

## THIRD DIVISION

[ G.R. No. 151085, August 20, 2008 ]

**JOEMAR ORTEGA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**NACHURA, J.:**

Before this Court is a Petition<sup>[1]</sup> for Review on Certiorari under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision<sup>[2]</sup> dated October 26, 2000 which affirmed in toto the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Bacolod City, Branch 50, dated May 13, 1999, convicting petitioner Joemar Ortega<sup>[4]</sup> (petitioner) of the crime of Rape.

#### *The Facts*

Petitioner, then about 14 years old,<sup>[5]</sup> was charged with the crime of Rape in two separate informations both dated April 20, 1998, for allegedly raping AAA,<sup>[6]</sup> then about eight (8) years of age. The accusatory portions thereof respectively state:

Criminal Case No. 98-19083

That sometime in August, 1996, in the Municipality of XXX, Province of YYY, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, (sic) willfully, unlawfully and feloniously (sic) had carnal knowledge of and/or sexual intercourse with the said AAA, a minor, then about 6 years old, against her will.

CONTRARY TO LAW.<sup>[7]</sup>

Criminal Case No. 98-19084

That on or about the 1st day of December, 1996, in the Municipality of XXX, Province of YYY, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, (sic) willfully, unlawfully and feloniously (sic) had carnal knowledge of and/or sexual intercourse with the said AAA, a minor, then about 6 years old, against her will.

CONTRARY TO LAW.<sup>[8]</sup>

Upon arraignment on September 10, 1998, petitioner pleaded not guilty to the offense charged.<sup>[9]</sup> Thus, trial on the merits ensued. In the course of the trial, two

varying versions arose.

### ***Version of the Prosecution***

On February 27, 1990, AAA was born to spouses FFF and MMM.<sup>[10]</sup> Among her siblings CCC, BBB, DDD, EEE and GGG, AAA is the only girl in the family. Before these disturbing events, AAA's family members were close friends of petitioner's family, aside from the fact that they were good neighbors. However, BBB caught petitioner raping his younger sister AAA inside their own home. BBB then informed their mother MMM who in turn asked AAA.<sup>[11]</sup> There, AAA confessed that petitioner raped her three (3) times on three (3) different occasions.

The first occasion happened sometime in August 1996. MMM left her daughter AAA, then 6 years old and son BBB, then 10 years old, in the care of Luzviminda Ortega<sup>[12]</sup> (Luzviminda), mother of petitioner, for two (2) nights because MMM had to stay in a hospital to attend to her other son who was sick.<sup>[13]</sup> During the first night at petitioner's residence, petitioner entered the room where AAA slept together with Luzviminda and her daughter. Petitioner woke AAA up and led her to the sala. There petitioner raped AAA. The second occasion occurred the following day, again at the petitioner's residence. Observing that nobody was around, petitioner brought AAA to their comfort room and raped her there. AAA testified that petitioner inserted his penis into her vagina and she felt pain. In all of these instances, petitioner warned AAA not to tell her parents, otherwise, he would spank her.<sup>[14]</sup> AAA did not tell her parents about her ordeal.

The third and last occasion happened in the evening of December 1, 1996. Petitioner went to the house of AAA and joined her and her siblings in watching a battery-powered television. At that time, Luzviminda was conversing with MMM. While AAA's siblings were busy watching, petitioner called AAA to come to the room of CCC and BBB. AAA obeyed. While inside the said room which was lighted by a kerosene lamp, petitioner pulled AAA behind the door, removed his pants and brief, removed AAA's shorts and panty, and in a standing position inserted his penis into the vagina of AAA.<sup>[15]</sup> AAA described petitioner's penis as about five (5) inches long and the size of two (2) ballpens. She, likewise, narrated that she saw pubic hair on the base of his penis.<sup>[16]</sup>

This last incident was corroborated by BBB in his testimony. When BBB was about to drink water in their kitchen, as he was passing by his room, BBB was shocked to see petitioner and AAA both naked from their waist down in the act of sexual intercourse. BBB saw petitioner holding AAA and making a pumping motion. Immediately, BBB told petitioner to stop; the latter, in turn, hurriedly left. Thereafter, BBB reported the incident to his mother, MMM.<sup>[17]</sup>

