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[G.R. Nos. 140786-88, March 14, 2003.]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDGARDO MAURO,** *appellant.*

SYNOPSIS

Accused-appellant was convicted of two counts of rape by the Regional Trial Court of Tayug, Pangasinan, and was sentenced to suffer the penalty of *reclusion perpetua.* In his appeal before the Court, appellant averred that he was deprived of his right to be informed of the nature of the charges against him in Criminal Cases Nos. 2008 and 2009. The phrases "sometime during the year 1992" and "sometime during the year 1993" in both informations are not sufficiently explicit enough and certain as to the date of the commission of said crimes. Appellant also averred that the victim's allegation of rape was incredible because they had been engaging in consensual sexual intercourse. The victim also continued living with him under the same roof and went to school regularly, and it was only when she became pregnant that she divulged to her mother for the first time that she had been sexually abused by appellant.

The Supreme Court affirmed appellant's conviction. According to the Court, the failure to specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face because the precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. The information is deemed sufficient as long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed. The Court also ruled that the victim's delay or vacillation in making a criminal accusation was sufficiently explained. The victim testified that she did not tell her mother that she was raped by appellant in 1992 and 1993 because he threatened to kill her and she did not want to cause a scandal in the family. If she divulged to her uncle or her grandfather that she was raped by appellant, she was afraid that her uncle or her grandfather

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might kill her or her uncle or grandfather might be killed by appellant.

SYLLABUS

1. CRIMINAL LAW; RAPE; PRECISE DATE OF COMMISSION NOT AN ESSENTIAL ELEMENT OF THE CRIME.— The Court held in *People vs. Lizada* that the precise date of the commission of the crime of rape is not an essential element of the crime. Failure to specify the exact date when the rape was committed does not render the information *ipso facto* defective. After all, the gravamen of the crime is carnal knowledge of private complainant under any of the circumstances enumerated under Article 335 of the Revised Penal Code, as amended. The Court ruled that as long as it is alleged in the Information that the offense was committed at any time as near to the actual date when the offense was committed, an information is sufficient. Citing its ruling in *People vs. Salalima*, the Court held: Failure to specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. In previous cases, we ruled that allegations that rapes were committed *"before and until October 15, 1994,." "sometime in the year 1991 and the days thereafter," "sometime in November 1995 and some occasions prior and/ or subsequent thereto"* and *"on or about and sometime in the year 1988"* constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules on Criminal Procedure. In this case, although the indictments did not state with particularity the dates when the sexual assaults took place, we believe that the allegations therein that the acts were committed *"sometime during the month of March 1996 or thereabout," "sometime during the month of April 1996 or thereabout," "sometime during the month of May 1996 or thereabout"* substantially apprised appellant of the crimes he was charged with since all the elements of rape were stated in the informations. As such,

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appellant cannot complain that he was deprived of the right to be informed of the nature of the cases filed against him. Accordingly, appellant's assertion that he was deprived of the opportunity to prepare for his defense has no leg to stand on. The Court believes that the allegations in the informations that the crimes were committed *"sometime during the year 1992"* and *"sometime during the year 1993"* substantially apprised appellant of the crimes he was charged with since all the essential elements thereof are sufficiently and succinctly alleged in the informations.

2. **ID.; QUALIFIED RAPE; INFORMATION MUST ALLEGE THE MINORITY OF THE VICTIM AND HER RELATIONSHIP WITH THE ACCUSED.** — This Court agrees with the Office of the Solicitor General. For appellant to be convicted of qualified rape, the information must allege the minority of the victim and the relationship of the latter and appellant. Absent such allegation, appellant cannot be convicted of qualified rape but only of simple rape. This was the ruling of this Court in *People vs. Lizada:* We agree with accused-appellant that he is guilty only of two counts of simple rape, instead of qualified rape. The evidence on record shows that accused-appellant is the common-law husband of Rose, the mother of private complainant. The private complainant, as of October 1998, was still 13 years old, and under Article 335 as amended by Republic Act 7659, the minority of the private complainant, concurring with the fact that accused-appellant is the common-law husband of the victim's mother, is a special qualifying circumstance warranting the imposition of the death penalty. However, said circumstance was not alleged in the Informations as required by Section 8, Rule 110 of the Revised Rules on Criminal Procedure which was given retroactive effect by this Court because it is favorable to the accused. Hence, even if the prosecution proved the special qualifying circumstance of minority of private complainant and relationship, the accused-appellant being the common-law husband of her mother, accused-appellant is guilty only of simple rape. . . . Although the information in Criminal Case No. 2010 alleges that appellant is the stepfather of the victim, however, the evidence shows that he is merely the common-law husband of Florida Mones, the natural mother of the victim. Moreover, the information does not allege the minority of the victim. Hence, appellant is guilty of simple rape in Criminal Case No. 2010. Under

