

## EN BANC

[ G.R. Nos. 137408-10, December 08, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLY MARQUEZ, ACCUSED-APPELLANT.**

### DECISION

**YNARES-SANTIAGO, J.:**

For automatic review by the Court is the conviction of accused Willy Marquez, for three (3) counts of rape<sup>[1]</sup> committed against five-year old Maria Cristina Agustin. The three (3) similarly worded informations, all dated February 17, 1998 allege:

That on or about the month of October 1997, at Brgy. Bacayao, Municipality of Guimba, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and taking advantage of his superior strength, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of one MARIA CRISTINA AGUSTIN, a five year old girl, against her will, to her damage and prejudice.

CONTRARY TO LAW.

Upon arraignment, accused entered a plea of "not guilty" in all three (3) cases. The case thereafter proceeded to trial.

After trial, the court *a quo* rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the prosecution having established the guilt of the accused Willy Marquez beyond reasonable doubt, this Court hereby sentences him to suffer the penalty of DEATH for each crime he has committed in Criminal Cases Nos. 1536-G, 1537-G and 1538-G. Further, the accused Willy Marquez is likewise ordered to indemnify the offended party the amount of P150,000.00 as moral damages.

IT IS SO ORDERED.

The prosecution established that sometime in October 1997, the minor victim, Maria Cristina Agustin, was forcibly dragged by accused-appellant from her house in Bacayao, Guimba, Nueva Ecija to the banana plantation situated at the back of the house. There, accused-appellant undressed Maria Cristina, spat on her vagina, and

had sexual intercourse with her. After the rape, accused-appellant warned the victim not to tell anybody what he did to her.

On another occasion also in October 1997, accused-appellant again dragged Maria Cristina to the banana plantation where he raped her. This was repeated still in October 1997, when accused-appellant raped Maria Cristina a third time at the banana plantation.

It was only on January 8, 1998 when Maria Cristina confided to her mother in detail what appellant did to her. Upon the advice of the police, Maria Cristina was brought by her parents to the Cabanatuan Provincial Hospital for medical examination.

Dr. Cora Lacurom, who examined Maria Cristina, found an old healed hymenal laceration at 6:00 o'clock position, which could have been inflicted through forced sexual intercourse committed in or about October 1997.<sup>[2]</sup>

Denying he had anything to do with the offenses charged, accused-appellant testified that during daytime for the whole month of October 1997 he was at his place of work hauling *palay* hay for Honofre Arenas at Barangay Bacayao, Guimba, Nueva Ecija.<sup>[3]</sup> He further claimed that he worked from Monday to Sunday from 6:00 a.m. to 5:30 p.m. and had a break time which lasted from 12:00 noon to 2:00 p.m.<sup>[4]</sup> Aside from hauling *palay* hay, accused-appellant's work included pasturing the cows and cleaning their wastes.<sup>[5]</sup> During break time, accused would hang out at the workshop (*talyer*) of his employer's brother-in-law which was just in front of his workplace.<sup>[6]</sup> After his dismissal from work, he would proceed to the workshop of the brother-in-law in order to learn.<sup>[7]</sup>

In his Brief, accused-appellant raises the lone assigned error that -

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO STATE IN THE (3) INFORMATIONS THE PRECISE DATES OF THE COMMISSION OF THE ALLEGED RAPES.

In support of the foregoing error, accused insists in sum that the three (3) informations charging him with three (3) counts of rape suffer from "constitutional and procedural infirmities" in that the "the date and time of the offenses charged are ... indefinite to give [him] an opportunity to prepare for his defense."<sup>[8]</sup> Accused-appellant specifically alludes to the phrase "on or about the month of October, 1997," the dates of commission of the crimes as alleged in the informations in Criminal Cases Nos. 1536-G, 1537-G and 1538-G.<sup>[9]</sup>

The argument is not novel and is bereft of merit.

The remedy against an indictment that fails to allege the time of commission of the offense with sufficient definiteness is a motion for bill of particulars.<sup>[10]</sup> The records of these cases reveal that accused-appellant did not ask for a bill of particulars in

accordance with Rule 116, Section 10 of the Rules of Court,<sup>[11]</sup> which provides that:

SEC. 10. *Bill of particulars.* - Accused may, at or before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial. The motion shall specify the alleged defects and details desired.

