

THIRD DIVISION

**G.R. No. 201147 – PEOPLE OF THE PHILIPPINES, *Petitioner-Appellee*,
v. **FREDDIE SERNADILLA, *Accused-Appellant*.****

Promulgated:

September 21, 2022

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CONCURRING OPINION

SINGH, J.:

The accused Freddie Sernadilla (**Sernadilla**) was charged in three separate Informations, the accusatory portions of which read:

Criminal Case No. 3596

That on February 9, 2006 at _____, Aurora and within the jurisdiction of the Honorable Court, the said accused, did then and there willfully, unlawfully, and feloniously, had carnal knowledge with one AAA _____,¹ who was then a sixteen (16) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.²

Criminal Case No. 3599

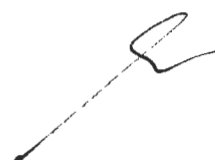
That on October 28, 2005 at _____, Aurora and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully, and feloniously had carnal knowledge with one AAA _____, who was then a fifteen (15) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.³

¹ The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (R.A.) No. 7610, "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION AND FOR OTHER PURPOSES," approved on 17 June 1992; R.A. No. 9262, "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on 8 March 2004; and Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004.

² Record, pp. 1-2.

³ CA *rollo*, pp. 13-14.



Criminal Case No. 3600

That sometime in October 2004, at _____, Aurora and within the jurisdiction of this Honorable Court and inside the premises of the Wenceslao Christian Fellowship, the said accused who was then the Pastor of the said church, did then and there willfully, unlawfully, and feloniously, had carnal knowledge with one _____ AAA _____, who was then a fourteen (14) year old lass and a member of said church, against the latter's will and consent and thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.⁴

The Regional Trial Court, Branch 96, Baler, Aurora convicted Sernadilla of one count of Rape, defined and penalized under Article 266-A(1) of the Revised Penal Code (**RPC**), in Criminal Case No. 3600, and two counts of Violations of Section 5(b), Article III of Republic Act (**R.A.**) No. 7610 in Criminal Case Nos. 3596 and 3599, in a Joint Decision,⁵ dated 28 March 2008. To this, the Court of Appeals agreed in a Decision,⁶ dated 17 June 2011.

The *ponencia* upheld Sernadilla's conviction for Rape in Criminal Case No. 3600, but acquitted him of the Violations of Section 5(b) of R.A. No. 7610.⁷

I concur. I would like, however, to offer another reason why the Court cannot convict Sernadilla of Rape in Criminal Cases Nos. 3596 and 3599.

To reiterate, the elements of rape under Section 266-A of the RPC are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through **force or intimidation**; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.⁸

I agree that, in so far as Criminal Case No. 3600 where Sernadilla was convicted, the prosecution properly alleged the element of "force and intimidation" in the Information, through the use of the words "against the latter's [AAA's] will and consent," coupled with an allegation that Sernadilla was the Pastor of AAA and her family's church. The Information in Criminal Case No. 3600 categorically alleged that Sernadilla was "then the Pastor of the [Wenceslao Christian Fellowship],"⁹ to which AAA and her

⁴ Id. at 15-16.

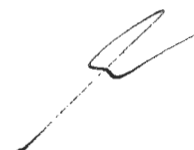
⁵ Id. at 17-37.

⁶ *Rollo*, pp. 2-11.

⁷ *Ponencia*, p. 13.

⁸ *People v. Rapiz*, G.R. No. 240662, 16 September 2020.

⁹ *CA rollo*, pp. 15-16.



family belonged. Jurisprudence clearly instructs that the accused's moral ascendancy may take the place of force and intimidation in rape cases.¹⁰

The *ponencia* aptly held:

While the term “force and intimidation” was not specifically mentioned in the Information, We find that its presence has been sufficiently alleged with the statement that the accused-appellant is a Pastor of the church to which AAA is a member, as this depicts the ascendancy which the former wields over the latter. The test in determining whether the information validly charges the offense is whether material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. As the objective is to enable the accused to adequately prepare for his defense. Thus, it is more important to aver the ultimate facts rather than employ the technical term employed by the law alone.¹¹ (citations omitted; emphasis supplied)

This moral ascendancy was not alleged in the Informations in Criminal Case Nos. 3596¹² and 3599,¹³ both of which merely stated that Sernadilla “had carnal knowledge with one AAA, who was then a fifteen (15) year old barrio lass against her will and consent thereby prejudicing her development as a child.” This constitutes a crucial textual difference between the Information in Criminal Case No. 3600, on the one hand, and the Informations in Criminal Case Nos. 3596 and 3599, on the other, which justified the acquittal of Sernadilla on the two other counts.

