

FIRST DIVISION

[G.R. No. 109780, August 17, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO BERNALDEZ @ "DOLFO," ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., J.:

This is an appeal from the decision^[1] of Branch 14 of the Regional Trial Court (RTC) of Ligao, Albay, convicting accused-appellant RODOLFO BERNALDEZ of rape committed against his 10-year old niece MARIA TERESA BERNALDEZ.^[2]

The complaint^[3] for rape was filed before the 6th Municipal Circuit Trial Court (MCTC) of Polangui-Libon, Albay, on September 1990 by Pedro B. Bernaldez, the younger brother of the appellant and father of the victim. RODOLFO was forthwith arrested and detained in jail.

After due proceedings in the MCTC, which found a probable cause against RODOLFO,^[4] the Office of the Provincial Prosecutor of Albay filed with the RTC of Ligao, Albay, an information^[5] charging him with the crime of rape committed as follows:

That in the morning of August 29, 1990, at Sitio Mabatia, Barangay Sugcad, Municipality of Polangui, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, said accused, with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge of her 10-year old niece MARIA THERESA BERNALDEZ, to her damage and prejudice.

The case was docketed as Criminal Case No. 2763 and raffled to Branch 14 of said court.

RODOLFO entered a plea of innocence at his arraignment.^[6]

At the trial on the merits, the prosecution presented as its witnesses MARIA TERESA and her father Pedro Bernaldez. Dr. Nancy de la Paz, who examined MARIA TERESA and issued the medical certificate, failed to testify.^[7] For its part, the defense had as its witnesses RODOLFO; Delfin Paular, the overseer of the rice mill where RODOLFO allegedly worked; and Melita Sasota, the teacher of MARIA TERESA.

The evidence for the prosecution is summarized by the Office of the Solicitor General (OSG) in the Brief for the Appellee as follows:

Through complainant's testimony, the prosecution was able to establish that in the morning of August 29, 1990, complainant, then [ten] years old, was raped by accused-appellant, her uncle, being the full-blooded brother of her father, at his house in Sitio Mabatia, Barangay Sugcad,

Polangui, Albay. She narrated that she was carried by her uncle upstairs who then removed her clothes and let her lie down on the floor. While she was lying down, her uncle opened the zipper of his pants and laid on top of her, inserted his penis inside her vagina and made a push and pull movement while on top of her. After a while, a sticky and warm object came out from his penis. After the rape, accused-appellant gave her P5.00 and threatened her not to tell anybody otherwise, he would kill her parents, brothers and sisters. (TSN, March 1, 1991, pp.6-7). Complainant further claimed that accused-appellant had been abusing her since five (5) years ago and these repeated acts were done in the same place, with accused-appellant always warning and threatening her not to tell anybody. (TSN, supra, pp.10-12).

On [August] 30, 1990, or the very next day after the last rape incident, complainant was sent by her father to go to accused-appellant's house in order to borrow P10.00 from him. However, complainant refused to go prompting her father to beat her. It was only then that she revealed to her father the cause of her reluctance and narrated to him the repeated rape and assaults of her uncle. Immediately after learning of the rape, her parents brought complainant to the Polangui Police Station to report the incident and file the complaint (TSN, supra p. 7). Complainant then executed a Sworn Statement before the police investigator (Exhs. A, A-1 and A-2). Afterwards, she was brought for treatment to Pio Duran Memorial District Hospital, a government hospital where she was examined by Dr. Maria Nancy de la Paz who issued a Medical Certificate dated September 3, 1990 (Exh. B). She likewise identified her Birth Certificate (Exh. C). Asked to identify her attacker, she readily identified accused-appellant in open court (TSN, supra, pp. 8-9).

