

## FIRST DIVISION

[ G.R. No. 206393, January 21, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MICHAEL JOSON Y ROGANDO, DEFENDANT-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

For consideration by the Court is the Court of Appeals Decision<sup>[1]</sup> dated 31 August 2012 that affirmed the judgment<sup>[2]</sup> of conviction by the Regional Trial Court of Dasmarias (RTC), Cavite, Branch 90 sitting in Imus, Cavite, convicting appellant Michael Joson y Rogando of the crime or rape of his 14-year old sister.

Appellant was charged with violation of Articles 266-A of the Revised Penal Code in relation to Republic Act No. 7610 in an Information, the accusatory portion of which reads:

That on or about the 14<sup>th</sup> day of May 2009, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological brother and thus a relative within the second degree of consanguinity of [AAA],<sup>[3]</sup> a minor fourteen (14) years of age and born on March 24, 1995, motivated by lust and with lewd design, with the use of force and intimidation and taking advantage of his moral ascendancy over her, did then and there willfully, unlawfully and feloniously have carnal knowledge of said [AAA], against her will and consent, thereby debasing, degrading and demeaning her intrinsic worth and integrity as a child, to the damage and prejudice of said complainant.<sup>[4]</sup>

On arraignment, appellant pleaded not guilty. Trial ensued. The prosecution's evidence is based on the sole testimony of the victim. AAA lives with appellant and his common-law partner. AAA testified that at around 1:00 in the morning of 14 May 2009, and while appellant's wife was away, AAA was awakened by appellant undressing her. AAA tried to struggle but appellant was tightly holding her arms. After undressing her, appellant kissed and mounted her. Appellant was able to insert his penis into her vagina. AAA felt pain in her genitalia. Thereafter, appellant went back to sleep leaving AAA crying. At about 6:00 or 7:00 in the morning, appellant left AAA with a letter apologizing for what happened and begging her not to tell on his wife. The letter reads:

*Ne!*

*Sorry Ne. Patawarin mo ko. Dala lang ng kalasingan kaya ko nagawa ang ganung bagay. Sana po wala ng ibang makaalam nito lalo na si Ate Cindy mo. Ayokong masira na naman ang pamilya ko at mga buhay natin. Paki tapon muna to pag tapos mong basahin.*<sup>[5]</sup>

At around 5:00 in the afternoon of that same date, AAA related to appellant's wife the rape incident.<sup>[6]</sup> And on 1 June 2009, AAA, accompanied by her father, reported the incident to the police and she executed a sworn statement detailing the rape.<sup>[7]</sup>

The prosecution presented a provisional medico-legal report on the examination conducted on AAA by Irene D. Baluyut of Philippine General Hospital which essentially states that there is no evident injury on AAA at the time of the examination.

Also submitted as part of the prosecution's evidence is the birth certificate of AAA to prove that she was still a minor at the time the rape was committed on 14 May 2009.

Appellant admitted that AAA is his sister but he proffered the defense of alibi and claimed that he was staying in Alfonso, Cavite on 14 May 2009 and only went back to his house in Dasmariñas on 26 May 2009. Appellant vehemently denied the accusation against him and speculated that AAA resented him because he was strict with his sister. Appellant also denied writing the apology letter and presented his specimen handwriting in court.<sup>[8]</sup>

After evaluating the evidence, the trial court found appellant guilty beyond reasonable doubt of the crime of rape and meted out the penalty of *reclusion perpetua*. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused MICHAEL JOSON y ROGANDO guilty beyond reasonable doubt of the crime of rape as defined in Article 266-A paragraph 1 of the Revised Penal Code in relation to Republic Act No. 7610, and hereby sentences the accused to suffer the penalty of *reclusion perpetua*, and the said accused is hereby ordered to indemnify the victim by way of moral damages in the amount of Php50,000.00, civil indemnity *ex-delicto* in the amount of Php50,000.00 and exemplary damages in the amount of Php25,000.00.<sup>[9]</sup>

The trial court found credible the testimony of AAA. It noted that appellant even wrote to the victim that he was sorry for what he has done. The trial court considered the letter as admission against appellant's interest.

Appellant filed a Notice of Appeal.<sup>[10]</sup> On 31 August 2012, the Court of Appeals rendered the assailed decision affirming the judgment of conviction.

