

FIRST DIVISION

[G.R. No. 176531, April 24, 2009]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROMEO BANDIN,
APPELLANT.**

D E C I S I O N

CORONA, J.:

For review is the September 23, 2005 decision^[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00152. It affirmed with modification the August 29, 2000 decision^[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 18 in Criminal Case No. 93-1761 which found appellant Romeo Bandin guilty of the crime of rape^[3] and sentenced him to suffer the penalty of *reclusion perpetua*.

The complaint read:

That on or about May 21, 1993, at 12.30 P.M., more or less, at Tagpangi, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with force and intimidation, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with complainant-victim, AAA^[4], a 16 [-year] old woman, against her will.

CONTRARY TO and in violation of Article 335 of the Revised Penal Code.
^[5]

Cagayan de Oro City, Philippines. July 22, 1993.

On August 20, 1993, the trial court issued a warrant of arrest. It could not be served on appellant, however, as he could not be found.

On May 4, 1994, another warrant of arrest was issued. This was returned on January 20, 1999. On the same date, appellant was committed to the city correctional officer of Cagayan de Oro City.

On arraignment, appellant entered a plea of not guilty. Thereafter, pre-trial and trial ensued.

The prosecution presented two witnesses, namely: the victim, AAA, and Dr. Aziel Diel,^[6] a pathologist of the Northern Mindanao Regional Training Hospital who conducted the vaginal examination of AAA.

During the trial, the prosecution established that on May 21, 1993, AAA and her older sister, BBB,^[7] went to sleep in their hut in Agora, Tagpangi, Cagayan de Oro City at about 7:00 p.m. Their other siblings and parents were then in Batinay and

Lanao del Norte, respectively.

AAA woke up at past midnight because she felt a heavy burden on top of her. It was a naked man who was holding her tightly and who uttered in a commanding voice, "Don't move!" She recognized the man's voice as belonging to her brother-in-law, the appellant in this case.

Thereafter, appellant removed the victim's short pants and underwear. AAA covered her genitals with her right hand and pleaded with her brother-in-law to stop. Appellant, however, proceeded to remove AAA's hand from her genitals, spread her legs and immediately inserted his penis inside her vagina. She shouted for help several times but no one responded. She was too frightened to resist appellant because he was armed with a long firearm which he placed beside her.

Meanwhile, AAA's sister, BBB, was awakened because of the commotion. Fearing that she would be appellant's next victim, she ran out of the house.

Finally, after having his way with the victim, appellant warned her to keep silent about the incident; otherwise, he would kill her and her parents. Subsequently, appellant fled from the scene, leaving the victim crying from the pain she felt in her vagina. She then discovered that there was blood and semen in it. Alarmed, she went to the house of her aunt, CCC, which was about ten meters away from their house. Once there, she relayed the whole incident to CCC.

The victim also reported the incident to her father the following morning. However, it took her father several days to decide on what to do as he was afraid of appellant who was a member of the Citizen Auxiliary Force Geographical Unit (CAFGU) in Tagpangi, Cagayan de Oro City.

AAA finally submitted herself a week later to a physical examination conducted by Dr. Diel. The medical certificate revealed that "there were healed lacerations at three and six o'clock positions which were irregular, sharp and coaptated."^[8] Citing NBI^[9] statistics, Dr. Diel stated that this indicated that sexual intercourse had indeed occurred.

For its part, the defense presented the testimonies of appellant and his fellow CAFGU members, Isidro Encoy^[10] and Junifer Baal. Appellant's defense hinged on denial and alibi. He contended that he did not rape AAA. He claimed that he was sleeping in the bunker of the CAFGU station in Tagpangi, Cagayan de Oro City, which was about two kilometers away from AAA's house. His testimony was corroborated by Encoy and Baal.

He further asserted that his in-laws merely fabricated the charges against him because they blamed him for the death of his daughter which caused his wife, DDD (AAA's other sister), to become insane.

On rebuttal, AAA denied fabricating the charges leveled against her brother-in-law. She countered that she would not want to undergo humiliation just to get back at appellant. She also denied harboring any hatred against appellant because she was only 4 years old when her niece (appellant's daughter) died in 1980. Had she really wanted to concoct a rape case against her brother-in-law, she could have done so