

## SECOND DIVISION

**[ G.R. Nos. 131103 & 143472, June 29, 2000 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ERNESTO M. SANTOS, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

This is an appeal from the decision, dated July 21, 1997, of the Regional Trial Court, Branch 72, Antipolo, Rizal, insofar as it finds accused-appellant Ernesto Santos guilty of two counts of rape and orders him to pay complainant P500,000.00 in moral and exemplary damages in Criminal Case Nos. 94-11360 and 94-11361.

In three informations, all dated May 20, 1994, filed in the RTC, Antipolo, Branch 72, Rizal, accused-appellant was charged with two counts of rape and one count of attempted rape of his daughter Mary Ann, then aged 14.<sup>[1]</sup> The informations alleged:<sup>[2]</sup>

Criminal Case No. 94-11359:

That on or about the 7th day of February 1994, in the Municipality of Taytay, Province of Rizal, Philippine and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence, and intimidation, did then and there willfully, unlawfully, and feloniously commence the commission of the crime of rape upon the person of one Mary Ann Santos Y Tabucao directly by overt acts, to wit: While the complainant was asleep, the accused touched her private parts and undressed her and tried to rape her, but was not able to perform all the acts that would have constituted the crime of rape by reason of the refusal and vigorous fight made by the complainant in defense of her honor and the timely arrival of complainant's aunt which caused the accused to desist from his intention.

CONTRARY TO LAW

Criminal Case No. 94-11360:

That on or about and sometime in the year 1988, in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge with one Mary Ann Santos Y Tabucao, a minor nine (9) years of age, against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 94-11361:

That on or about and sometime in the year 1989 in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Mary Ann Santos Y Tabucao, a minor ten (10) years of age, against her will and consent.

CONTRARY TO LAW.

Accused-appellant pleaded "not guilty" in all three cases, whereupon trial was held. The cases were consolidated and jointly tried.

The prosecution presented evidence showing the following:<sup>[3]</sup>

Sometime in 1988 in their house at L. Wood Street, Taytay, Rizal, complainant Mary Ann Santos slept with her father on a wooden bed (*papag*), as her mother, Nilda Tabucao Santos, had to stay beside her younger brother because he was sick. Mary Ann was awakened as she was being fondled by her father. Mary Ann resisted by pushing and kicking accused-appellant, but the latter threatened her, saying, "*Papatayin ko kayong mag-iina*" ("I'll kill you and your mother"). Her mouth was covered so that she could not shout. Accused-appellant went atop her and inserted his penis into her vagina. As Mary Ann cried in pain, she was assured by accused-appellant that "it will take . . . a few minutes only." After he was through, accused-appellant withdrew his organ, but he still held her in a tight embrace. At that point, Mary Ann's mother, Nilda, woke up and saw her husband embracing her daughter, both of them naked. She cursed accused-appellant and hurled invectives at him.

As a result of the incident, Nilda took her children and left accused-appellant. The separation, however, lasted for three months only. Upon the intercession of accused-appellant's mother, Nilda and her children returned to live with him again. The return, however, only made things worse for Mary Ann. From 1989 to 1994, she was raped "many times" by accused-appellant. Things came to a head on February 7, 1994. That evening, at around 8:00, while Mary Ann was sleeping, she was awakened because accused-appellant lay beside her. She asked him "what he was doing there. But he did not answer."

Mary Ann stood up and went to the sewing machine. Accused-appellant, however, followed her and told her, "*Gusto kong makabawi*" ("I want to get even"). When she asked him what he meant, he said she knew what he meant. This made Mary Ann ask him bluntly, "[W]hy is it that you are always doing those things to me as if I am not your daughter?"

Instead of answering, accused-appellant pulled Mary Ann towards the bathroom. Mary Ann got hold of a pair of scissors and tried to stab accused-appellant, but she was overpowered.

At that point, Mary Ann saw her cousin Marie.<sup>[4]</sup> She asked Marie to fetch her grandmother. It was Mary Ann's Aunt Josie, however, who came and saved her from disgrace by accused-appellant. Mary Ann and her mother then reported the matter

to the police. Mary Ann filed a complaint against accused-appellant.

On February 14, 1994, Dr. Rosaline Cosidon, a medico-legal officer of the Philippine National Police Crime Laboratory, examined Mary Ann. Dr. Cosidon's report shows the following:

**FINDINGS:**

**GENERAL AND EXTRAGENITAL:**

Fairly nourished, fairly developed and coherent female subject. Breasts are hemispherical with pale brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

**GENITAL:**

There is moderate growth of pubic hair. Labia majora are full, convex, and coaptated with the pale brown labia minora presenting in between. On separating, the same is disclosed [as] an elastic, fleshy-type hymen with shallow healed lacerations at 1, 9, and 11 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color, and consistency.

**CONCLUSION:**

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of violence.