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Article 335 of the Revised Penal Code, as amended, the penalty for simple rape is *reclusion perpetua.* Appellant should be meted the penalty of *reclusion perpetua* in the three cases.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; TOO LATE FOR APPELLANT TO QUESTION SUFFICIENCY OF INFORMATION.**— Appellant's plaint that he was not sufficiently informed of the nature of the charges lodged against him is merely an afterthought. For, if he believed that the informations were defective, he should have filed a motion for bill of particulars with the trial court before his arraignment. However, appellant did not. Instead, he voluntarily entered his plea of not guilty and even adduced evidence to refute the evidence of the prosecution and prove his defenses. It is only in this Court on automatic appeal that he complained that he was not sufficiently informed of the precise dates of the commission of the crimes charged. It is now too late in the day for him to complain. In *People vs. Magbanua,* the Court held: As may be deduced from the above discussion, it is already too late in the day for appellant to question the sufficiency of the information. He had all the time to raise this issue during the course of the trial, particularly during his arraignment. He could have filed for a bill of particulars in order to be properly informed of the dates of the alleged rapes. However, appellant chose to be silent and never lifted a finger to question the information. As a result, he is deemed to have waived whatever objections he had and he cannot now be heard to seek affirmative relief. Furthermore, objections as to matters of form or substance in the information cannot be made for the first time on appeal.

4. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY OR VACCILLITION IN MAKING A CRIMINAL ACCUSATION DOES NOT NECESSARRILY ADULTERATE CREDIBILITY OF WITNESSES.** — The Court agrees with the Office of the Solicitor General. In *People vs. Juntilla,* the Court held that: The case of *People vs. Manggasin* involved a young girl who was sexually molested at age 12 and which abuse lasted until she was 17. In that case, accused-appellant was the common law spouse of the private complainant's mother. We ruled that accused-appellant exercised moral ascendancy over complainant which made the threats effective. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against

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her will to the rapist's embrace because of fear for her life and personal safety. The aforementioned ruling is applicable to the case at bar considering that appellant is private-complainant's father whose moral ascendancy cannot be doubted. Also, the fact that appellant had a bolo by his side at the time of the rape is enough to intimidate private complainant. Private complainant's delay in instituting the complaint does not weaken the case for the prosecution. It is not uncommon for a young girl to conceal *assaults on her* virtue, especially when the rapist is living with her. In *People vs. Caloma*, we ruled that even a delay of 8 years is not a sign of fabrication. We have consistently held that delay or vacillation in making a criminal accusation does not necessarily adulterate the credibility of witnesses. We are not about to change the rules in mid-stream. In these cases, Cecilia testified that she did not tell her mother that she was raped by appellant in 1992 and 1993 because he threatened to kill her and she did not want to cause a scandal in the family. If she divulged to her uncle or her grandfather that she was raped by appellant she was afraid that her uncle or her grandfather might kill her or her uncle or grandfather might be killed by appellant. Moreover, she was afraid of her mother.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

This is an automatic review of the Decision[1] of the Regional Trial Court of Tayug, Pangasinan, Branch 51, finding appellant Edgardo Mauro guilty beyond reasonable doubt of two counts of rape and meting on him the penalty of *reclusion perpetua* for each count and of a third count of rape and imposing on him the supreme penalty of death.

[1] Penned by Judge Ulysses R. Butuyan.

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The Case for the Prosecution

From the testimonies of private complainant Cecilia Mones, her mother Florida Mones, and Dra. Ma. Cecilia Teresa Asuncion and the documentary evidence of the prosecution, it has been established that on February 1, 1982, Florida Somera delivered her first child, Ma. Cecilia S. Mones, by her husband Efren Mones.[2] Florida left her husband taking Cecilia with her and settled in Tayug, Pangasinan. Two years thereafter, Florida met Edgardo Mauro who was then 20 years old, a drunkard and an unemployed. The two lived as husband and wife in a house, about fifty meters away from the house of her brother and father. Out of their union, Florida gave birth to Edward Jayson in 1985 and to Eva in 1987. In order to financially support the family, Florida sold fish in the public market in Urdaneta, Pangasinan. She usually left their house at or about 2:00 a.m. to sell fish, leaving Edgardo, Jayson, Eva and Cecilia in the house still fast asleep. Edgardo used to sleep with only his briefs on.