Rule 110, Section 6 provides:

Section 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, **the acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. (emphasis supplied)

*Quimvel v. People*¹⁴ instructs:

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused

¹⁰ *People v. Villacampa*, 823 Phil. 70.

¹¹ *Id.* at 9-10.

¹² Records, pp. 1-2.

¹³ CA *rollo*, pp. 13-14.

¹⁴ 808 Phil. 889, 912-913.

to question his conviction based on facts not alleged in the information cannot be waived. As further explained in *Andaya v. People*:

No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights. (emphasis added)

In the recent case of *People v. Cubay*,¹⁵ the Supreme Court acquitted the accused who was charged with 44 counts of Rape because, among other things, the Information failed to allege the material elements of the offense, violating the right of the accused to be informed of the nature and cause of the accusation against him:

We quote anew the forty-four (44) separate Informations, which except for the material dates, uniformly read:

That on or about the 7th day of September, 2007, in the evening, at XXX, province of Bukidnon, Philippines particularly at the Special Education Dormitory (SPED) and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], (an) 18 year-old (who) suffered (a) physical defect (hearing impaired) **against her will**, to the damage and prejudice of [AAA] in such amount as (may be) allowed by law.

CONTRARY to (and) in violation of R.A. 8353.

The Informations conspicuously lack the second element of rape, i.e. the accused employed force or intimidation, or that the victim was deprived of reason, unconscious, under twelve (12) years of age, or was demented.

Surely, being a deaf-mute does not necessarily take the place of the element of force or intimidation or having been deprived of reason, unconscious, or demented. **The allegation that the accused “did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, an 18 year-old (who) suffered a physical defect (hearing impaired) against her will, x x x” does not equate to force or intimidation either.**

¹⁵ G.R. No. 224597, 29 July 2019.



In fine, the Informations do not validly charge the crime of rape or any offense at all. The same, for sure, cannot be the basis of a valid judgment of conviction.¹⁶ (citations omitted; emphasis supplied)

Thus, “intimidation” cannot be appreciated against Sernadilla, although proven by the prosecution, because it was not alleged in the Information in these two cases. The difference in the averments of the three Informations concretely explains why “intimidation” on account of Sernadilla’s position as a Pastor, relative to Criminal Case No. 3600, cannot be extended to Criminal Case Nos. 3596 and 3599, despite joint trial. The facts proven during such joint trial does not automatically extend to all criminal cases consolidated, when the subject Informations contain differing allegations, as in these cases. In fact, Rule 110, Section 6 on the sufficiency of the Information gains greater prominence in these cases with respect to allegations and proof.

Consequently, Sernadilla cannot be said to have been informed of the nature and cause of the accusation against him in Criminal Case Nos. 3596 and 3599, particularly, if the charge that the prosecution wanted to prove was rape. As to force, the prosecution failed to prove that such force was used by Sernadilla to rape the victim as alleged.

In this regard, the prosecution successfully proved that Sernadilla exercised moral ascendancy in order to have sexual intercourse with AAA in Criminal Case No. 3600. It should further be noted that the heinous act took place inside the premises of the Wenceslao Christian Fellowship, categorically alleging that such moral ascendancy was employed deliberately to violate the sexual integrity of the victim. The factual findings of the RTC, as affirmed by the Court of Appeals, deserve respect, particularly its finding that AAA was a credible witness and that her testimony is worthy of belief.

I also agree that Sernadilla also cannot be convicted of Child Abuse under Section 5(b) of RA 7610 because the Information in Criminal Case Nos. 3596 and 3599 likewise failed to allege the elements comprising such crime. The Court in *People v. Tulagan* identified “coercion or influence” as an element of a Violation of Section 5(b). Following the reasoning above, nowhere in the Informations for Child Abuse did the prosecution allege that Sernadilla employed some artifice to coerce or influence AAA to engage in sexual intercourse with him. Thus, although the prosecution proved during trial that Sernadilla gave monetary allowances and other material support, such ultimate fact was not included in the Informations in these cases.

¹⁶ Id.



As a final note, the Informations uniformly refer to the minor victim as a “barrio lass.” Perhaps, the investigating prosecutor believed that by such description, all that is needed to be alleged, *i.e.*, that the victim was subjected to force or intimidation, or undue influence, had been alleged. Let this be a reminder to all that the Court does not look with favor on gender stereotypes. The Constitution and our laws do not equate the same to presumptions, much less evidence. Lest it be forgotten, the fundamental right of the accused to be informed of the nature and cause of the accusation is the gateway to a valid criminal prosecution.

I accordingly **CONCUR** with the *ponencia*.



MARIA FILOMENA D. SINGH
Associate Justice