Pedro Bernaldez, father of the complainant, testified that he is the younger brother of accused-appellant who lives in a separate house about two (2) "medium hills" away. He confirmed that he only discovered the rape on his daughter when she revealed to him the reason for her reluctance or fear in going to her uncle's (accused-appellant's) place when he sent her to borrow P10.00 from him on [August] 30, 1990. He likewise confirmed that the victim told him of the repeated rapes by her uncle since five (5) years ago, the last time being that done on [August] 29, 1990. These, his daughter revealed after he hit her with his belt several times for refusing to go as instructed. Fearing that something wrong would result if he directly confronted his brother, he decided to report the matter to the police authorities instead, which he immediately did. He also executed a Sworn Statement before the Polangui Police Station police investigator on September 2, 1990 (Exh. E). He further stressed that he had a good relationship with his brother and had no quarrel with him. (TSN, supra, pp. 17-21.).^[8]

RODOLFO had alibi for his defense. According to him he could not have committed the crime charged because from 6:00 a.m. to 5:00 p.m. of 29 August 1990, when the rape was allegedly committed, he was working as a mechanic/mill operator in the rice mill of William Cu, located 2 ½ to 3 kilometers from his house.^[9] He was charged with rape because in the evening of 28 August 1990, he saw one "Rodolfo" wearing only "briefs" near the door of the house of his brother Pedro. Half a meter

away from that man was Pedro's wife (MARIA TERESA's mother), who was then lying down on the floor wearing a sando and a skirt. The next day, Pedro had a drinking spree with this "Rodolfo"; "when he was already drunk," he filed the case against herein accused-appellant RODOLFO.^[10]

Delfin Paular, the overseer at the rice mill where RODOLFO was allegedly working, testified that RODOLFO arrived at the rice mill at around 6:00 a.m. of 29 August 1990, and stayed there until 6:00 p.m. because nobody was available to "relieve" him.^[11]

Melita Sasota, MARIA TERESA's teacher at North Central School, Polangui, Albay, testified that MARIA TERESA was present in her class on 29 August 1990 because her record of attendance was "clean" and not marked "absent." MARIA TERESA must have been already in school at around 6:30 a.m. and was inside the classroom when the bell rang at 7:15 a.m. However, Melita could not remember what time MARIA TERESA left school after the morning session and to where the latter went, although she saw the latter again at the start of the afternoon session until it ended at 4:20 p.m.^[12]

In its decision of 19 January 1993, the trial court found RODOLFO guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua. It also ordered him to pay MARIA TERESA P50,000 representing moral and exemplary damages, and to pay the costs.

The trial court held that the testimony of MARIA TERESA, who positively identified RODOLFO as the malefactor, was sufficient to prove RODOLFO's guilt. RODOLFO, as an uncle, had a great influence over MARIA TERESA, who, admittedly, was less than 12 years of age when the offense was committed; besides, there was intimidation consisting of the threat to kill her parents and brothers and sisters. Moreover, no reason or motive existed for MARIA TERESA or her father to fabricate the charge. Both RODOLFO and Pedro Bernaldez admitted in open court that they had "no quarrel with each other," as their families were close-knit.^[13]

As to Melita Sasota's testimony that MARIA TERESA attended her class on 29 August 1990, the trial court ruled that, as buttressed by a long line of decisions, the specific date of commission of the offense was not so material for as long as evidence could show that accused had actually committed the offense; and that the accused could be convicted even if there was a mistake as to the date of the commission of the offense as long as the evidence showed with sufficient clarity that a crime was committed and the accused was responsible therefor.

Finally, the trial court gave weight to the medical certificate (Exhibit "B") issued on 3 September 1990 by Dr. De la Paz, who was a government doctor at the time. In considering the medical certificate despite the failure of Dr. De la Paz to testify thereon, the trial court reasoned that such document, being an act done by a public officer, was presumed to be done regularly unless proved otherwise. It concluded that the finding of "[o]ld lacerations at 3:00 and 9 o'clock" and "newly-healed lacerations at 11 o'clock" on the hymen of MARIA TERESA proved that someone had carnal knowledge of her. Nevertheless, a medical examination was not an indispensable requisite in the prosecution for rape.

In view of the penalty imposed, appeal from the decision should have been to this Court.^[14] But RODOLFO's appeal was to the Court of Appeals;^[15] hence, the record

of the case was transmitted to that court.^[16] On 23 April 1993, the record of the case was forwarded to this Court.^[17]

It was only on 27 March 1996 that RODOLFO's counsel, Atty. Mario Abella Encinareal, filed the Appellant's Brief. He did so only after he had been fined twice in the amounts of P500 and P1,000, and ordered arrested and confined in the cell of the National Bureau of Investigation (NBI).