Cecilia treated Edgardo like her natural father. She used to sit on his lap. In contrast, Florida was strict on Cecilia. On January 3, 1992, as she was accustomed to, Florida left their house at or about 2:00 a.m. Then 9 years old and in grade II, Cecilia was awakened when she felt Edgardo on top of her. She protested and tried to push Edgardo, to no avail. Edgardo is five foot seven inches tall. He then removed her panties and his briefs. She wanted to shout but Edgardo covered her mouth with his palm. She resisted with all her might but he was too strong for her. Edgardo inserted his penis inside her vagina. As she was still a virgin, it took a while before he was able to penetrate her vagina. Cecilia felt pain and blood oozed from her vagina. After Edgardo satiated his lust, he warned Cecilia not to tell her mother, otherwise he will kill her. He then dismounted and went back to sleep. Afraid of what Edgardo might do to her mother, Cecilia did not tell her mother about the bestial

[2] Exhibit "B".

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assault on her by Edgardo. She cried all by herself. Nevertheless, she went to school.

On May 13, 1992, Cecilia felt pains in her abdomen. She was suffering from acute appendicitis. However, Edgardo chided Cecilia and told her that she was feigning illness. Edgardo and Florida left Cecilia in their house to attend a funeral. However, when the couple returned to their house, they saw Cecilia in pain and brought her to the hospital. Cecilia was operated on for her acute appendicitis.

Cecilia enrolled in June 1993 as a Grade III pupil. Shortly thereafter, at about 2:00 a.m., as she usually did, Florida left the house for Urdaneta to sell fish. Edgardo, Jayson, Eva and Cecilia were still fast asleep. Cecilia wanted to embrace her half-sister Eva whom she believed was beside her. Cecilia was aghast when she discovered that it was Edgardo who was beside her and whom she had just embraced. Edgardo took advantage of the situation. He removed her panties and his brief and succeeded in having sexual intercourse with her. After he had satisfied his lust, Edgardo warned Cecilia anew not to tell her mother what he had just done to her, otherwise he will kill her. Afraid for her life, Cecilia kept her ordeal to herself. Neither did she tell her uncle and grandfather who lived about fifty meters away from their house for fear that Edgardo might kill them. Nor did she try to tell her siblings whom she believed were still too young to understand.

Edgardo sexually abused Cecilia for three times in October 1996. One Sunday morning in January 1997, Florida and Eva were in the market selling fish. Jayson went up north to play. Cecilia went to the house of her uncle who went fishing while her grandfather went to the north to drink, like Edgardo used to. She tended to her mute and disabled cousin. After putting the baby to sleep, Cecilia put him to bed. At about 11:00 a.m., the unsuspecting Cecilia went back to their house to cook food. By then, Edgardo had already returned to their house. Upon entering their house, Cecilia was grabbed from behind by Edgardo. She pleaded to him not to molest her again. However, Edgardo ignored her pleas, undressed her and himself and laid her down

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on the floor. He then went on top of her, inserted his penis in her vagina and made push and pull motions for about five minutes. Cecilia could do nothing but cry. When Edgardo extricated his penis from her vagina, Cecilia saw white substance oozing from his penis.

Sometime toward the end of 1997, Cecilia told her mother that she did not have her monthly period for three months and that she might be pregnant. Florida confronted Cecilia who told her that she had been raped by Edgardo in 1992, 1993 and in January of 1997. When Florida confronted Cecilia and Edgardo and demanded to know if they had consensual amorous relations, the two denied having such relations. Edgardo left Tayug, Pangasinan, and hid in his native place in Barangay San Felipe, Llanera, Nueva Ecija.

On June 30, 1997, Florida brought Cecilia to the rural health center for a pregnancy test. She was told that Cecilia was about twenty six (26) weeks pregnant. Florida and Cecilia then went to the police station where Cecilia lodged a complaint against Edgardo for three (3) counts of rape.[3] Florida also executed a sworn statement.[4] On July 1, 1997, Florida brought Cecilia to the Eastern Pangasinan District Hospital where Dr. Cecilia Teresa Asuncion subjected Cecilia to a pelvic ultrasound examination. The doctor discovered that Cecilia was twenty-six weeks or six to seven months pregnant. Cecilia was expected to deliver her baby two or three months later. The doctor issued a medical certificate with the following findings:

> Pregnancy uterine, 26 5/7 weeks AOG by LMP, 32–33 weeks by pelvic ultrasound (July 01, 1997), cephalic, NIL; GIPO[5]

After the requisite preliminary investigation, three Informations were filed on October 27, 1997, with the Regional Trial Court of Pangasinan (Tayug, Branch 51) for rape, each Information reading and docketed as follows:

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[3] Exhibit "B".

[4] Exhibit "D".

[5] Exhibit "C".

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CRIMINAL CASE NO. 2008

That sometime during the year 1992, in the evening, inside the house of the victim located at Brgy. Libertad, municipality of Tayug, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who is the stepfather of complainant, by means of force, threat and intimidation, did then and there wilfully (sic), unlawfully and feloniously have sexual intercourse with MARIA CECILIA MONES, who was then 9 years old, against her will and consent, to the damage and prejudice of said MARIA CECILIA MONES.