**REMARKS:**

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

Dr. Cosidon testified that the healed lacerations were at least a week old and shallow because they only "reached about one-half of the width of the hymen." She opined that the lacerations could not be deeper because Mary Ann's hymen was thick.<sup>[5]</sup>

After the prosecution had rested its case, accused-appellant testified in his defense, focusing solely on the charge of attempted rape against him.<sup>[6]</sup> He denied that he had made an attempt on his daughter's honor in the evening of February 7, 1994, alleging that he was then away working in another place. He claimed that on February 5, 1994, he had had an altercation with his daughter Mary Ann because of the latter's refusal to wash his work clothes. Mary Ann allegedly told him, "Why don't you wash your clothes?", and when he asked her where her mother was, Mary Ann allegedly said, "Why are you asking me?" According to accused-appellant, he got mad and slapped Mary Ann. It was then when Mary Ann asked her cousin Marie to call her Aunt Josie. When Josie arrived, she talked to Mary Ann. That was the end of the matter as far as accused-appellant was concerned. He claimed he did not know why Mary Ann filed rape charges against him. He speculated that it was

because he had maltreated his wife after he caught her flirting with a certain Romualdo.

Accused-appellant's relatives testified in his behalf. His sister, Josie Santos, corroborated his allegations, although she said the argument between accused-appellant and Mary Ann occurred in the morning of February 7, 1994. According to Josie, she was fetched by her niece Marie who told her that Mary Ann wanted to talk to her. When Jose saw Mary Ann, the latter was crying "[b]ecause her father asked her to do the laundry" and "that her father was holding something and was attempting to hit her." No mention was made by Mary Ann of accused-appellant's attempt to rape her, according to Josie.<sup>[7]</sup>

Mary Ann's brother, Alan, likewise testified. He said Mary Ann never told him that accused-appellant had molested her.<sup>[8]</sup> Mary Ann's paternal grandmother, Marcela M. Santos, who owns the house where the incidents subjects of these cases occurred, testified to the same effect.<sup>[9]</sup>

On July 21, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, the Court finds accused ERNESTO SANTOS guilty beyond reasonable doubt of two (2) counts of Statutory Rape and he is hereby sentenced to suffer the penalty of Reclusion Perpetua for each count and to pay the amount of P50,000.00 for each count as provided for by law.

However, the Court finds said accused NOT GUILTY of the offense of Attempted Rape and he is thus ACQUITTED of the said charge.

Although the prosecution failed to prove any damages, moral and exemplary, the Court motu proprio awarded the amount of P500,000.00 as damages in both cases to the private complainant.<sup>[10]</sup>

The trial court held:

Analyzing carefully the testimony of the accused and his witnesses, nothing has been said about the statutory rape[s], hence, the castle built by the prosecution stands on the basis of the testimony of Mary Ann. The Court firmly believes that it can stand the meticulous scrutiny of any legal mind, hence, the prosecution was able to prove the guilt of the accused Ernesto Santos beyond reasonable doubt. For the Court believes that Mary Ann, daughter of the accused, could not allow herself to be exposed to public ridicule and scandal leading to the destruction of her future and that of her family if such were not a fact in her complaint and if only to seek justice and redress for a despicable and bestial wrong inflicted upon her by the accused.

Moreover, the Court gives great weight and credence over private complainant's testimony considering the tender age of the complainant and the moral ascendancy exercised over her by the accused. Furthermore, the Court believes that accused could easily perpetrate his lustful desires on her daughter with a modicum of effort as when accused

merely laid beside her and had carnal knowledge with her daughter with least resistance.

Further, the reason advanced by accused is patently shallow and unworthy of belief. The fact remains that Mary Ann considered the accused as her father and regarded him with respect and love that a daughter has for her father when she murmured the words "Why is it that you are always doing those things to me as if I am not your daughter?" The Court finds that such gesture inculcated upon the person of the private complainant could not possibly make her concoct and fabricate such charges against the accused if the same were not true.

Lastly, it should be worthy of note that no less than the Supreme Court, on more than one occasion has declared that rape committed by a father upon his daughter is "so monstrous that no punishment which is in the power of this, or any other human tribunal to decree, could possibly be sufficient expiation of the defense."<sup>[11]</sup>

Hence this appeal.

After due consideration of the records of these cases, we find accused-appellant's conviction fully warranted.

#### I.

*First.* Accused-appellant argues that the informations in Criminal Case Nos. 94-11360 and 94-11361, charging him with rape, simply allege that "on or about and sometime" in 1988 and in 1989, respectively, he raped his daughter. He argues that these allegations are indefinite and have deprived him of the right to be informed of the nature and cause of the accusation against him. He cites *United States v. Javier Dichao*<sup>[12]</sup> in which it was held:

. . . 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, and that indefiniteness is not cured by setting out the date when a child was born as a result of such crime. 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.<sup>[13]</sup>

Accused-appellant's argument is without merit. Accused-appellant never asked for a bill of particulars nor moved to quash the informations before he was arraigned. This circumstance alone distinguishes this case from *Dichao* because in the latter case, the accused moved to quash the information on the ground that it did not allege the date of commission of the crime with some specificity.<sup>[14]</sup> It is thus too late in the day for accused-appellant to question the form or substance of the informations in these cases.<sup>[15]</sup>