

FIRST DIVISION

[G.R. No. 138974, September 19, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO SEGOVIA, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us is an appeal of the Decision^[1] dated July 10, 1998 of the Regional Trial Court of Iloilo City, Branch 22, in Criminal Case No. 32713, finding accused-appellant Roberto Segovia guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Accused-appellant was charged with rape in an Information which reads as follows:

That on or about 22nd day of November 1987 in the Municipality of Nueva Valencia, Guimaras, Iloilo, Phils., and within the jurisdiction of this Honorable Court, said accused armed with a knife, did then and there willfully, unlawfully and feloniously, through the use of force, violence and intimidation, have sexual intercourse with a certain Miriam Montalvo, then a thirteen-year old and mentally defective child, without her consent and against her will.

Contrary to law.^[2]

Upon arraignment, accused-appellant pleaded "not guilty" to the crime charged. Thereafter, the case was tried on the merits.

The facts are as follows:

The victim, thirteen year-old Miriam Montalvo, was a resident of Barangay Lanipe, Nueva Valencia, Guimaras, Iloilo. She regularly walked to school with her cousin, Stephen Deles. The two would pass by the store of accused-appellant to fetch his granddaughter, Jennylin Bilib-on, and bring her to school.

When Miriam and Stephen arrived at accused-appellant's store in the morning of November 21, 1986, the latter told them that Jennylin had gone back home to fetch water. Accused-appellant insisted that they wait for her, but Stephen decided to go ahead since he did not want to be late for class. Accused-appellant invited Miriam to come in and wait for Jennylin inside the store. Miriam initially refused but later acceded upon accused-appellant's insistence. When they got inside, Miriam sat on a stool while accused-appellant closed the door. Miriam started to feel uncomfortable and decided to leave, but accused-appellant held her left hand and pushed her towards a bamboo bed about two meters away. Accused-appellant pointed a knife at Miriam and lay on top of her. Miriam struggled and fought back but accused-appellant was too strong. He took off his shorts and brief and, after removing Miriam's panties, forced her legs apart with his knees. Miriam felt intense pain as

accused-appellant inserted and repeatedly thrust his penis into her vagina. After satisfying his lust, he again pointed the knife at Miriam's neck and threatened to kill her if she told anybody what he did.

Miriam's vagina bled profusely and stained her dress. After accused-appellant got up, Miriam put on her panties and hurriedly left the store. She proceeded to her school but did not attend her classes. Instead, she waited for Stephen at the gate. When morning classes were over, she and Stephen walked home together. Stephen noticed that Miriam's eyes were swollen but he said nothing. As soon as they arrived home, Miriam changed her clothes and washed them. She stopped going to school since then.

Six months later, Miriam's cousin, Luzvminda Deles, discovered that she was pregnant. When she confronted her, Miriam confessed that she was raped by accused-appellant Roberto Segovia. In August 1987, Miriam gave birth to a baby girl.

On January 18, 1989, complainant finally mustered the courage to file a criminal complaint, charging accused-appellant of the crime of rape.

Accused-appellant interposed the defense of denial and alibi. He alleged that on the day of the alleged rape, he stayed in his house in Nueva Valencia, Guimaras and did not go to the store, which is located half a kilometer away.

After trial, judgment was rendered against the accused-appellant, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment finding the accused, Roberto Segovia, GUILTY beyond reasonable doubt of having committed the crime of rape. He is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to indemnify the victim, Miriam Montalvo, the amount of P50,000.00, pay moral damages in the amount of P20,000.00, and P10,000.00 as exemplary damages in order to serve as an object lesson to the public that no one may deprive a young woman of " the right to grow up and discover the wonders of womanhood in the normal way", without subsidiary imprisonment in case of insolvency.

He is further ordered to acknowledge and support the child delivered by Miriam Montalvo in August 1987 whose complete name has not been revealed.

Costs against him.

SO ORDERED.

Accused-appellant interposed the instant appeal, raising the following assignment of errors:

I

THE TRIAL COURT ERRED IN NOT DISMISSING THE CASE ON THE GROUND OF VARIANCE OF THE DATE OF THE COMMISSION OF THE ALLEGED RAPE AND THAT WHICH THE PROSECUTION PROVED DURING THE TRIAL SINCE THE COMPLAINT WAS NEVER AMENDED NOR SUBSTITUTED.

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE OFFENDED PARTY DESPITE THE FACT THAT SHE GAVE INCONSISTENT, CONTRADICTIONARY AND EVASIVE DECLARATIONS DURING THE TRIAL AND DURING THE PRELIMINARY INVESTIGATION OF THE CASE.

III

THE TRIAL COURT ERRED IN NOT HOLDING THE IMPROBABILITY OF THE COMMISSION OF THE CRIME ON NOVEMBER 22, 1987 OR NOVEMBER 21, 1986, WHICH WAS ALLEGED AS A SCHOOL DAY AND, THEREFORE, IN DISCREDITING THE TESTIMONY OF THE OFFENDED PARTY AS REGARDS THE COMMISSION OF RAPE.

IV

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED FOR LACK OF EVIDENCE WHICH WILL SUSTAIN HIS CONVICTION.

Accused-appellant alleged that the case should have been dismissed because while the complaint alleged that the rape was committed on November 22, 1987, the evidence showed that the crime was committed on November 21, 1986.

The pertinent provision of the Revised Rules of Criminal Procedure is Rule 110, Section 11, which states:

Date of 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 offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

In rape cases, the date of the commission of the crime is not an essential element of the crime and, therefore, need not be accurately stated.^[3] The material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient if the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.^[4]

In the case at bar, the complaint alleges that the rape was committed “on or about 22nd day of November 1987.”^[5] This sufficiently apprised accused-appellant of the charge proffered against him.^[6] The date alleged was stated near to the actual date of commission. Thus, the same afforded accused-appellant ample opportunity to prepare an intelligent defense and avoid surprise and substantial prejudice to the defense.^[7]

In *People v. Bugayong*,^[8] we held that a difference of one (1) year or twelve (12) months is merely a matter of form and does not prejudice the rights of the accused. The phrase “on or about” employed in the information does not require the