CONTRARY to Article 335 of the Revised Penal Code.[6]

xxx xxx xxx

CRIMINAL CASE NO. 2009

That sometime during the year 1993, early dawn, inside the house of the victim located at Brgy. Libertad, municipality of Tayug, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who is the stepfather of complainant, by means of force, threat and intimidation, did then and there wilfully (sic), unlawfully and feloniously have sexual intercourse with MARIA CECILIA MONES, who was then 10 years old, against her will and consent, to the damage and prejudice of said MARIA CECILIA MONES.

CONTRARY to Article 335 of the Revised Penal Code.[7]

xxx xxx xxx

CRIMINAL CASE NO. 2010

That sometime during the month of January, 1997, inside the house of the victim located at Brgy. Libertad, municipality of Tayug, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused is (sic) the stepfather of complainant, by means of force, threat and intimidation, did then

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[6] Original Records, p. 144.

[7] *Id.* at, p. 145.

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and there wilfully (sic), unlawfully and feloniously have sexual intercourse with MARIA CECILIA MONES, who was then 14 years old, against her will and consent, to the damage and prejudice of said MARIA CECILIA MONES.

CONTRARY to Article 335 of the Revised Penal Code.[8]

On December 18, 1997, Edgardo was duly arraigned, assisted by counsel *de parte* and entered a plea of Not Guilty to all the charges.[9]

A joint trial thereafter ensued. In the course of the proceedings, Cecilia gave birth on July 19, 1997. The baby has since been under the custody of Florida.

During the trial on March 2, 1998, the public prosecutor and counsel agreed that if Edgardo were convicted of the crimes charged, he will pay Cecilia the total amount of ₱125,000.00 as damages.[10]

For his part, Edgardo denied having raped Cecilia in 1992 and 1993. He claimed that the charges were contrived by Florida because of the embarrassment to her of the pregnancy of Cecilia. Edgardo testified that he and Florida slept in one room in their house while Cecilia, Jayson and Eva slept in another room. He recalled that on January 13, 1992, Cecilia was operated on for appendicitis. Cecilia was so mad at him and Florida for not attending to her needs. He alleged that it was impossible for him to have sexually assaulted Cecilia in 1992 and 1993 because he was in the market helping Florida sell fish. He, however, admitted having sexual intercourse with Cecilia in October 1996. He testified that his sexual intercourse with Cecilia in October 1996, was consensual. He claimed that Cecilia sat on his lap, took his hands and placed it on her private parts and kissed him passionately. Cecilia confessed to him that she loved him. Edgardo was sexually aroused and reciprocated by kissing her with equal

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[8] *Id., supra.*

[9] Original Records, p. 22.

[10] TSN, March 2, 1998, p. 9.

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passion. Unable to contain themselves, they removed their clothes and laid down on the cemented floor of the house. Edgardo inserted his penis into her vagina but was unable to penetrate her. Thereafter, he and Cecilia started to have an intimate relationship and had regular sexual intercourse. However, he could not have raped Cecilia in January 1997 because she was then pregnant. He was not sure if he was the father of Cecilia's baby since he was not always with her. However, he sent his mother from Llanera, Nueva Ecija to Tayug, Pangasinan, to take care of and visit Cecilia.

After Edgardo had testified, the defense presented Florida. She disavowed her testimony for the prosecution and claimed that Edgardo did not rape Cecilia in January 1997 because Cecilia was confined in the hospital for appendicitis. She and Cecilia charged Edgardo of rape, which they alleged to have been committed in 1992 and 1993, to strengthen their charge of rape against him that was committed in January 1997.

Edward "Jayson" Mauro testified for his father saying that in 1992 and 1993, he arrived home from school at noontime and saw accused-appellant on top of Cecilia in the kitchen of their house having sexual intercourse. Jayson saw Cecilia enjoying the intercourse. She even asked Jayson not to tell their mother what he saw.

On October 4, 1999, the trial court rendered a decision finding Edgardo guilty of rape in Criminal Case No. T-2008 and Criminal Case No. T-2009 and sentencing him to *reclusion perpetua* in each case, and of rape in Criminal Case No. T-2010 and sentencing him to death for said crime. The decretal portion of the decision reads:

WHEREFORE, pursuant to Section 2, Rule 133 of the Rules of Court, and applying Article 335 of the Revised Penal Code as amended by Republic Act Nos. 2632, 4111 and 7659, respectively, in relation to Article 63 thereof, the Court finds the accused EDGARDO MAURO, a native of Llanera, Nueva Ecija GUILTY beyond reasonable doubt, of three (3) counts of rape, and hereby sentences him to suffer the penalties of *RECLUSION PERPETUA* relative to Crim. Case No. T-2008, *RECLUSION PERPETUA* in regard to Crim. Case No.

