553 Phil. 466

# EN BANC

# [ G.R. NO. 171163, July 04, 2007 ]

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MELITON JALBUENA Y TADIOSA, APPELLANT.

## D E C I S I O N

**CARPIO MORALES, J.:**

Accused-appellant Meliton Jalbuena y Tadiosa was charged with rape of a daughter, a minor,[1] in an Information, docketed as Criminal Case No. 96-601 before the Lucena City Regional Trial Court, which reads:

x x x x

> That on or about the month of August 1996, at Barangay Ilayang Nangka, in the Municipality of Tayabas, Province of Quezon, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, threats and intimidation, did then and there[,] willfully, unlawfully and feloniously have carnal knowledge of one [AAA], his own daughter, a minor, 11 years of age,[2] against her will.[3]

x x x x (Underscoring supplied)

From the evidence for the prosecution, the following version is culled:

In the morning of August 19, 1996, while her mother BBB was out of the house, her father- accused-appellant approached AAA while she was in bed, pulled down her underwear, placed himself on top of her, and inserted his penis in her vagina. She was warned not to report the incident to anyone; otherwise, something bad would occur to her.[4]

The incident was repeated on two other occasions, the last of which was in the morning and witnessed by her uncle CCC while accused-appellant was on top of her.

CCC reported what he saw to AAA's grandfather who merely advised her to avoid her father, to an aunt, as well as to her mother BBB who refused to believe it.[5]

AAA later mustered enough courage to narrate her ordeals to two classmates who reported them to their teacher, who in turn reported and brought her to the school principal.[6]

On September 12, 1996, Dr. Marilyn Salumbides examined AAA and reduced her findings to writing as follows:

P.P.E.: Normal Looking External Genitalia
Internal Exam - admits tip of finger with difficulty
**Hymen - intact**

Vaginal Smear taken for Spermatozoa - NONE SEEN

x x x x[7] (Emphasis supplied)

Hence, accused-appellant's indictment.

Accused-appellant denied the accusation and gave his side of the case as follows:

He could not have raped AAA as his job as a canvasser of plastic wares required him to be out of the house most of the time, except on Saturdays, albeit he would return home in the afternoon or evening.[8]

Appellant's wife BBB corroborated his claim.

Branch 58 of the RTC of Lucena City, however, found the testimony of AAA "clear, consistent, direct and without any hesitation when confronted by the presence of her own abuser."[9] It discredited appellant's defense of alibi, there being no proof that it was physically impossible for him to be at the place, date and time of the commission of the offense.

The trial court thus disposed in its Judgment of September 11, 2003:[10]

> **WHEREFORE**, accused **MELITON JALBUENA y TADIOSA** of Bgy. Ilayang Nangka, Tayabas, Quezon, is hereby found **guilty beyond reasonable doubt** of the crime of statutory rape, defined and punished under Article 335 of the Revised Penal Code, as amended by R.A. 7659; and in the absence of any mitigating circumstance and with the special aggravating circumstances of minority and relationship alleged and duly proven by the prosecution, Meliton Jalbuena y Tadiosa is hereby sentenced to suffer the extreme penalty of DEATH.
>
> Further, accused is hereby ordered to pay to the offended party, [AAA] the amounts of P75,000.00, as civil indemnity, P50,000.00, as moral damages, and P25,000.00, as exemplary damages.
>
> The Jail Warden, Quezon Provincial Jail, Lucena City, is hereby ordered to immediately deliver the person of Meliton Jalbuena y Tadiosa to the National Bilibid Prisons, Muntinlupa City, and to remain thereat until the penalty imposed upon him may be served.
>
> The Branch Clerk of Court is hereby directed to forward the entire records of this case to the Supreme Court, Manila, for automatic review of the case pursuant to the provision of Article 47 of the Revised Penal Code, as amended.[11] (Emphasis in the original; underscoring supplied)

This case was forwarded to this Court for automatic review in view of the death penalty imposed. Per *People v. Mateo*,[12] however, this Court referred the case to the Court of Appeals by Resolution of July 26, 2005.[13]

The appellate court, finding that the testimony of AAA is credible and free from material inconsistencies and contradictions, affirmed the Judgment of the trial court by Decision of November 18, 2005,[14] disposing as follows:

> **WHEREFORE**, premises considered, the appealed judgment dated September 11, 2003 of the Regional Trial Court of Lucena City, Branch 58 in Criminal Case No. 96-601 finding **MELITON JALBUENA y TADIOSA** guilty of Statutory Rape and sentencing him to suffer the supreme penalty of DEATH is hereby AFFIRMED.
>
> In accordance with A.M. No. 00-5-03-SC which took effect on October 15, 2004, amending Section 13, Rule 124 of the Revised Rules of Criminal Procedure, let the entire records of this case be elevated to the Supreme Court for review. [15] (Emphasis in the original)

Hence, the present review of the case.

By Resolution of February 21, 2006, this Court required the parties to submit Supplemental Briefs within 30 days from notice if they so desire.[16] Both parties filed their respective Manifestations that they are no longer filing any Supplemental Briefs.[17]

In his Brief filed before the appellate court, accused-appellant faulted the trial court (1) for convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt and (2) in not considering the information insufficient to support a judgment of conviction for failure to state the precise date of the commission of the rape.[18]

The second assigned error shall, for obvious reasons, first be resolved.

Appellant questions as fatally defective the information for failure to allege the date and time of the commission of the offense charged, thus violating his constitutionally protected right to be informed of the nature and cause of the accusation against him and depriving him of the opportunity to prepare for his defense.

Prior to its substantial incorporation in the Revised Rules of Court in 2000, Section 11, Rule 110 of the Rules of Court, reads:

> 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 offense was committed as the information or complaint will permit.[19] (Emphasis and underscoring supplied)

In rape, the gravamen of the offense, being the carnal knowledge of a woman, the date is not an essential element, hence, the specification of the exact date or time of its commission is not important. [20]

In statutory rape, like in this case, what matters most is that the information alleges that the victim is a minor under twelve years of age and that the accused had carnal knowledge of her.[21]

If accused-appellant found the information defective as it bears only the month and year of the incident complained of, he should have filed a Motion for Bill of Particulars, as provided for under Rule 116,[22] before he entered a plea. His failure to do so amounted to a waiver of the defect or detail desired in the information.[23]

> Indeed, in the case at bar, the criminal complaint states that the rape was committed "on or about the month of August 1996." Such an allegation in the criminal complaint as to the time of the offense was committed is sufficient compliance with the provisions of Section 11, Rule 110 of the Revised Rules of Criminal Procedure. Besides, if the appellant was of the belief that the criminal complaint was defective, he should have filed a motion for a bill of particulars with the trial court before his arraignment. The appellant failed to do so. It was only when the case was brought to this Court on automatic review that he raised the question of the supposed insufficiency of the criminal complaint, which is now too late by any reckoning.[24]

At all events, accused-appellant participated in the trial and never objected to the presentation of evidence by the prosecution that the rape was committed "on or about the month of August 1996."

> Appellant likewise never objected to the presentation of evidence by the prosecution to prove that the offenses were committed "on or about sometime (*sic*) 1987, prior and subsequent thereto." He cannot now pretend that he was unable to defend himself in view of the vagueness of the allegation in the *Information* as to when the crimes were committed, as it was shown to the contrary that he participated in the trial and was even able to give an alibi in his defense.[25] (Italics in the original)

On the merits, accused-appellant assails the credibility of AAA's testimony that she was raped three times, in light of the finding of Dr. Salumbides that her hymen was intact.

And accused-appellant questions the prosecution's failure to present as witness AAA's uncle CCC who allegedly saw him on top of AAA, which failure amounts to, so he claims, willful suppression of evidence.

In rape cases, the credibility of the victim is almost always the single most important issue.[26] If the testimony of the victim passes the test of credibility, the accused may be convicted solely on that basis.[27] Significantly, the trial court, passing on AAA's credibility, noted:

> The credibility of the testimony of the offended party is put to a stringent test in order that it could be said as credible to sustain a conviction. The Court finds [AAA's] testimony to have passed said test. Her testimony given in open court is clear, consistent, direct and without any hesitation when confronted by the presence of her own abuser.