MMM testified that when she asked AAA about what BBB saw, AAA told her that petitioner inserted his fingers and his penis into her vagina. MMM learned that this was not the only incident that petitioner molested AAA as there were two previous occasions. MMM also learned that AAA did not report her ordeal to them out of fear that petitioner would spank her. MMM testified that when BBB reported the matter to her, petitioner and Luzviminda already left her house. After waiting for AAA's brothers to go to sleep, MMM, with a heavy heart, examined AAA's vagina and she

noticed that the same was reddish and a whitish fluid was coming out from it. Spouses FFF and MMM were not able to sleep that night. The following morning, at about four o'clock, MMM called Luzviminda and petitioner to come to their house. MMM confronted Luzviminda about what petitioner did to her daughter, and consequently, she demanded that AAA should be brought to a doctor for examination.<sup>[18]</sup>

MMM, together with Luzviminda, brought AAA to Dr. Lucifree Katalbas<sup>[19]</sup> (Dr. Katalbas), the Rural Health Officer of the locality who examined AAA and found no indication that she was molested.<sup>[20]</sup> Refusing to accept such findings, on December 12, 1996, MMM went to Dr. Joy Ann Jocson (Dr. Jocson), Medical Officer IV of the Bacolod City Health Office. Dr. Jocson made an unofficial written report<sup>[21]</sup> showing that there were "abrasions on both right and left of the labia minora and a small laceration at the posterior fourchette." She also found that the minor injuries she saw on AAA's genitals were relatively fresh; and that such abrasions were superficial and could disappear after a period of 3 to 4 days. Dr. Jocson, however, indicated in her certification that her findings required the confirmation of the Municipal Health Officer of the locality.

Subsequently, an amicable settlement <sup>[22]</sup> was reached between the two families through the DAWN Foundation, an organization that helps abused women and children. Part of the settlement required petitioner to depart from their house to avoid contact with AAA. <sup>[23]</sup> As such, petitioner stayed with a certain priest in the locality. However, a few months later, petitioner went home for brief visits and in order to bring his dirty clothes for laundry. At the sight of petitioner, AAA's father FFF was infuriated and confrontations occurred. At this instance, AAA's parents went to the National Bureau of Investigation (NBI) which assisted them in filing the three (3) counts of rape. However, the prosecutor's office only filed the two (2) instant cases.

### ***Version of the Defense***

Petitioner was born on August 8, 1983 to spouses Loreto (Loreto) and Luzviminda Ortega. <sup>[24]</sup> He is the second child of three siblings • an elder brother and a younger sister. Petitioner denied the accusations made against him. He testified that: his parents and AAA's parents were good friends; when MMM left AAA and her brothers to the care of his mother, petitioner slept in a separate room together with BBB and CCC while AAA slept together with Luzviminda and his younger sister; he never touched or raped AAA or showed his private parts to her; petitioner did not threaten AAA in any instance; he did not rape AAA in the former's comfort room, but he merely accompanied and helped AAA clean up as she defecated and feared the toilet bowl; in the process of washing, he may have accidentally touched AAA's anus; on December 1, 1996, petitioner together with his parents, went to AAA's house; <sup>[25]</sup> they were dancing and playing together with all the other children at the time; while they were dancing, petitioner hugged and lifted AAA up in a playful act, at the instance of which BBB ran and reported the matter to MMM, who at the time was with Luzviminda, saying that petitioner and AAA were having sexual intercourse;<sup>[26]</sup> petitioner explained to MMM that they were only playing, and that he could not have done to AAA what he was accused of doing, as they were together with her brothers, and he treated AAA like a younger sister;<sup>[27]</sup> BBB was lying;

AAA's parents and his parents did not get angry at him nor did they quarrel with each other; petitioner and his parents peacefully left AAA's house at about nine o'clock in the evening; however, at about four o'clock in the morning, petitioner and his parents were summoned by MMM to go to the latter's house; upon arriving there they saw BBB being maltreated by his father as AAA pointed to BBB as the one who molested her; and MMM and Luzviminda agreed to bring AAA to a doctor for examination.<sup>[28]</sup>