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T-2009, and DEATH with respect to Crim. Case No. T-2010; to indemnify complainant Ma. Cecilia Mones of Brgy. Libertad, Tayug, Pangasinan for damages in the negotiated sum of ₱125,000.00; to support their common offspring; and to pay the costs.[11]

Appellant seeks reversal of the decision of the trial court contending that:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT FOR THREE (3) COUNTS OF RAPE DESPITE FAILURE OF THE PROSECUTION TO DEFINE OR INCLUDE IN THE FIRST TWO INFORMATIONS THE PARTICULAR DATES DURING 1992 AND 1993 WHEN THE OFFENSE WERE ALLEGEDLY COMMITTED;

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT FOR THREE (3) COUNTS OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PRESENT EVIDENCE TO PROVE BEYOND REASONABLE DOUBT THE RAPE COMMITTED IN JANUARY 1997.

On the first assignment of error, appellant avers that he was deprived of his right to be informed of the nature of the charges against him in Criminal Cases Nos. 2008 and 2009. The phrases "sometime during the year 1992" and "sometime during the year 1993" in both informations are not sufficiently explicit enough and certain as to the date of the commission of said crimes. Appellant cited another ruling in *People vs. Ladrillo*,[12] to buttress his contention.

The Court does not agree with appellant. Section 10, Rule 110 of the Revised Rules of Criminal Procedure reads:

Section 10. *Date of the Commission of the Offense.* — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is material ingredient

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[11] Decision, p. 166, Records.

[12] 320 SCRA 61 (1999).

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of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.[13]

The Court held in *People vs. Lizada*[14] that the precise date of the commission of the crime of rape is not an essential element of the crime. Failure to specify the exact date when the rape was committed does not render the information *ipso facto* defective. After all, the gravamen of the crime is carnal knowledge of private complainant under any of the circumstances enumerated under Article 335 of the Revised Penal Code, as amended. The Court ruled that as long as it is alleged in the Information that the offense was committed at any time as near to the actual date when the offense was committed, an information is sufficient. Citing its ruling in *People vs. Salalima*,[15] the Court held:

> Failure to specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. In previous cases, we ruled that allegations that rapes were committed "*before and until October 15, 1994,*." "*sometime in the year 1991 and the days thereafter,*" "*sometime in November 1995 and some occasions prior and/or subsequent thereto*" and "*on or about and sometime in the year 1988*" constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules on Criminal Procedure.

In this case, although the indictments did not state with particularity the dates when the sexual assaults took place, we believe that the allegations therein that the acts were committed "*sometime during the month of March 1996 or thereabout,*" "*sometime during the month of April 1996 or thereabout,*" "*sometime during the month of May 1996 or thereabout*" substantially apprised appellant of the

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[13] *Id., supra.*

[14] G.R. No. 143468-71, .January 24, 2003.

[15] 363 SCRA 192 (2001).

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crimes he was charged with since all the elements of rape were stated in the informations. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the cases filed against him. Accordingly, appellant's assertion that he was deprived of the opportunity to prepare for his defense has no leg to stand on.[16]

The Court believes that the allegations in the informations that the crimes were committed "*sometime during the year 1992*" and "*sometime during the year 1993*" substantially apprised appellant of the crimes he was charged with since all the essential elements thereof are sufficiently and succinctly alleged in the informations.

Appellant's plaint that he was not sufficiently informed of the nature of the charges lodged against him is merely an afterthought. For, if he believed that the informations were defective, he should have filed a motion for bill of particulars with the trial court before his arraignment. However, appellant did not. Instead, he voluntarily entered his plea of not guilty and even adduced evidence to refute the evidence of the prosecution and prove his defenses. It is only in this Court on automatic appeal that he complained that he was not sufficiently informed of the precise dates of the commission of the crimes charged. It is now too late in the day for him to complain. In *People vs. Magbanua,*[17] the Court held:

As may be deduced from the above discussion, it is already too late in the day for appellant to question the sufficiency of the information. He had all the time to raise this issue during the course of the trial, particularly during his arraignment. He could have filed for a bill of particulars in order to be properly informed of the dates of the alleged rapes. However, appellant chose to be silent and never lifted a finger to question the information. As a result, he is deemed to have waived whatever objections he had and he cannot now be heard to seek affirmative relief. Furthermore, objections as to matters of form or substance in the information cannot be made for the first time on appeal.[18]

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[16] *Id., supra.*

[17] 319 SCRA 719 (1999).

[18] Footnote text not supplied in the original.

