

## FIRST DIVISION

**[ G.R. Nos. 137051-52, May 30, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICENTE VALDESANCHO Y DELMO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

This Court has many times declared that the date of commission of the rape is not an essential element of the crime.<sup>[1]</sup> While this is true in the cases at bar, the dates when the rapes were committed are nonetheless essential to the accused Vicente Valdesancho's defense of alibi. Thus, for failure of the prosecution to allege in the information and prove during trial the correct dates of the rapes allegedly committed against the victim, Elvie Basco, the accused will be let off the hook on due process considerations.

On March 27, 1996, two informations were filed against the accused Valdesancho.

In Criminal Case No. S-1964, the information reads, viz:

"That on or about August 15, 1994 at Sitio Mahabang Parang, Barangay Nanguma, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and by means of force and violence, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Elvie B. Basco, 15 years old, single (,) against her will and consent and to her damage and prejudice.

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

In Criminal Case No. S-1965, the information reads, viz:

"That on or about the evening of August 16, 1994 at Sitio Mahabang Parang, Barangay Nanguma, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and by means of force and violence, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Elvie B. Basco, 15 years of age, single (,) against her will and consent and to her damage and prejudice.

CONTRARY TO LAW."<sup>[3]</sup>

The prosecution evidence shows that the accused Valdesancho is the husband of Elvie's sister, Erlinda Valdesancho. Elvie and her two younger brothers, Erick and Eddie, lived with their brother in the mountains of Barangay Minayutan, Famy, Laguna. In 1994, however, Elvie's mother, Leonida Basco, requested the spouses Erlinda and the accused Valdesancho to let Elvie, Erick and Eddie live in their house in San Antonio, Mabitac, Laguna. The three were going to study in Barangay San Antonio. They resided with the accused from June 24, 1994 to June 1995. Elvie was then fourteen years old and in Grade 1 at the Barangay San Antonio School.<sup>[4]</sup>

The first incident of rape happened in the early morning of August 15, 1994. Elvie was in the house of the accused Valdesancho while Erlinda was then in Manila. The accused called Elvie into his room and ordered her to powder his back. After a while, Elvie asked the accused to excuse her because she had to cook breakfast. The accused held her and refused to release her. He tied her hands at her back and laid her on the bed. He removed Elvie's shorts and panty and then took off his pants. Elvie pleaded with the accused not to violate her. She tried to keep her legs together, but the accused forcibly spread her legs. He succeeded in having carnal knowledge of Elvie. The painful experience caused her to bleed. Having satisfied his lust, the accused stood up and put on his clothes. He untied Elvie's hands and she dressed up. The accused warned her not to reveal the dastardly act to anybody, otherwise he would kill her and her family. All this time, Elvie's brothers were sleeping in the other room.<sup>[5]</sup>

The second incident of rape happened in the evening of August 16, 1994. Elvie was in the house of the accused Valdesancho studying. He called Elvie to his room and ordered her to look under the bed for a chick. She did so, and while she was on her way out of the room, the accused blocked her path. The accused laid her on the bed, removed her shorts and panty, kissed her on the cheeks and lips, and again had carnal knowledge of her against her will. She hurt. After succumbing to his beastly instinct, the accused put on his brief and pants. Elvie also put on her clothes. Again, the accused threatened Elvie not to report the incident to anybody, otherwise he would kill her and her family. Elvie kept her harrowing experience to herself for fear that the accused would carry out his threat.<sup>[6]</sup>

In September 1995, however, when Elvie was already residing with her brother and mother in Barangay Minayutan, Famy, Laguna, she reported the rape incidents to her Tiya Soling. She was fearful that the accused might rape her again. Although she no longer lived with the accused, the latter stayed in their (Elvie's) house in Barangay Minayutan for less than a month in September, 1995 and he gave her malicious looks. Tiya Soling reported the rape incidents to Elvie's mother who verified the story from Elvie herself. On January 15, 1996, Elvie executed a sworn statement at the Mabitac Police Station narrating the rape incidents.<sup>[7]</sup>

Elvie's mother, Leonida Basco, testified that in 1994, she requested her three children, Elvie, Erick and Eddie to live with her daughter, Erlinda, and the accused Valdesancho in Mahabang Parang. Elvie was then fourteen years old. Consistent with Elvie's testimony, Leonida declared that it was Soledad Nero (Elvie's Tiya Soling) who first told her that the accused raped Elvie. Elvie confirmed to her that she had been raped twice by the accused in August 1994. Leonida did not immediately take action on the matter as the accused was her son-in-law. But after

she was convinced of Elvie's story, she accompanied her to the police station in the Municipal Building of Mabitac. Upon advice by a certain Mayor Carpio, Elvie was medically examined. Thereafter, they filed a criminal complaint for rape against the accused.<sup>[8]</sup> She averred that she did not have any misunderstanding with Erlinda and the accused Valdesancho.<sup>[9]</sup>

Dra. Nimfa Pastrana, Medico-Legal Officer at the General Cailles Memorial Hospital, examined Elvie on January 13, 1996. On January 19, 1996, she issued a medical certificate stating her findings, viz:

"Old hymenal incomplete lacerations noted at 12, 5 and 4 o'clock position. . . Old hymenal complete lacerations at 3 and 7 o'clock positions."<sup>[10]</sup>

She opined that the lacerations could have been caused by a man's private part or fingers inserted in the vagina months or years before she examined Elvie. Elvie told her she had been raped. Dra. Pastrana noted in a logbook that according to Elvie, the rape took place on August 4, 1994.<sup>[11]</sup>

