

FIRST DIVISION

[G.R. No. 128085-87, April 12, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN RAZONABLE, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

This is an appeal from a decision^[1] rendered by the Regional Trial Court of Camarines Norte, Branch 39, dated May 3, 1996, in Criminal Cases Nos. 7760, 7761 and 7762, finding appellant Benjamin Razonable guilty beyond reasonable doubt of raping his daughter, Maria Fe Razonable, and sentencing him to suffer the penalties of three (3) reclusion perpetua and to pay the amount of two hundred thousand (P200,000.00) pesos as moral damages.

Appellant was charged in three separate Informations^[2] with the crime of rape, which are identically worded, as follows:

"That sometime in the year 1987, at Purok I, Brgy. IV, Mantagbac, Municipality of Daet, Province of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously have carnal knowledge of his own daughter **MARIA FE H. RAZONABLE**, against the latter's will and by means of force and intimidation, to her damage and prejudice.

"The crime was committed with the aggravating circumstances of relationship, the accused is the father of the offended party and that said offense was committed in their own dwelling and the offended party not having given provocation for it."

Appellant pleaded not guilty and his case was tried on the merits.

Records show that in the middle of June 1987, just before midnight, complainant Maria Fe was lying down in her room on the second floor of their house in Bgy. IV, Mantagbac, Daet, Camarines Norte. Her father, appellant Benjamin Razonable, suddenly appeared inside her room, covered her mouth and held her hands. While complainant struggled to free herself from his grip, appellant forcibly removed her shirt, skirt and panty. Then appellant took off his shirt and pants, and straddled her. Complainant continued to struggle and tried to shout, but appellant covered her mouth and told her that "hindi naman daw po ako maaano." She cried while appellant was deflowering her, but she could not shout because appellant was covering her mouth. Appellant succeeded in having carnal knowledge of her.

Thereafter, appellant repaired to his room downstairs, but not before threatening complainant with death should she report the crime to anybody. As soon as appellant had gone, complainant ran to a friend's house nearby where she cried a river, but did not tell her friend the truth due to her father's threat. Complainant went back home and helplessly cried herself to sleep. At the time of the rape, complainant was 12 years old^[3] and was living alone with her father because her parents were then separated.

Then came the following night. While in deep slumber, complainant felt appellant on top of her. He started to remove her shirt and panty. She cried and pleaded with him to stop, but appellant ignored her and when she struggled, he slapped her several times. Appellant once more succeeded in satisfying his lustful desires on her. She felt the pain again, and again her father repeated his threat to kill her if she would reveal the incident.

Complainant's harrowing experience was to be repeated a third time. After one day, at about midnight, she was standing in her room when appellant grabbed her on the arm and forced her to lie inside the room. Appellant forced another intercourse with her.

Complainant was able to disclose the dastardly acts of her father to her elder sister only in February of 1993 because her conscience would not allow her any peace of mind. She also feared recurrence of the bestial acts. Her father often drank with friends inside their house and she was wary that appellant might give her to his friends. Thus, accompanied by her sister Ana Marie, complainant went to the police station and filed a complaint. Then they proceeded to the Camarines Norte Provincial Hospital where complainant was examined by Dr. Arsenio Angeles, Jr. Based on his medical certificate, complainant had, at the time of examination, incompletely healed hymenal lacerations at 5, 6, 7, and 9 o'clock positions.^[4]

The defense evidence was anchored on denial and alibi. Appellant Razonable testified that during the times material to the alleged rape incidents, he was at the bakery owned by a certain Mrs. Balane where he worked from 8 p.m. to 10 a.m. In corroboration, witness Wilfredo Francisco declared that in June of 1987, appellant was never absent from work because they were busy preparing for the town fiesta. On cross, however, he admitted that there were times accused did not report for work. He failed to remember the days when appellant worked in June of 1987.

Appellant attempted to explain the ill motive of the complainant. He said that complainant filed the cases at bar because he often scolded his children when they stayed out late at night. He even whipped them with his belt. He added that on February 16, 1993, he slapped Marie Fe and her brother Ruben because he caught them sleeping together naked. When he insisted that the two be checked by a doctor, they refused and instead they transferred to the house of their sibling at Pasig, Daet, Camarines Norte. He was not able to discuss with his children these cases because, except for complainant, they already left for Manila.^[5]

Felix Razonable, brother of appellant, testified that after the cases were filed, his nieces Ana Marie and Maria Fe saw him at his house and asked for help as they wanted to withdraw the said cases. They went to the Public Attorney's Office to execute an Affidavit of Desistance. She did not, however, proceed for fear that she

might be incarcerated.^[6] Complainant refuted Felix's story. She explained that the purported execution of affidavit of desistance was insisted upon by appellant's sister.

From the judgment of conviction, appellant is now before us alleging that:

1. The trial court gravely erred in not considering the information insufficient to support a judgment of conviction for its failure to state the precise date of the alleged commission of the offense, it being an essential element of the crime charged; and
2. The lower court gravely erred in finding that the guilt of herein accused-appellant of the three (3) counts of rape has been proven beyond reasonable doubt.

We sustain the conviction.

Appellant contends that the allegation in the Information that the offense was committed "sometime in the year 1987" violates Section 6, Rule 110 of the Revised Rules of Court which provides that the information must state the approximate time of the commission of the offense. The three Informations should therefore be considered fatally defective because the dates of the commission of the offenses charged are too indefinite and denied the appellant an opportunity to prepare his defense. Appellant contends that the defective Informations violated his constitutional right to be informed of the nature and cause of the accusation against him.

Section 11, Rule 110 of the Rules of Court requires that the time of the commission of the offense must be alleged as near to the actual date as the information or complaint will permit. If the Information does not state the time with sufficient certainty as to inform the accused of the date on which the criminal act is alleged to have been committed, this will run afoul of the constitutionally protected right of the accused to be informed of the nature and cause of the accusation against him.^[7]

The rationale of the rule, which is to inform the accused of the nature and cause of the accusation against him, should guide our decision. To claim this substantive right protected by no less than the Bill of Rights, the accused is duty bound to follow our procedural rules which were laid down to assure an orderly administration of justice. Firstly, it behooved the accused to raise the issue of a defective information, on the ground that it does not conform substantially to the prescribed form, in a motion to quash said information or a motion for bill of particulars. An accused who fails to take this seasonable step will be deemed to have waived the defect in said information. The only defects in an information that are not deemed waived are where no offense is charged, lack of jurisdiction of the offense charged, extinction of the offense or penalty and double jeopardy. Corollarily, we have ruled that objections as to matters of form or substance in the information cannot be made for the first time on appeal.^[8] In the case at bar, appellant did not raise either in a motion to quash or a motion for bill of particulars the defect in the Information regarding the indefiniteness of the allegation on the date of the commission of the offense.