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Reliance by appellant of the ruling of this Court in *People vs. Ladrillo* is misplaced. In said case, the information alleged that the crime charged was committed "*on or about the year 1992*" which this Court held as encompassing not only the twelve months of 1992 but including the years prior to and subsequent to 1992:

> The phrase "on or *about* the year 1992" encompasses not only the twelve (12) months of 1992 but includes the years prior and subsequent to 1992, *e.g.*, 1991 and 1993, for which accused-appellant has to virtually account for his whereabouts. Hence, the failure of the prosecution to alleged with particularity the date of the commission of the offense and, worse, its failure to prove during the trial the date of the commission of the offense as alleged in the Information, deprived accused-appellant of his right to intelligently prepare for his defense and convincingly refute the charges against him. At most, accused-appellant could only establish his place of residence in the year indicated in the Information and not for the particular time he supposedly committed the rape.[19]

In contrast, the informations in Criminal Cases Nos. 2008 and 2009 respectively allege that the crimes were "*committed sometime during the year 1992*" and "*sometime during the year 1993,*" thus excluding the years before and after 1992 and 1993. In fact, the informations in said cases further alleged that when the crimes charged were committed in 1992 and 1993, the victim was 9 years old and 10 years old, thus clearly confining the period of the commission of the crime to the year 1992 and 1993, respectively.

In his second assignment of error, appellant avers that Cecilia's testimony that he raped her in January 1997, was incredible. As early as October 1996, they had been engaging in consensual sexual intercourse. Cecilia never revealed to her mother or to her relatives and friends that she had been raped by him in January 1997. She continued living with him under the same roof and regularly going to school. It was only when she was

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[19] At page 68, *supra*.

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already pregnant that she divulged to her mother for the first time that she had been sexually abused by him.

The Office of the Solicitor General defanged accused-appellant's contention and avers in its Brief for the People that:

II. There is no credence to appellant's claim that he and private complainant had an illicit relationship

Appellant admitted that he had sex with Cecilia sometime in .January 1997, but claimed that it was consensual. Appellant even had the temerity to claim that it was Cecilia, then only fourteen years old, who seduced him by sitting on his lap and placing his hands on her body (*pp. 11–12, TSN, Feb. 2, 1999*). However, considering that Cecilia positively testified that she had been repeatedly raped by appellant since January 3, 1992, appellant's defense of consensual sex is futile.

It should be stressed that appellant and Florida cohabited since Cecilia was only two (2) years old. Cecilia grew with appellant and considered him as his real father (p. 8, TSN, May 28, 1998); thus, it is highly improbable that she would initiate a sexual relationship with appellant. Instead, what was evident was that having helped his live-in partner rear Cecilia, appellant exercised moral and physical ascendancy over her which he used sufficient (sic) to cow Cecilia to submit to his lustful desires. Furthermore, it is improbable that Cecilia, who was only fourteen year old at the time she revealed what he had done, and one who was not exposed to the ways of the world, would impute a crime as serious as rape to any man, let alone her stepfather, if what she claimed was not true [*People v. Manggasin*, 306 SCRA 228 (1999)]. Clearly, appellant's claim that he and Cecilia were maintaining amorous relations behind her mother's back was concocted in a desperate attempt to exculpate himself from criminal liability.

It should be worth noting that even defense's witness Edward Mauro, the son of appellant and half brother of Cecilia testified that sometime in March 1992 after coming from school, he caught appellant engaging in sexual intercourse with Cecilia and the said incident was again repeated sometime in 1993 (pp. 8–13, TSN, June 21, 1999). Thus, there is no doubt that appellant has been sexually abusing Cecilia

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since 1992 and as such, his claim of consensual sex is clearly without any credence.[20]

The Court agrees with the Office of the Solicitor General. In *People vs. Juntilla*,[21] the Court held that:

> The case of *People vs. Manggasin* involved a young girl who was sexually molested at age 12 and which abuse lasted until she was 17. In that case, accused-appellant was the common law spouse of the private complainant's mother. We ruled that accused-appellant exercised moral ascendancy over complainant which made the threats effective. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's embrace because of fear for her life and personal safety.
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> The aforementioned ruling is applicable to the case at bar considering that appellant is private-complainant's father whose moral ascendancy cannot be doubted. Also, the fact that appellant had a bolo by his side at the time of the rape is enough to intimidate private complainant.
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> Private complainant's delay in instituting the complaint does not weaken the case for the prosecution. It is not uncommon for a young girl to conceal assaults on her virtue, especially when the rapist is living with her. In *People vs. Caloma*, we ruled that even a delay of 8 years is not a sign of fabrication.
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> We have consistently held that delay or vacillation in making a criminal accusation does not necessarily adulterate the credibility of witnesses. We are not about to change the rules in mid-stream.[22]

In these cases, Cecilia testified that she did not tell her mother that she was raped by appellant in 1992 and 1993 because he threatened to kill her and she did not want to cause a scandal in the family. If she divulged to her uncle or her grandfather that she was raped by appellant she was afraid that her uncle or her grandfather might kill her or her uncle or grandfather might be killed by appellant. Moreover, she was afraid of her mother:

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[20] *Rollo*, pp. 141–143.

