346 Phil. 475

SECOND DIVISION

[G.R. No. 120093, November 06, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID GARCIA Y QUITORIO, ACCUSED-APPELLANT.
D E C I S I O N

REGALADO, J.:

Accused-appellant David Garcia was found guilty beyond reasonable doubt of having raped herein complainant Jackielyn Ong,[1] a minor, one hundred eighty-three (183) times during the period from November, 1990 up to July 21, 1994, and was correspondingly sentenced to suffer one hundred eighty-three (183) penalties of reclusion perpetua and to indemnify complainant in the amount of P50,000.00 as moral damages.

In an information dated July 25, 1994, appellant Garcia was charged with the crime of multiple rape allegedly committed as follows:

> "That from November 1990 up to July 21, 1994, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have multiple carnal knowledge of one Jackielyn Ong, a minor about twelve (12) years old, to the damage and prejudice of the latter."

Complainant Jackielyn Ong and her younger brother, Darwin, had been abandoned by their mother since birth and when their father Danilo Ong died, the latter's sister, Elizabeth Ong, took them under her care and custody. Jackielyn, who was born on June 3, 1982, was only eight years old when she, together with Darwin and a stepbrother, Allan, were left to the care of herein appellant Garcia, who was then the live-in partner of the victim's aforesaid aunt, when the latter left for the United States sometime in November, 1990. Appellant Garcia stayed with the children in the house of Elizabeth Ong at Fontaine Street, East Bajac-Bajac, Olongapo City.[2]

On that fateful day of November 1990, after Elizabeth Garcia had left for the airport, complainant, who was then playing with Darwin outside the house, was called by appellant Garcia who told her to go upstairs. Once there, Garcia ordered her to remove her shirt and panty and, when she refused, the former was the one who removed them. He made her lie on the bed and he then removed his pants and brief. Thereafter, he climbed into the bed with her, spread her legs apart and inserted his private organ into hers. She felt pain when he forced himself upon her and he was moving up and down. Jackielyn narrated that Garcia pulled out his organ when a whitish substance was discharged therefrom. Then he ordered her to put back her shirt and panty. Later, complainant went back to play with her brother.

According to Jackielyn, from November, 1990 up to July 21, 1994, appellant Garcia raped her almost weekly.[3] These incidents happened in all the three places where

they lived, that is, at Fontaine Street, East Bajac-Bajac, at 12th Street, Pag-asa, and at #40 14th Street, East Tapinac, all in Olongapo City.[4] On July 21, 1994, Jacqueline was sleeping in bed beside her brother, Darwin, when appellant woke her up, asked her to lie down beside him on the cushion inside the same room where he slept, and had intercourse with her.

Prosecution witness Angelito Ong testified that sometime in May, 1994, his sister Elizabeth Ong called to inform him that their brother in the States met an accident, and he was requested to support and take care of the children because she would not be able to send them money in the meantime. Thenceforth, the children would go to Angelito Ong's house for their food and other needs.

In the evening of July 22, 1994, Angelito was already becoming apprehensive because the children had not yet arrived to get their food. He decided to go to the house where the children were staying but he only saw the children's bags there. The door of the house was locked, and he found Jackielyn and Darwin at a nearby store. When he asked them why they did not get their food, they answered that the house was locked and the key was with appellant Garcia. They likewise told him that Garcia scolded them and would not allow them to go out of the house without the former's permission. Angelito told the children that just because they were getting their food from him, appellant had no right to be angry at them.

Thereafter, Angelito asked Jackielyn if she was having an affair with appellant or if she had been abused by him. When Jackielyn refused to answer and merely kept silent, Angelito took it as an admission that what he was asking her was true, so he brought Jackielyn to the Perpetual Help Clinic for checkup.

