

THIRD DIVISION

[G.R. No. 124441, October 07, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLOS VILLAMOR, ACCUSED-APPELLANT.**

DECISION

ROMERO, J.:

In an information dated December 23, 1993,^[1] accused was charged with multiple rape allegedly committed as follows:

"The undersigned 1st Asst. Provincial Prosecutor, accused CARLOS VILLAMOR, of Marintoc, Mobo, Masbate, of the crime of Multiple Rape, committed as follows:

That sometime in the month of September, 1989 up to October 1993, at Barangay Marintoc, Municipality of Mobo, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge many times with Efebin Villamor against the latter's will and without her consent.

Contrary to law."

Thereafter, with the assistance of counsel, accused entered a plea of "not guilty" during his arraignment and the case proceeded to trial in due course. On January 5, 1996, Judge Manuel S. Pecson of the Regional Trial Court of Masbate, Branch 48, rendered judgment convicting the accused of ten counts of rape. The dispositive portion of the assailed decision is quoted herein:

"WHEREFORE, premises considered, CARLOS VILLAMOR is hereby found guilty beyond reasonable doubt of ten (10) counts of rape committed under Article 335, paragraphs 1 and 3 of the Revised Penal Code. The Court hereby imposes upon the accused the penalty of RECLUSION PERPETUA for each count or a total of ten (10) RECLUSION PERPETUA. In line with the prevailing jurisprudence, and considering the age of the victim, the depravity of the crime, and the psychological trauma involved, he is ordered to indemnify the complainant the sum of FIFTY THOUSAND PESOS (P50,000.00) for each count or a total of FIVE HUNDRED THOUSAND PESOS (P500,000.00) and to support the offspring. With costs.

SO ORDERED."

The evidence of the prosecution relied heavily on the testimony of the complainant Efebin Villamor, thirteen (13) years of age. According to her, sometime in September

1989, while she was at home sleeping in the bedroom, she was awakened by the movements inside the room and was surprised to see in front of her the accused, her own uncle, with a bolo in his hand. Immediately, the accused removed the complainant's underwear. However, the complainant resisted his advances, as a result of which she was punched and strangled until she lost consciousness.^[2] Upon regaining consciousness soon after, she saw to her dismay the accused still on top of her in the process of consummating his bestial desire.^[3] After satisfying his lust, accused threatened the complainant not to report the incident to anyone.^[4]

Complainant's harrowing experience continued for four (4) more years or until October 30, 1993, when the accused again sexually assaulted the complainant. At this point, complainant could no longer take such depravations that sometime in November 1993, she related her experience to a certain Donna Thelma Bongais.^[5] Thereafter, Bongais reported the matter to Nilda Medina of the Department of Social Welfare and Development (DSWD) in Masbate. The DSWD, in turn, took custody of the complainant.

The complainant was immediately examined by Dra. Florenda D. Almero, provincial health officer of Masbate, who issued a report entitled "Physical and Medical Examination" which shows the following:

"EXTERNAL FINDINGS:

LMP - August 30, 1993

Breast - developed

Pubic hair sparsely grown

no palpable abdominal mass

INTERNAL FINDINGS:

- With curdled-mild-like discharge inside the vaginal canal

- Hymen has old-healed laceration corresponding to 2, 6, and 9:00 o'clock in the face of the clock

- Orifice admits three fingers of the examiner's hand with slight resistance

SMEAR FOR HUMAN SPERMATOZOA: Pregnancy Test (+)

In addition, the complainant also revealed that she was abused at least ten (10) times from September 1989 to October 1993.^[6] As a result of these abuses, she became pregnant and gave birth on July 2, 1994.^[7]

The accused, on the other hand, claims that the charge against him was a fabrication by the complainant due to her hostility against him and upon the inducement of Donna Thelma Bongais. Accused testified that private complainant, at an early age, was already involved with his son Danilo, as evidenced by the two letters he discovered in his son's wallet.^[8] Upon learning of their relationship, he confronted the complainant and manifested his objections. Moreover, on two (2) occasions, he allegedly caught the complainant and his son having carnal knowledge.^[9] These incidents, according to the accused, aroused the anger of the complainant, precipitating her charges against him alleging rape. The testimony of the accused was corroborated by his wife, Romana, who narrated that she knew the relationship of Danilo and the complainant.^[10]

Meanwhile, to establish the basis for Bongais' inducement, accused testified that he had a quarrel with the former's brother due to a misunderstanding concerning an ice box.^[11]

In resolving the case, the trial court accorded full faith and credence to the testimony of the complainant regarding how she was sexually molested by the accused. Finding her testimony clear, straightforward and convincing, it dismissed the claim of the accused that the charge against him was merely a fabrication by both the complainant and Bongais. Thus, the trial court convicted the accused of ten (10) counts of the crime of rape and sentenced him to suffer the penalty of ten reclusion perpetua, to indemnify the complainant the sum of P500,000.00 and to support the offspring.