[21] 314 SCRA 568 (1999).

[22] *Ibid.*

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Q You have an immediate neighbor[s] in your house and that is your grandfather, is that correct?
A It is far, sir.

Q How far?
A About 50 meters, sir.

COURT:

Q Was your grandfather your nearest neighbor then?
A Yes, sir, there was (sic) only 2 houses there.

ATTY. CASTILLO:

Q Did you not inform your grandfather about the incident?
A No, sir.

Q Why?
A I was afraid of the fact that my stepfather might kill me or my mother might kill me.

Q You also have your immediate neighbor who is your uncle or the brother of your mother, is that correct?
A There was, sir.

COURT:

Q How far?
A About the same distance of 50 meters, sir.

PROS. BINCE —

May we place on record that the witness is crying, Your Honor.

COURT:

All right

Q You mean your uncle and your grandfather were close neighbors 50 meters away from your house?

WITNESS:

A Yes, Sir.

PROS. BINCE —

Before we proceed further may we ask from the private complainant if she desire (sic) the exclusion of the public, Your Honor.

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COURT:

Would you like the public excluded while you testify Miss complainant'?

A No, sir.

ATTY. CASTILLO —

Q Did you not inform your uncle considering that your house was just 50 meters away?
A No more, sir.

Q Why?
A I was afraid because I might be killed by them, sir.

COURT

Q By your uncle even?
A No, sir, if my uncle and my stepfather would quarrel my uncle might be killed, sir.

Q A while ago you said that you were also afraid as your stepfather and your mother might kill you (sic) why were you also afraid that if this incident you are testifying on would be known by your mother your mother might also kill you?
A Yes, sir, I was informed that if she could not kill me she is going to disown me, sir.

Q You mean you were afraid also of your mother?
A Yes, sir, before but now no more.

Q Were you afraid of your mother already before this January 3 incident?
A No, sir, because she was strict.

Q Was she strict of you because she made known to you that she was suspecting that you are yielding physically to your stepfather?
A I do not know, sir, but she considered me as if I was not her child.[23]

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[23] TSN, Cecilia Mones, May 28, 1998, pp. 6–7.

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PROS. CORPUZ:

Q After all these things that happened to you did you reveal it to anybody else?
A When my mother had discovered that I no longer have my menstrual period sometime on (*sic*) June 1996 I already divulged.

COURT:

Q So if she did not discover that you would not have complained to her?
A No, sir.

Q Why?
A My stepfather was always at the side of my mother.

COURT:

Q What was your reason for not telling your mother or anyone about it until after your mother discovered that you no longer have your menstrual period?
A I was afraid.

Q Of whom?
A To my mother, sir, beforehand or during that time she said that she was not believing in me.

Q You mean your mother was suspecting that you have an affair with your stepfather?
A I do not know, sir.

Q Why are you afraid of your mother?
A Because she was angry at me, and before that she did not believe me.

Q Why was she angry with you?
A I do not know, sir.

PROS. CORPUZ:

Q After your mother has discovered that you no longer have your menstrual period, what did she tell you?
A After divulging to her what happened to me we went to the clinic.

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COURT:

The witness is testifying between sads (*sic*).[24]

CRIMES COMMITTED BY APPELLANT AND PROPER PENALTIES THEREFOR

The trial court convicted appellant of simple rape in Criminal Cases Nos. 2008 and 2009 and of qualified rape in Criminal Case No. 2010 and meted on him in the latter case the supreme penalty of death on its finding that appellant is the stepfather of Cecilia. The Office of the Solicitor General disagrees with the trial court with the ratiocination that:

III. The penalty imposed on appellant in Criminal Case No. T-2008 and T-2009 is correct, while the death penalty imposed on appellant in Criminal Case No. T-2010 should be reduced to reclusion perpetua.

The trial court is correct in imposing the penalty of *reclusion perpetua* in Criminal Cases Nos. T-2008 and T-2009 since the rape covered in Criminal Case No. T-2008 was committed in 1992 while Criminal Case No. 2009 covers a rape which was committed sometime in 1993. Both crimes were committed before Article 335 of the Revised Penal Code was amended on December 31, 1993 by Republic Act No. 7659, which imposes the death penalty in cases of rape when the victim is under eighteen (18) years of age and the offender is the common law spouse of the parent of the victim.

However, it is submitted that the trial court erred in imposing the death penalty in Criminal Case No. T-2010.

The Information in Criminal Case No. T-1010 (sic) filed against appellant reads as follows:

> The undersigned upon a verified complaint of FLORIDA MAURO (mother of the victim, MARIA CECILIA MONES), hereby accuses EDGARDO MAURO of the crime of RAPE, committed as follows:

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[24] TSN, Cecilia Mones, March 2, 1998, pp. 4–5.

