

## EN BANC

[ G.R. No. 135401, March 06, 2002 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WILFREDO VILLARUEL Y RIVADENERA, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

For automatic review is the judgment of the Regional Trial Court, Fourth Judicial Region, Branch 31, San Pedro, Laguna dated July 10, 1998 imposing the death penalty on the accused-appellant for raping his sister.

On February 13, 1998, an Information was filed which reads as follows:

That on or about February 21, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, said accused being the brother of the victim, did then and there wilfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge with one MYRA R. VILLARUEL, 14 years of age against her will and consent.

CONTRARY TO LAW.<sup>[1]</sup>

With leave of court, the Information was amended, changing the date of the commission of the crime from February 21, 1997 to February 21, 1996. Thus, the Information now reads as follows:

That on or about February 21, 1996, in the Municipality of San Pedro, province of Laguna, Philippines and within the jurisdiction of this Honorable Court, said accused being the brother of the victim, did then and there willfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge with one MYRA R. VILLARUEL, 14 years of age, against her will and consent.<sup>[2]</sup>

When arraigned, the accused-appellant pleaded "not guilty."

On July 10, 1998, the trial court rendered its judgment, to wit:

WHEREFORE, the Court hereby renders judgment sentencing accused Wilfredo Villaruel y Rivadenera to suffer the penalty of death, to pay the private complainant the amounts of P100,000.00 as civil indemnity and another P100,000.00 for moral damages. Costs against the accused.

SO ORDERED.<sup>[3]</sup>

The facts as stated in the brief of the Office of the Solicitor General (OSG) are as follows:

Myrna Villaruel was born on September 26, 1982. Her parents being both dead, she used to live with four (4) of her five (5) older brothers, namely, appellant Wilfredo, Joel, Ricky and Ogie in the house owned by their grandmother located at Barangay Bagong Silang, San Pedro, Laguna. Said house has two (2) bedrooms, with one (1) being occupied by Joel, his wife Carlota and their children, whereas the other one is being occupied by appellant, Ricky and Ogie. Myrna sleeps in the mezzanine located at the upper portion of the room occupied by Joel and Carlota. Their grandmother resides in another house adjacent to the one Myrna and her brothers occupied (TSN, April 6, 1998, pp. 6-9).

On February 21, 1996, at around 1:00 o'clock in the morning, Myrna was roused from her sleep by appellant who pulled and shook her hands and who told her that they would buy bread. She followed appellant, her elder brother (TSN, Ibid., pp. 9-10).

Upon reaching a grassy area, near their comfort room located a meter away from the back of their house, appellant pulled Myrna and poked two (2) fan knives on both sides of her waist. Appellant threatened to kill Myrna if she would shout (TSN, *ibid.*, pp. 10-12).

After removing her t-shirt, shorts, panty and bra, appellant kissed Myrna on the different parts of her body while the two (2) knives were placed on the ground. Then, appellant removed his t-shirt and lowered his pants and brief down to his knees (TSN, *ibid.*, pp. 11-12).

Thereafter, appellant asked Myrna to lie down at the dark grassy area at the back of their comfort room, and kissed her again on the different parts of her body. Appellant placed himself on top of his sister and forcibly inserted his private parts into hers (TSN, *Id.*)

Appellant threatened his sister with death if she moves. Thus, Myrna did not do anything (TSN, *ibid.*, p. 13). He stayed on top of Myrna for about three (3) minutes. The latter's whole body ached (TSN, *ibid.*, p. 12).

At this time, Myrna had noted that her brother was drunk and was high on shabu (TSN, *ibid.*, p. 13).

On July 19, 1997 at about 12:00 o'clock midnight, appellant who was again high on shabu, asked Myrna to go with him to buy bread. She obliged but was surprised when he asked her to pass by the back of their house (TSN, *ibid.*, p. 15).

Thereat, appellant poked two (2) fan knives at his sister. He asked her if she had a boyfriend. When she answered in the negative, appellant told Myrna that he could teach her (TSN, *ibid.*, p. 16).

Appellant pulled Myrna again to the same grassy area where he first sexually molested her on February 21, 1996. She thought of shouting,

but her elder brother slapped her (TSN, Id., pp. 16-17).

But since the dogs were already barking and many had been awakened, appellant just sent his sister Myrna home. He again threatened to kill her if she would report the incident to her brothers and to the barangay authorities (TSN, *ibid.*, p. 17).

However, Myrna told the incident to her sister-in-law Carlota, who, in turn, reported the same to the former's aunts and to the barangay authorities (TSN, *id.*).

Thus, on July 29, 1997, together with the barangay authorities, Myrna and Carlota went to the police station where Myrna executed an affidavit (TSN, *ibid.*, p. 18).