The failure to move for specifications or the quashal of information on any of the grounds provided for in the Rules of Court deprives accused of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms but which sufficiently charges the accused with a definite crime.<sup>[12]</sup> It is too late in the day for accused-appellant to raise this issue because objections as to matters of form or substance in the information can not be made for the first time on appeal.<sup>[13]</sup> Be that as it may, the exact date of the commission of the crime is not an essential element of the crime.<sup>[14]</sup> In *People v. Jesus Gianan y Molina*,<sup>[15]</sup> the Court pointedly stated that:

It is settled that the time of the commission of rape is not an element thereof, as this crime is defined in Art. 335 of the Revised Penal Code. *The gravamen of the crime is the fact of carnal knowledge* under of the circumstances enumerated therein, *i.e.* (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented. In accordance with Rule 110, Section 11, as long as it alleges that the offense was committed "at any time as near to the actual date at which the offense was committed," an information is sufficient. Thus, in *People v. Bugayong*,<sup>[16]</sup> it was held when the time given in the (information) is not the essence of the offense, the time need not be proven as alleged and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action.<sup>[17]</sup>

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x x x

x

x x

Indeed, this Court has held that the allegation that rapes were committed "before and until October 15, 1994,"<sup>[18]</sup> "sometime in the year 1991 and the days thereafter,"<sup>[19]</sup> and "on or about and sometime in the year 1988"<sup>[20]</sup> constitute sufficient compliance with Rule 110, Section 11. In any event, even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during trial and any objection based on this ground must be deemed waived as a result of accused-appellant's failure to object before arraignment. Accused-appellant's remedy was to move either for a bill of particulars<sup>[21]</sup> or for the quashal of the information on the ground that it does not conform substantially to the prescribed form.<sup>[22]</sup>

Indeed, under Rule 110, Section 6 of the Rules of Court, the information need only state the *approximate* time of the commission of the offense, while Section 11 thereof states that -

SEC. 11. *Time of the commission of the offense.*- It is not necessary to state in the complaint or information the precise time at which the offense was committed *except when time is a material ingredient of the offense*, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit. (Italics ours)

In view of the gravity of the penalties imposed on accused-appellant, the Court must once again defer to the following guiding principles in the review of rape cases: 1.] to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; 2.] considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and 3.] the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.<sup>[23]</sup> Corollary to the foregoing legal yardsticks is the dictum that when a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.<sup>[24]</sup>

The Court has said time and again that in reviewing rape cases, it will be guided by the settled realities that an accusation for rape can be made with facility. While the commission of the crime may not be easy to prove, it becomes even more difficult for the person accused, although innocent, to disprove that he did not commit the crime. In view of the intrinsic nature of the crime of rape where only two persons are normally involved, the testimony of the complainant must always be scrutinized with great caution.<sup>[25]</sup> Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.<sup>[26]</sup>

Guided by these principles, the Court has meticulously scrutinized the testimony of complaining witness Maria Cristina Agustin and ultimately reached the conclusion that the acts charged did in fact occur. Maria Cristina's testimony on the acts of rape perpetrated against her by accused-appellant is clear and could have only been narrated by a victim subjected to those sexual assaults. Nowhere is accused-appellant's bestiality detailed than in the following narration of the victim, who was six years old<sup>[27]</sup> at the time she was called to testify at the witness stand:

FISCAL:

Q Now, do you still remember if sometime in October 1997 this Willy Marquez did something bad to you?

A Yes, sir.

Q What did he do to you this Willy Marquez?

A He brought me to the banana plantation (*sagingan*), sir.

Q That place where there were banana plants, is it situated

near your house?

A Yes, sir.

Q At the back of your house or in front of your house?

A At the back, sir.

Q What were you doing during the first time that Willy Marquez brought you to the banana plantation or the place where there were bananas? Were you outside the house or inside the house?

A Outside, sir.

Q You were doing what at that time? Were you playing or doing something at that time?

A Playing, sir.

Q What time of day was that, in the morning or in the afternoon or in the evening?

A Afternoon, sir.

Q And you said Willy Marquez brought you to that place where there were bananas, what did he do to you when you reach[ed] the place where there were bananas?

A He took off my clothes, sir.

Q After taking off your clothes, what did Willy Marquez do to you?

A He took off his clothes, sir.

Q After he took off his clothes, what did he do next?

A He spit, sir (*dinuraan*).

Q Willy Marquez spit on what?

A My private part, sir.

Q Your vagina?

A Yes, sir.

Q After spitting on your vagina, what did he do?

A He inserted, sir.

Q What did he insert?

A His private part, sir.

Q He inserted his penis into your vagina?

A Yes, sir.

Q What did you feel when he inserted his penis into your vagina?

A I got hurt, sir.

Q What did you do when Willy Marquez was inserting his penis into your vagina?

A Nothing, sir.

Q What did he tell you, this Willy Marquez?

A That I should not tell anybody, sir.

Q Did he threaten you or was he trying to scare [you] that you should not tell this to anybody?

A Yes, sir.

Q And you were scared of him?

A Yes, sir.

Q Now, after that first experience with Willy Marquez, did he repeat the same act in October 1997?

A Yes, sir.

Q How many times did he do that to you?

A Three (3) times, sir.

Q Now on the second occasion that he did that again to you, where did he do it?

A Also in the place where there were banana plants, sir.