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"That sometime during the month of January, 1997, inside the house of the victim located at Brgy. Libertad, municipality of Tayug, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused is the stepfather of complainant, by means of force, threat, and intimidation, did then and there willfully, unlawfully, feloniously have sexual intercourse with MARIA CECILIA MONES, who was then 14 years old against her will and consent, to the damage and prejudice of said MARIA CECILIA MONES.

CONTRARY to Article 335 of the Revised Penal Code.

Tayug, Pangasinan, October 27, 1997.

(SGD.) NOEL C. BINCE
3rd Asst. Prov'l. Prosecutor"

All the informations stated that appellant is the stepfather of Cecilia. Except for the bare allegation of Florida that she married appellant before the municipal judge of Llanera, Nueva Ecija (*p. 16, TSN, June 22, 1998*), which was denied by appellant (*p. 3, TSN, Feb. 2, 1999*), the prosecution failed to present clear and convincing evidence of such marriage to show that appellant is indeed the stepfather of Cecilia. Thus, consonant with this Honorable Court's pronouncement in *People v. Mangasin* (*ibid.*), the death penalty meted out to appellant should be reduced to *reclusion perpetua* for although a common law husband is subject to punishment by death in case he commits rape against his wife's daughter, nevertheless, the death penalty cannot be imposed on appellant because the relationship alleged in the information is different from that actually proven. Accordingly, appellant must be sentenced to the lesser penalty of *reclusion perpetua* since the failure to allege accurately the relationship between appellant and his victim in the information bars his conviction in its qualified form that is punishable with death [*People v. Pinado,* 311 SCRA 529 (1997)]. Thus, it is recommended that the penalty imposed on appellant in Criminal Case No. T-1010 (sic) be reduced to *reclusion perpetua*.[25]

This Court agrees with the Office of the Solicitor General. For appellant to be convicted of qualified rape, the information must allege the minority of the victim and the relationship of

[25] *Rollo*, pp. 143–145.

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the latter and appellant. Absent such allegation, appellant cannot be convicted of qualified rape but only of simple rape. This was the ruling of this Court in *People vs. Lizada:*

> We agree with accused-appellant that he is guilty only of two counts of simple rape, instead of qualified rape. The evidence on record shows that accused-appellant is the common-law husband of Rose, the mother of private complainant. The private complainant, as of October 1998, was still 13 years old, and under Article 335 as amended by Republic Act 7659, the minority of the private complainant, concurring with the fact that accused-appellant is the common-law husband of the victim's mother, is a special qualifying circumstance warranting the imposition of the death penalty. However, said circumstance was not alleged in the Informations as required by Section 8, Rule 110 of the Revised Rules on Criminal Procedure which was given retroactive effect by this Court because it is favorable to the accused. Hence, even if the prosecution proved the special qualifying circumstance of minority of private complainant and relationship, the accused-appellant being the common-law husband of her mother, accused-appellant is guilty only of simple rape.[26]
>
> . . .

Although the information in Criminal Case No. 2010 alleges that appellant is the stepfather of the victim, however, the evidence shows that he is merely the common-law husband of Florida Mones, the natural mother of the victim. Moreover, the information does not allege the minority of the victim. Hence, appellant is guilty of simple rape in Criminal Case No. 2010.

Under Article 335 of the Revised Penal Code, as amended, the penalty for simple rape is *reclusion perpetua*. Appellant should be meted the penalty of *reclusion perpetua* in the three cases.

CIVIL LIABILITIES OF APPELLANT

The trial court ordered appellant to pay only the amount of ₱125,000 by way of damages to the victim which was the amount stipulated on by the public prosecutor and the appellant. The

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[26] *Supra.*

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Court does not agree with the trial court. There is no evidence that the public prosecutor was authorized to compromise for the victim who was still a minor during the trial the civil liability of appellant. Hence, Cecilia is not bound by the compromise forged by the public prosecutor and appellant. The latter is, thus, obliged to pay the victim Cecilia Mones, in each case, the amounts of ₱50,000 as indemnity and ₱25,000 as moral damages.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Tayug, Pangasinan, Branch 21, in Criminal Cases Nos. 2008, 2009 and 2010 is *AFFIRMED* with *MODIFICATIONS*. Appellant EDGARDO MAURO is found guilty beyond reasonable doubt, as principal, of simple rape in each of these cases, and is hereby meted the penalty of *RECLUSION PERPETUA* in each count. Appellant is hereby ordered to pay to the victim Cecilia Mones the amounts of ₱50,000 as civil indemnity and ₱25,000 as moral damages in each case.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J ., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, and *Azcuna, JJ.*, concur.

Ynares-Santiago, J., on leave.

THIRD DIVISION

[G.R. No. 142011. March 14, 2003.]

ALFONSO C. CHOA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and LENI CHOA,** *respondents.*