Luzviminda corroborated the testimony of her son. She testified that: her son was a minor at the time of the incident; CCC and BBB were the children of MMM in her first marriage, while AAA and the rest of her siblings were of the second marriage; CCC and BBB are half-brothers of AAA; when MMM entrusted AAA and her brothers to her sometime in August of 1996, she slept with AAA and her youngest daughter in a separate room from petitioner; on December 1, 1996, she was at AAA's house watching television and conversing with MMM, while FFF and Loreto were having a drinking spree in the kitchen; from where they were seated, she could clearly see all the children, including petitioner and AAA, playing and dancing in the dining area; she did not hear any unusual cry or noise at the time; while they were conversing, BBB came to MMM saying that petitioner and AAA were having sexual intercourse; upon hearing such statement, Luzviminda and MMM immediately stood up and looked for them, but both mothers did not find anything unusual as all the children were playing and dancing in the dining area; Luzviminda and MMM just laughed at BBB's statement; the parents of AAA, at that time, did not examine her in order to verify BBB's statement nor did they get angry at petitioner or at them; and they peacefully left AAA's house. However, the following day, MMM woke Luzviminda up, saying that FFF was spanking BBB with a belt as AAA was pointing to BBB nor to petitioner as the one who molested her. At this instance, Luzviminda intervened, telling FFF not to spank BBB but instead, to bring AAA to a doctor for examination. Luzviminda accompanied MMM to Dr. Katalbas who found no indication that AAA was molested. She also accompanied her to Dr. Jocson. After getting the results of the examination conducted by Dr. Jocson, they went to the police and at this instance only did Luzviminda learn that MMM accused petitioner of raping AAA. Petitioner vehemently denied to Luzviminda that he raped AAA. Thereafter, MMM and Luzviminda went to their employer who recommended that they should seek advice from the Women's Center. At the said Center, both agreed on an amicable settlement wherein petitioner would stay away from AAA. Thus, petitioner stayed with a certain priest in the locality for almost two (2) years. But almost every Saturday, petitioner would come home to visit his parents and to bring his dirty clothes for laundry. Every time petitioner came home, FFF bad-mouthed petitioner, calling him a rapist. Confrontations occurred until an altercation erupted wherein FFF allegedly slapped Luzviminda. Subsequently, AAA's parents filed the instant cases.<sup>[29]</sup>

### ***The RTC's Ruling***

On May 13, 1999, the RTC held that petitioner's defenses of denial cannot prevail over the positive identification of petitioner as the perpetrator of the crime by AAA and BBB, who testified with honesty and credibility. Moreover, the RTC opined that it could not perceive any motive for AAA's family to impute a serious crime of Rape to petitioner, considering the close relations of both families. Thus, the RTC disposed of this case in this wise:

FOR ALL THE FOREGOING, the Court finds the accused Joemar Ortega Y Felisario GUILTY beyond reasonable doubt as Principal by Direct Participation of the crime of RAPE as charged in Criminal Cases Nos. 98-19083 and 98-19084 and there being no aggravating or mitigating circumstance, he is sentenced to suffer the penalty of Two (2) Reclusion Temporal in its medium period. Applying the Indeterminate Sentence Law, the accused shall be imprisoned for each case for a period of Six (6) years and One (1) day of Prision Mayor, as minimum, to Fifteen (15) years of Reclusion Temporal, as maximum. The accused is condemned to pay the offended party AAA, the sum of P100,000.00 as indemnification for the two (2) rapes (sic).

Aggrieved, petitioner appealed the RTC Decision to the CA.<sup>[30]</sup>

Taking into consideration the age of petitioner and upon posting of the corresponding bail bond for his provisional liberty in the amount of P40,000.00, the RTC ordered the petitioner's release pending appeal.<sup>[31]</sup>

### ***The CA's Ruling***

On October 26, 2000, the CA affirmed in toto the ruling of the RTC, holding that the petitioner's defense of denial could not prevail over the positive identification of the petitioner by the victim AAA and her brother BBB, which were categorical, consistent and without any showing of ill motive. The CA also held that the respective medical examinations conducted by the two doctors were irrelevant, as it is established that the slightest penetration of the lips of the female organ consummates rape; thus, hymenal laceration is not an element of rape. Moreover, the CA opined that petitioner acted with discernment as shown by his covert acts. Finally, the CA accorded great weight and respect to the factual findings of the RTC, particularly in the evaluation of the testimonies of witnesses.

Petitioner filed his Motion for Reconsideration<sup>[32]</sup> of the assailed Decision which the CA denied in its Resolution<sup>[33]</sup> dated November 7, 2001.

Hence, this Petition based on the following grounds:

#### **I.**

THE HONORABLE COURT OF APPEALS HAS OVERLOOKED CERTAIN FACTS OF SUBSTANCE AND VALUE WHICH IF CONSIDERED MIGHT AFFECT THE RESULT OF THE CASE.

#### **II.**

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT FAILED TO APPRECIATE THE MEDICAL FINDINGS OF DR. LUCIFREE KATALBAS.

#### **III.**

THE FINDINGS OF THE LOWER COURT, AFFIRMED BY THE APPELLATE COURT, THAT PETITIONER-APPELLANT IN FACT COMMITTED AND IS CAPABLE OF COMMITTING THE ALLEGED RAPE WITHIN THE RESIDENCE