It appears that Angelito had already harbored suspicions because sometime in June, 1994, Darwin told him that several times in the past, although Jackielyn slept beside Darwin at night, the latter would wake up in the morning and see her sleeping beside appellant Garcia. At that time, Angelito merely warned Jackielyn that it was not proper for her to be sleeping beside appellant because she was already a big girl. He did not bother to confront appellant about it then because he did not want to appear invidious. Yet even before that, Angelito already thought it odd and suspicious why appellant would not allow the children's relatives to go to their house.

Since the doctor at the Perpetual Help Clinic was not available, Angelito decided to bring the children home. Along the way, Angelito kept on asking Jackielyn if she had been raped by appellant Garcia. At first, Jackielyn refused to answer, but due to Angelito's persistence and after threatening her that he would eventually know once she is examined by a doctor, she finally admitted that she had been raped several times by appellant. He then brought her to the Olongapo City General Hospital where Jackielyn was examined by Dr. Laila Patricio who thereafter issued a medicolegal certificate.[5]

According to Dr. Patricio, the hymen of Jackielyn was no longer intact and, considering that there was no laceration, it was possible that there had been sexual contact for more than five times. She discounted the probability that there had been only one or two contacts, or that the loss of virginity was caused by biking, because otherwise there should have been a laceration. She likewise conducted a

"spermatozoa determination" to see if there had been sexual intercourse during the past 24 hours, but the result was negative, although she clarified that the sperm normally stays in the vagina for 24 hours unless the woman washes herself very well. Jackielyn told her, during the medical examination, that she had been raped by the husband of her aunt who was in the States.

From the hospital, Angelito and Jackielyn proceeded to the police station where they filed a complaint for rape[6] against Garcia and later executed their sworn statements.[7] On the strength thereof, Garcia was apprehended in his house at 32 Jones Street, Olongapo City. At the time of his arrest, no formal complaint had as yet been filed in court nor had a warrant of arrest been issued.[8]

Appellant Garcia could only offer bare denials to the inculpatory testimonies of the victim and the prosecution witnesses that he raped Jackielyn. He contends, however, that probably the reason why he was being falsely charged was because Elizabeth Ong's family was not satisfied with the way he managed the house entrusted to him and the money being sent by Elizabeth for the support of the children. He rationalizes that as the supposed guardian of the children and with the trust reposed in him by Elizabeth, he could not and would never do such a thing to Jackielyn.

In his cross-examination, however, appellant Garcia admitted having sent a letter addressed to Elizabeth Ong and several others, dated August 24, 1994,[9] wherein he disclosed that he and Jackielyn were having a relationship and that he was asking for forgiveness from Elizabeth for what happened between him and Jackielyn.

The conviction of herein appellant is now being controverted and assailed essentially on two grounds, namely, that the information is defective and that the trial court erred in relying on the credibility of the testimony of the victim.[10]

I. Appellant avers that the information for multiple rape filed against him is defective for failure to state the exact dates and time when the alleged acts of rape were committed since it was merely stated therein that the offense was committed "from November 1990 up to July 21, 1994." He asserts that each sexual act is a separate crime and, hence, must be proven to have been committed on a precise date and time.

The defense, in support of this argument, relies mainly on Section 11, Rule 110 of the Rules of Court, as revised, which provides:

> "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."

It invokes the early case of U.S. vs. Dichao[11] wherein an order sustaining a demurrer to an information for failure to conform to the subscribed form was upheld by the Court, in effect authorizing the outright dismissal of the case, on the ground that:

"x x x The allegations of an information should, if possible, be sufficiently explicit and certain as to time to inform the defendant of the date on which the criminal act is alleged to have been committed. 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.

While Section 7 of the Code of Criminal Procedure provides that "except when time is a material ingredient of an offense, the precise time of commission need not be stated in a complaint or information, but the act may be alleged to have been committed at any time before the filing thereof," this does not mean that the prosecuting officer may be careless about fixing the date of the alleged crime, or that he may omit the date altogether, or that he may make the allegation so indefinite as to amount to the same thing. Where the exact date cannot be fixed, or where the prosecuting officer is not thoroughly satisfied that he can prove a precise date, he should allege in the information that the crime was committed on or about a date named. Under such an allegation he is not required to prove any precise date but may prove any date which is not so remote as to surprise and prejudice the defendant. In case of surprise the court may allow an amendment of the information as to time and an adjournment to the accused, if necessary, to meet the amendment.

