her mother Rosella arrived. His father stood up, wore his shorts and did not answer his wife's query what he did to their child. Rosella got angry and asked her husband why did he do it, but the latter did not speak and just went away as if nothing happened. Tessie, in tears, told her mother about her carnal defilement in the hands of her father that day. The following day Tessie, together with her aunt, Casiana Miranda, went to Daet where she stayed with the latter's daughter for a month, until her mother fetched her. Her elder sister Hilda Navarro, who came to learn of her fate from her mother, brought her to the police authorities. She executed a sworn statement before police at Ragay, Camarines Sur (Exhibit B, p. 4, Record).

Dr. Marilyn Follosa, Municipal Health Officer of Ragay, examined Tessie Miranda on March 24, 1998. The medical certificate (Exhibit A, p.5, Record) indicated the following:

"Pertinent PE findings:

Healed, Complete, Hymenal Laceration at 4:00 o'clock"

x x x^[3]

The accused-appellant denied the accusations and claimed that he was in the farm busy plowing the field in February, 1998. He denied that he was drunk that noon of February and asserted that he goes to the farm everyday, in February, or even before that month and also in March until he was arrested by the police.^[4]

In this appeal, the accused-appellant raised the lone assignment of error that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO STATE IN THE INFORMATION THE PRECISE DATE OF THE COMMISSION OF THE ALLEGED OFFENSE.^[5]

The accused-appellant asserts that the Information where he is charged for rape is fatally defective as it does not state the approximate time of the commission of the

crime in violation of the Rules of Court.^[6]

The information merely states that the rape was allegedly committed "sometime in February 1988." As it does not mention the precise time and date when the rape was committed; the Information must, therefore, be considered void. Such defect jeopardizes the right of the accused-appellant to be informed of the offense charged. With this constitutional infirmity, the accused-appellant deserves an acquittal.

The contention is untenable.

In refutation of accused-appellant's argument, the Office of the Solicitor General (OSG) presented adequate jurisprudence on the matter that it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless the time is an essential ingredient of the crime.^[7] In the crime of rape, the time of its commission is not "a material ingredient of the offense."^[8] It is sufficient that the act complained of is alleged to have taken place "as near to the actual date at which the offense was committed as the information or complaint will permit."^[9] It can not be said that the accused-appellant was not properly apprised of the charges proffered against him. There is, therefore, no merit in accused-appellant's appeal.

After a careful review, we find the findings and conclusions of the trial court to be in accord with the law and jurisprudence and supported by evidence. The trial court gave credence to the testimony of the victim because she testified in a candid and straightforward manner. It had the badges of truth considering that the trial court found no motive which would make her testify falsely against the father if she has not really been aggrieved. She testified, to wit:

PROS. CONTRERAS:

Q: By the way, you said that you were raped by your father, where did it happen?

A: In our house, Sir.

Q: What is the name of your father?

A: Salvador Miranda.

Q: You said that you were raped by your father, are you referring the house of your father at Banga Caves, Ragay, Camarines Sur?

A: Yes, sir.

Q: Now, approximately, what time was that when it happened?

A: At 12:00 noon, Sir.

Q: Can you still remember the specific date?

A: I do not know, Sir.

Q: On that date, when you were raped by your father, was it schooldays or none schooldays?

A: There were classes, Sir.

Q: And on February of 1998 at 12:00 noon, aside from you and your father, who else were there in your house?

A: Only the two of us, Sir.

Q: Why, where was your mother at that time?

A: She was washing clothes Sir.

Q: Where?

A: At the house of my brother.

Q: Whom are you referring?

A: Jenny, Sir.

Q: Is Jenny's house, near or far?

A: Far, Sir.

Q: What about your sister Francia, where was she at that time?

A: She was at Sipocot, Sir.

Q: What about Danilo?

A: He (sic) also studying, Sir.

Q: You said, you were only two at your house and your father raped you, before your father raped you, what did he do first to you?

A: He followed me and he pulled me.

Q: Up to what place?

A: Towards the room.

Q: While the two of you was already there, what did he do to you?

A: He undressed me.

Q: What kind of clothes were you wearing on that time?

A: T-shirt and short, Sir.

Q: You said that your father undressed you, what did you do?

A: I was not able to move.

Q: You said you were not able to moved (sic), why?

A: Because, he might hurt me, Sir.

Q: Why do you say that he might hurt you, was he carrying any weapon?

ATTY. MIRABUENO:

Leading, Your Honor.

COURT:

Reform your question.

PROS. CONTRERAS:

Q: What did you observe from your father at that time?

A: I smelled of gin to (sic) him, Sir.

Q: Why do you say that he was (sic) smelled of gin?

A: He drunk, Sir.

Q: Where?

A: In our house, Sir.

Q: On that same date?

A: Yes, Sir.

Q: And who was his drinking mate?

A: My uncle, Sir.

COURT:

Q: No other persons?

A: They were four (4) Mam.

COURT:

Proceed, fiscal.

PROS. CONTRERAS:

Q: You said your father undressed you, which clothes you were wearing that he removed?

A: My short, Sir.

Q: After removing your short, what did he do next?

A: He took out my panty and then he undressed himself.

Q: When you have no more panty, what happened next?

A: He made me to (sic) lay down.

Q: After you laydown (sic), what happened next?

A: He also laydown (sic), Sir.

Q: Where, on top of you?

ATTY. MIRABUENO:

Leading, Your Honor.

COURT:

Reform your question.

PROS. CONTRERAS:

Q: You said you laydown (sic), what happened next when he also laydown (sic)?

A: I was raped, Sir.

Q: How did he rape you?

A: His penis inserted to my vagina.

Q: What did you do, when he inserted his penis to your vagina?

A: I cried, Sir.

Q: Why did you cry?

A: Because it is painful, Sir.