On the following day, July 30, 1997, Carlota brought Myrna to the National Bureau of Investigation where she was examined by NBI Medico-Legal Officer Annabelle Soliman, whose findings and conclusion are indicated in a written report denominated as Living Case No. MG-97-1053 (Exh. "C"; TSN, April 29, 1998, pp. 8-18).<sup>[4]</sup>

On the other hand, the version of accused-appellant as stated in his brief is as follows:

Accused Wilfredo Villaruel denied that he raped his sister on February 21, 1997 or in 1996 at 1:00 A.M. in their house at Barangay Bagong Silang, San Pedro, Laguna. From January 3, 1997 to March 22, 1997, he was detained in the Municipal Jail of San Pedro, Laguna relative to a complaint for illegal possession of deadly weapon filed against him. On February 21, 1996 he could not recall where he was, but he was then residing at Block 47, Lot 8, Barangay Bagong Silang, San Pedro, Laguna, together with the complainant and his brothers. He did not know why his sister filed this case of rape against him.<sup>[5]</sup>

In assailing the trial court's decision, the accused-appellant raises the lone assignment of error that:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT WILFREDO VILLARUEL GUILTY OF RAPE NOTWITHSTANDING THE MEDICAL FINDINGS AND THE INCONSISTENT, IMPROBABLE AND INCREDIBLE TESTIMONY OF THE COMPLAINANT.<sup>[6]</sup>

The accused-appellant avers that the evidence of the prosecution did not meet the quantum of proof required to overcome his innocence. He doubts the credibility of the complainant's testimony considering that initially, she stated that her brother raped her on February 21, 1997 and thereafter, changed the date to February 21, 1996. Her narration of the sexual assault appears to be divergent from the findings of the medico-legal officer of the NBI, who found complainant's hymen still intact.

It is the well-settled rule that the assessment of the credibility of the witnesses depends upon the discretion of the trial court for it is more in the position to observe their demeanor. In the case at bar, the trial court was convinced that the complainant was telling the truth when she testified in a candid and straightforward

manner that her brother sexually molested her in the early morning of February 21, 1996. We do not find any cogent reason to divert from the findings and conclusions of the trial court as we find it in accord with the law and the evidence on record.

We agree with the trial court that the amendment of the Information changing the date of the commission of the crime was merely a matter of form.<sup>[7]</sup> When recalled to the witness stand for additional direct examination,<sup>[8]</sup> the complainant sufficiently explained that she was very confused at that time she signed the complaint and did not notice the error in the date, that it should have been February 26, 1996 and not 1997. Nonetheless, Section 11 of Rule 110<sup>[9]</sup> does not require that the precise time when the offense was committed be stated in the information. In rape cases, the date of the commission of the crime is not an essential element of the crime and, therefore, need not be accurately stated.<sup>[10]</sup> Contrary to the allegation of the accused-appellant, the modification did not at all affect the credibility of the complainant nor did it prejudice the rights of the accused-appellant as she was positively firm about the sexual assault committed on her by her brother.

The complainant testified, to wit:

PROS. LOMARDA:

q- Miss Villaruel, at around 1:00 o'clock in the morning of February 21, 1997 do you still recall where you were?

a- In our house at Barangay Bagong Silang, San Pedro, Laguna, sir.

q- Where was your brother Wilfredo Villaruel, the accused in this case on that particular date and time?

a- He was also in the house, sir.

q- While you and your brother Wilfredo Villaruel were inside the house located at Barangay Bagong Silang, San Pedro, Laguna, what happened if anything happened at all?

a- He told me that we will buy bread, sir.

q- Earlier, you said that three of your brothers are also residing in that same house, where were your brothers on that particular date and time, Miss Villaruel?

a- They were sleeping, sir.

COURT:

q- You mean to tell this Court that you were not sleeping yet at 1:00 o'clock in the morning on February 21, 1997?

a- He woke me up, maam.

q- When you said "he", you are referring to whom?

a- Wilfredo Villaruel, maam.

PROS. LOMARDA:

q- How do you address your brother Wilfredo Villaruel?

a- Kuya, sir.

q- As soon as your brother woke you up because according to you he wanted to buy some bread, what did you do if you did anything, Miss Witness?

a: I followed him but he pulled me and poked a fan knife at me, sir.

q: To which direction did he pull you?

A: At the back of our comfort room, sir.

q: Where is your comfort room located in relation to your house?

a: At the back of our house, sir.

COURT:

q: Is it outside your house?

a: Yes, maam.

PROS. LOMARDA:

q: How far away is your house from your comfort room?

a: About one (1) armlength, sir.

q: Could you describe to us, Miss Villaruel, the place where your brother Wilfredo dragged or pulled you to?

a: At the grassy area at the back of our house, sir.

q: What kind of grass are growing in that place where you were dragged by your brother Wilfredo?

a: Short grass, sir.

q: How tall are the grasses?

a: About this high, sir. (Witness demonstrating with the use of her hands the height of about 9 inches.)

q: Miss Villaruel, in which part of your body did Wilfredo poke the fanknife?

a: There were two fan knives poke on both sides of my waist, sir. (Witness demonstrating by pointing with her two hands both sides of her waist.)