In the case before us the statement of the time when the crime is alleged to have been committed is so indefinite and uncertain that it does not give the accused the information required by law. To allege in an information that the accused committed rape on a certain girl between October 1910 and August 1912, is too indefinite to give the accused an opportunity to prepare his defense x x x. Section 7 of the Code of Criminal Procedure does not warrant such pleading. Its purpose is to permit the allegation of a date of the commission of the crime as near to the actual date as the information of the prosecuting officer will permit, and when that has been done any date may be proved which does not surprise and substantially prejudice the defense. It does not authorize the total omission of a date or such an indefinite allegation with reference thereto as amounts to the same thing."

Assuming that this is still good case law, reliance cannot be placed thereon by appellant since the dicta are not squarely applicable to the present case due to factual differences. Taking into consideration the circumstances obtaining herein vis-a-vis the Dichao case, the distinguishing factor which is immediately apparent is the existence of a motion to quash in that case as pointed out in the aforequoted decision. There is no such motion in the case at bar, and this spells the big differences.

The rule is that at any time before entering his plea, the accused may move to quash the information[12] on the ground that it does not conform substantially to the prescribed form.[13] The failure of the accused to assert any ground for a motion to quash before he pleads to the information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds for a motion to quash, except the grounds of no offense charged, lack of

jurisdiction over the offense charged, extinction of the offense or penalty, and jeopardy.[14]

Perforce, a formal defect in the information not being one of the exceptions to the rule, appellant's failure to invoke the same through a motion to quash is deemed to be a waiver of such objection and he cannot now be heard to seek affirmative relief on that ground. Moreover, objections as to matters of form or substance in the information cannot be made for the first time on appeal.[15]

At any rate, even laying aside procedural technicalities and assuming arguendo that appellant Garcia could validly raise this legal question before us, we are still not inclined to apply the ruling in Dichao to the case now before us.

It may readily be inferred from the decision in Dichao that where there is such an indefinite allegation in the information as to the time of the commission of the offense which would substantially prejudice the defense, a motion to quash the information may be granted and the case dismissed without the benefit of an amendment. On the other hand, where there is a variance between the date of the commission of the crime alleged in the information and that proved at the trial, and it is shown to the trial court that the accused is surprised thereby, and that by reason thereof, he is unable to properly defend himself, the court may, in the exercise of sound discretion based on all the circumstances, order the information amended so as to set forth the correct date. It may further grant an adjournment for such a length of time as will enable the accused to prepare himself to meet the variance in date which was the cause of his surprise.

Apparently, that distinction was premised on the theory that the question on whether the allegations of the information are sufficiently definite as to time, and the question which arises from a variance between the particulars of the indictment and the proof, are different in nature and legal effect, and are decided on different principles.

It would then result that, on the basis of the foregoing disquisition in Dichao, an amendment will not be allowed, and the motion to quash should instead be granted, where the information is, on its face, defective for failure to state with certainty when the offense was committed, and such ambiguity is so gross as to deprive the accused of the opportunity to defend himself. For all intents and purposes, however, a strict adherence thereto would no longer be a sound procedural practice, especially in criminal proceedings which bears the mandate on speedy trial and wherein the availability of bills of particulars have over time been adopted and recognized.

We believe that the principle laid down in the more recent case of Rocaberte vs. People, et al.[16] involving exactly the same issue, presents the more logical and realistic interpretation of the rules. While the Court there adverted to the Dichao case, it nevertheless resorted to a less restrictive application of the rules by disposing of the case in this wise:

> "A defect in the averment as to the time of the commission of the crime charged is not, however, a ground for a motion to quash under Rule 116 of the Rules of Court. Even if it were, a motion for quashal on that