Appellant filed a Notice of Appeal<sup>[11]</sup> with the appellate court. In a Resolution<sup>[12]</sup> dated 19 June 2013, the Court ordered the elevation of the records and directed the parties to file their respective supplemental briefs should they so desire. However,

appellant and the Office of the Solicitor- General both manifested that they were adopting their respective appeal briefs previously filed with the Court of Appeals.<sup>[13]</sup>

In his Appeal Brief, appellant maintains that the prosecution failed to prove all the elements of rape as defined under Article 266-A of the Revised Penal Code, particularly the elements of force, threat or intimidation. Appellant argues that AAA did not allege that she was threatened by appellant with the use of any firearm or any bladed weapon nor did appellant say anything to threaten or intimidate her. With respect to moral ascendancy, appellant contends that the Court in a recent case did not consider a brother as one of those close kin who has moral ascendancy over a victim that would substitute for force and intimidation. Appellant further points out that there was no showing of any resistance on the part of AAA to his alleged sexual advances.

Upon a careful evaluation of the case, we find no reason to reverse appellant's conviction.

For a charge of rape under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.<sup>[14]</sup>

AAA gave a complete account of her ordeal in the hands of her own brother, to wit:

Q: Do you know one Michael Joson?

A: *Opo.*

Q: Why do you know him?

A: He is my brother.

Q: Is he inside the courtroom?

A: *Opo.*

Q: Please point to him. (Witness points to a man wearing a yellow tshirt, who when asked what his name is, answered "Michael Joson.")

Q: On May 14, 2009, around 1:00 o'clock in the afternoon, where were you?

A: *Nasa bahay po.*

Q: What were you doing in your house?

A: *Tulog po.*

Q: What time did you wake up?

A: *Sa tingin ko po mga 1:00 o'clock.*

Q: Will you please tell this Honorable Court the reason why you woke up early?

A: *Hinuhubaran po niya ako.*

Q: Who are you referring to?

A: *Ng kapatid ko.*

Q: He was undressing you? So what did you do while he was undressing you, while you were lying or sleeping? That's why you were awakened?

A: *Opo.*

Q: So what happened next when you felt that he was undressing you?

A: *Pumalag po ako, kasi hinihigpitan po niya ako sa braso ko.*  
Q: So what else did you do?  
A: *Sabi po niya kasi, wag daw po ako maingay.*  
Q: Who was your companion in the house, aside from your brother?  
Who else was there in the house?  
A: *Wala po.*  
Q: Where were they?  
A: *'Yung asawa niya po, umuwi sa kanila.*  
Q: What about your parents, where were they?  
A: *'Yung tatay ko po, nagtatrabaho.*  
Q: Your mother?  
A: *Patay na po.*  
Q: What happened next when you were told not to shout?  
A: *Hinubaran niya po 'yung ibaba ko, tapos pumatong po siya sa ibabaw ko tapos pinaghahalikan niya ko.*  
Q: Was he able to undress you?  
A: *Opo.*  
Q: Totally?  
A: *Opo.*  
Q: Thereafter, what did you do?  
A: *Pinaghahalikan niya po ako.*  
Q: What were you doing?  
A: *Umiiyak lang po ako.*  
Q: What about the accused, what did he do to you?  
A: *Pumatong po siya sa ibabaw ko.*  
Q: He went on top of you? Thereafter what did the accused do next?  
A: *Pilit niya pong ipinapasok ang ari niya sa ari ko.*  
Q: Was he able to insert his penis?  
A: *Opo.*  
Q: For how long?  
A: *Matagal po.*  
Q: How did you feel when his organ was inside your organ?  
A: *Masakit po.*  
Q: And what (sic) you trying to do while his organ was inside?  
A: *Umiiyak lang po ako.*  
Q: After that, what happened next?  
A: *Pinaghahalikan niya pa rin po ako, tapos tumayo po siya sandali tapos humiga po uli siya. Natulog po.*  
Q: What about you, you went to sleep also?  
A: *Hindi po, umiiyak lang po ako.*  
Q: The following day, in the morning, were you not able to sleep after that incident?  
A: *Hindi po.*  
Q: What did you do?  
A: *Doon lang po, umiiyak lang po.*  
Q: What about the accused?  
A: *Doon lang din po siya.*  
Q: Beside you?  
A: *Opo.*  
Q: And what happened next, at 6:00 o'clock in the morning or 7:00 o'clock?  
A: *May iniwan po siyang sulat.*  
Q: Where did he go, if you know?