In his Appellant's Brief, RODOLFO contends that the trial court committed serious and grave error in convicting him of the crime of "multiple rape," which was not charged in the information. He also attacks the ruling of the trial court that the specific date of commission of the offense was not so material so long as evidence could show that the accused had actually committed the offense. According to him, "while the precise time of the commission of the crime need not be alleged in the complaint or information, nevertheless, it must be sufficiently definite and certain to give the accused an opportunity to prepare for his defense"; for unless the accused is informed of the day, or about the day, he may be, to an extent, deprived of the opportunity to defend himself.^[18]

RODOLFO likewise argues that he could not have sexually abused MARIA TERESA on 29 August 1990 because (a) he was at his place of work from as early as 6:00 a.m. until 5:00 p.m.; and (b) MARIA TERESA attended her classes the whole day of 29 August 1990, from 7:15 a.m. until the dismissal of classes in the afternoon. Moreover, MARIA TERESA imputed the crime of rape against him just to escape from more severe beatings from her father for her refusal to obey an errand.

On the other hand, the OSG maintains that RODOLFO was convicted of rape committed on 29 August 1990, and not of multiple rape. His conviction was supported by the straightforward and candid testimony of MARIA TERESA on the details of the rape. The motive imputed to MARIA TERESA is flimsy, illogical, and irrational; and so is the insinuation that the case was filed against RODOLFO to cover up the alleged infidelity of his sister-in-law (MARIA TERESA's mother).

The appeal is without merit.

RODOLFO was not convicted of multiple rape, but of one rape committed on 29 August 1990, as alleged in the information. This is very clear from the following finding of the trial court:

The prosecution, as can be observed, tried to convey to the court that the victim Maria Teresa Bernaldez ha[d] been repeatedly abused by the accused, her uncle and brother of his father, repeatedly for the past five (5) years the latest of which was on the faithful [sic] morning of August 29, 1990. No evidence, however, was presented by the prosecution on how and when Maria Teresa was abused the past five (5) years except that of August 29, 1990.^[19]

and the dispositive portion of the decision, which reads:

WHEREFORE, premises considered, the Court finds the accused RODOLFO BERNALDEZ alias DOLFO, GUILTY beyond reasonable doubt of the crime of Rape. Accordingly, he is hereby sentenced to suffer the penalty of Reclusion Perpetua together with the accessory penalties provided for by

law, and to pay the aggrieved party P50,000.00 representing moral and exemplary damages, and to pay the costs.^[20]

As to RODOLFO's lament on the trial court's statement that the specific date of the commission of the offense charged in the information is not material, it is enough to quote Section 11 of Rule 110 of the Rules of Court; thus:

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 the 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.

Indeed, we have ruled that the precise time of the commission of the crime is not an essential element of rape.^[21]

In this case, the allegation in the information of the time of the commission of the offense is specific, i.e., "in the morning of 29 August 1990." RODOLFO admits its sufficiency when he states:

A careful reading of the information clearly show[s] that accused-appellant was charged of [sic] having committed the crime of rape on August 29, 1990, a precise designation of the commission of the crime as determined by the Public Prosecutor. The plain and clear meaning of August 29, 1990, only embraces a period of twenty four (24) hours when used with respect to time....

In fact, at no time before the trial court did the defense question the sufficiency of the information.

Even *granting arguendo* that the prosecution failed to prove the allegation in the information that the rape was committed "in the morning of August 29, 1990," any variance in the evidence as to the time the crime was committed is insignificant, if not, irrelevant. Besides, the record fails to reveal that RODOLFO objected to the testimony of MARIA TERESA as to the time of the commission of the crime. His counsel did not even object to the questions as to the number of times RODOLFO had been abusing MARIA TERESA.^[22]

It is settled that even a variance of a few months between the time set out in the indictment and that established by the evidence during trial has been held not to constitute an error so serious as to warrant reversal of a conviction solely on that score.^[23] The failure of the complainant to state the exact date and time of the commission of rape is a minor matter and can be expected when the witness is recounting the details of a humiliating experience which are painful and difficult to recall in open court and in the presence of other people.^[24] Moreover, the date of the commission of the rape is not an essential element of the crime.^[25]

The ruling in *U.S. v. Dichao*^[26] cited by RODOLFO is not applicable because the statement of the time of the commission of the offense in the information (between October 1910 to August 1912) was indefinite and uncertain and was, therefore, held to be fatally defective because it deprived the accused of the opportunity to adequately prepare for his defense.