Erlinda Valdesancho, wife of the accused, testified for the defense. She declared that on August 15 and 16, 1994, she was in their house at Mahabang Parang, San Antonio, Mabitac, Laguna. Her husband was not home on those days because he was in J. Rizal St., Sta. Maria, Laguna helping his friends cook food for the town fiesta. The distance between that place and their house is about five kilometers. Erlinda was then with her brothers Erick and Eddie and her sister Elvie. On August 15, 1994, Erlinda awoke at about 3:00 or 4:00 a.m. She woke up Elvie, Erick, and Eddie to get ready for school. The three children went to school at San Antonio, Mabitac, Laguna, and nothing unusual happened that date. Elvie was then thirteen nearing fourteen years old and in Grade 1. The whole day of August 15, 1994, Erlinda made candies, crocheted, and cleaned the house.

On August 16, 1994, Erlinda testified that she woke up at about 5:00 a.m. In the subsequent part of her testimony, however, Erlinda surprisingly said that on August 16, 1994, she did not see Elvie. Allegedly, Elvie no longer lived with her and the accused by the summer vacation of 1994. It was in 1993 that Elvie, Erick, and Eddie were entrusted to her and her husband, accused Valdesancho. They shouldered the school expenses of the three who went to San Antonio Elementary School. The siblings stayed with them until summer vacation in 1994. Thereafter, they were brought to Barangay Minayutan, Famy, Laguna, then to Saksak, Sta. Maria, Laguna, and finally to Ilog Putol, Siniloan, Laguna.<sup>[12]</sup>

Erlinda further testified that her father died on July 4, 1991. Her mother, Leonida, did not remarry but lived in with a lesbian named Melita Flores. This was the source of animosity between them. On January 4, 1995, prior to the filing of the instant rape cases, her mother berated her. Her mother was mad because she advised her to separate from Melita. The latter had children of her own and their relationship was an embarrassment. Erlinda knew that Melita was a lesbian because the latter left her husband for Leonida.<sup>[13]</sup>

On additional direct examination, about a month after her initial testimony where she stated that Elvie lived with them on August 15 and 16, 1994, Erlinda testified that Elvie could not have possibly been raped by her husband. She explained that Elvie was no longer living with them at the time of the alleged rape incidents.<sup>[14]</sup> By then, Elvie was already residing with her brothers Elmer and Edgar in Barangay Minayutan, Famy, Laguna. Elvie was then studying in Barangay Minayutan and was in Grade 2. The school was about twelve meters from Elmer's residence and 150 meters from the house of Edgar. To buttress her claim, she presented to the court a certification stating that Elvie Basco studied and finished Grade 1 from 1993 to 1994 at the Paaralang Elementarya ng San Antonio, Mabitac, Laguna. The certification was signed by Victoria Cuevas, a Grade 1 and 2 teacher and Ma. Rona Aguja, the *Gurong Namamahala*.<sup>[15]</sup> She also presented a certification dated February 12, 1997, stating that Elvie Basco studied Grade 2 at Minayutan Elementary School in Barangay Minayutan, Famy, Laguna during the school year 1994-1995. This was signed by a certain Edgardo Planillo.<sup>[16]</sup> Erlinda also presented a certification dated February 25, 1997, stating that Elvie attended her classes in Minayutan Elementary School from August 1 to 31, 1994. It was signed by Elvie's teacher, Mercedita Ramos.<sup>[17]</sup>

Erlinda denied going to Manila occassionally during the year Elvie lived with her and her husband. She also testified that she and her husband did not have any misunderstanding with Elvie before the latter lodged a complaint for rape against the accused.<sup>[18]</sup>

Aquilino Agustin also testified for the accused. He is a retired PNP member and farmer residing in Sta. Maria, Laguna. He owned a riceland in Sitio Mahabang Parang, Barangay San Antonio, Mabitac, Laguna and had known the accused Valdesancho for about five years.

On August 14, 1994, Agustin went to the house of the accused and asked the latter to help him butcher a pig for the town fiesta the next day. The accused went to Sta. Maria before lunch time on August 15, 1994. He helped butcher a pig and stayed there the whole day. The following day, or on August 16, 1994, the accused again went to Agustin's house. He arrived at about 6:00 in the morning and helped cook food. He sliced meat and other ingredients. He left Agustin's house early morning the following day. On cross-examination, however, Agustin testified that the accused left his house in the afternoon of August 16, 1994, and not the following day. A year after or on August 15 and 16, 1995, the accused again helped prepare food for the town fiesta. In 1996, Agustin asked his neighbors, among whom were his godchildren in marriage, to help prepare the food.<sup>[19]</sup>

Mercedita Ramos likewise took the witness stand for the accused. She is a teacher at the Famy Central Elementary School. Previously, she taught in Barangay Minayutan, Famy, Laguna beginning school year 1994-1995. Elvie Basco was her pupil in Grade 2 from June 6, 1994 to March, 1995. She identified the certification she issued on February 25, 1997 upon request of Erlinda Valdesancho. It stated that Elvie attended classes in Minayutan Elementary School on August 1 to 31, 1994. She based her certification on Form 18-E which was in the custody of Mr. Edgardo Planillo, the District Supervisor of the Department of Education, Culture and Sports in Famy, Laguna. Form 18-E does not contain the exact month of attendance, but it states that Erlinda was absent for only one (1) day during school