Obviously, unable to accept his fate, accused appeals before us raising the sole issue that:

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF TEN (10) COUNTS OF RAPE."^[12]

The appeal has no merit.

Before resolving the substantive issue of this appeal, it is worth noting that the information filed against the accused failed to state the age of the complainant, considering that the accused was convicted of statutory rape.

This defect notwithstanding, we rule that the trial court did not err in convicting the accused of statutory rape. *First*, the crime having occurred prior to the effectivity of Republic Act No. 7659, otherwise known as the Death Penalty Law, whether the offense was committed under paragraph 1 - using force or intimidation or paragraph 3 - statutory rape of Article 335, the imposable penalty would still be the same - reclusion perpetua. *Second*, the information filed was not void, it was merely defective. In this regard, the general rule is that a defective information cannot support a judgment of conviction unless the defect was cured by evidence during the trial and no objection appears to have been raised.^[13] In this case, complainant Efebin Villamor testified that at the time the first sexual abuse occurred, she was only nine years old,^[14] a fact which was not objected to by the defense. Third, the failure to state the age of the complainant in the information cannot be considered as a violation of the right of the accused to be informed of the charge against him. After all, it would be illogical not to assume that when accused ravished the complainant, he was aware that his victim was a mere slip of a girl, unsophisticated and defenseless.

Moreover, aside from being his niece, the complainant lived with him under the same roof. Furthermore, even if the information filed did not allege that the complainant was nine years old, there was substantial compliance with the constitutional mandate that an accused be informed of the nature of the charge against him when the Order issued by the investigating judge, a copy of which was attached in the record of the preliminary investigation, clearly stated that the complainant was nine years old.^[15] Consequently, the defense cannot invoke the element of surprise as to deprive it of the opportunity to suitably prepare for the accused's defense.^[16]

With respect to the substantive aspect of this case, established by a growing body of jurisprudence are the following principles in deciding crimes of rape: that the accusation for rape can be made facilely; it is difficult to prove but more difficult for the person accused to disprove; the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[17] Corollarily, when the victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed, and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.^[18] Therefore, it is necessary that for evidence to be believed, it must not only proceed from a credible witness, but must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.^[19] These doctrines are material and pertinent in resolving instant appeal.

In the instant petition, accused harps on the fact that it took the complainant more than five (5) years to report the crime.^[20] The delay can easily be explained by the fact that from the first to the last offense in October 1993, the victim was still a minor living in the house of the accused and dependent on him for shelter and sustenance. To aggravate the situation, accused threatened the complainant with death. Under such circumstances, a young girl is easily intimidated and would rather keep quiet than risk physical harm and humiliation.

In a plethora of cases, we have ruled that "it is not uncommon for a young girl of tender age to be intimidated into silence by the mildest threat against her life."^[21] Also, the accused was the uncle of the complainant, her father being the brother of the accused.^[22] He was at least 40 years old when the first assault was committed and obviously, he must have exercised moral ascendancy, not to mention physical superiority, over the complainant, a nine-year old ingenue. In addition, the accused stresses the failure of the complainant to remember the specific dates of the ten (10) other defilements. This is immaterial. We have held that victims of rape hardly retain in their memories the dates, number of times and manner they were violated.^[23] Suffice it to say, the date of the commission of the rape is not an essential element of the crime.^[24]

It is highly inconceivable that the complainant would accuse appellant of rape just because he allegedly castigated her over her lovelife. No young and decent Filipina would publicly admit that she was ravished and her honor tainted unless the same was true, for it would be instinctive on her part to protect her honor and obtain justice for the wicked acts committed upon her.^[25] Plainly, only a woman seeking justice with truth as her weapon could have braved this calvary.^[26] In the same light, it stretches the imagination to assert that Bongais urged the complainant to concoct the charge of rape against the accused on the flimsy ground of a misunderstanding between her brother and the accused over a trifle dispute involving an ice bucket.

In like manner, we cannot accept the theory that it was Danilo, the son of the accused, who had intercourse with the complainant. The records show that the private complainant vehemently denied this allegation. Her testimony, during the direct and cross examination was straightforward, clear and convincing.^[27] Besides,