

## EN BANC

[ G.R. No. 146859, January 20, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAUL OBRIQUE Y ANTONIO, APPELLANT.**

### DECISION

**AZCUNA, J.:**

Elevated to us for automatic appeal is the Decision<sup>[1]</sup> dated November 15, 2000, of the Regional Trial Court (RTC) of Malaybalay City, Bukidnon, Branch 8, in Criminal Case No. 9019-98. The death penalty was imposed on Raul Obrique y Antonio (hereafter "appellant") for the crime of rape committed upon his 13-year old niece, private complainant Angela H. Obrique.

The original indictment, dated July 2, 1998, reads:

That on or about the 2<sup>nd</sup> day of March, 1998, in the evening, and prior thereto, at Purok 1, Barangay Managok, Malaybalay City (Bukidnon), Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of a bolo, did then and there wil[l]fully, unlawfully and criminally have sexual intercourse with his niece, ANGELA H. OBRIQUE, a girl 13 years of age, against her will.

CONTRARY to and in violation of Articles 335 of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353.<sup>[2]</sup>

On August 12, 1998, before arraignment could be had on the charge, the prosecution moved to amend the above information.<sup>[3]</sup> Consequently, an Amended Information was filed on August 17, 1998, worded as follows:

That on or about the 2<sup>nd</sup> day of March, 1998, in the evening, and prior thereto, at Purok 1, Barangay Managok, Malaybalay City, Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with force and intimidation and with the use of a bolo, did then and there willfully, unlawfully and criminally pull and drag to a grassy and secluded place AND have sexual intercourse with his niece, ANGELA H. OBRIQUE, a girl 13 years of age, against her will.

Contrary to and in violation of Articles 335 in relation to 15 of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353.<sup>[4]</sup>

On November 3, 1998, upon arraignment thereunder, appellant, assisted by his counsel, pleaded not guilty.<sup>[5]</sup>

The pre-trial conference was thereafter held and the parties came out with a Pre-Trial Agreement<sup>[6]</sup> which was signed by the prosecutor, the counsel for appellant, as well as appellant himself.<sup>[7]</sup> The agreement embodied these pertinent stipulations:

1. Private complainant Angela Obrique in Criminal Case No. 9018-98 for the crime of rape, is the niece of the accused, being a daughter of the elder brother of the accused;
2. The private complainant Angela Obrique was born on June 19, 1984, as evidence[d] by Certificate of Live Birth, marked as Exhibit "A;"
3. That private complainant Angela Obrique was examined by Dr. Joselyn M. Baeyens of the Bukidnon Provincial Hospital of Malaybalay who issued a Medical Certificate dated March 3, 1998, marked as Exhibit "B;"

x x x

The same stipulations appear in the Pre-Trial Order<sup>[8]</sup> issued by RTC Judge Vivencio P. Estrada, dated November 10, 1998.

Trial on the merits followed.

Two witnesses were presented by the prosecution. ENECITA OBRIQUE, the mother of complainant, first took the stand, followed by ANGELA OBRIQUE (hereafter "Angela"). Their testimonies brought forth the following narration of facts:

The spouses Norberto and Enecita Obrique had 12 children, the youngest of whom is complainant Angela. The couple lived with their two unmarried sons at Purok 1, Managok, Malaybalay City, Bukidnon (hereafter "Managok"). Appellant Raul Obrique is Norberto's younger brother and was also staying with them in the same house. Appellant was already past his thirties and was still single.

Angela, on the other hand, stayed with the spouses' married daughter named Gemma. Although their house was only 75 meters from Gemma's house, Angela decided to stay with Gemma because she was "afraid and disturb[ed] by the trouble in our house."<sup>[9]</sup> Enecita testified that when Angela asked permission to stay with her sister, Angela had said, "Ma, I'll stay with Gemma because I am afraid of Uncle Raul who is fierce."

On March 2, 1998, Enecita was in her house together with two grandchildren. Her husband and two sons were attending the wake of a relative, also in Managok but located a little distance from their house. At that time, appellant had already been staying with them for a year. He usually left the house during the day and came back at night.

At around 10:00 p.m., appellant arrived and struck the shutter of the house three times with his bolo. Enecita then opened the door and was told by appellant to fetch Angela from her elder sister. Enecita obeyed, stating that if she did not do so, appellant would hack her.<sup>[10]</sup> She immediately went to Gemma's house and told the

latter to wake her sister up so that Angela can go home.

While Angela was walking with Enecita towards their house, they saw appellant on the road. Appellant was about to strike Enecita with his bolo when Angela pleaded, "Tio, do not hack Mama because I am now going home." To this appellant replied, "[A]lright, you go home immediately but do not go inside the house, just wait for me at the yard." Nevertheless, upon reaching the house, mother and daughter immediately went inside. Appellant followed them and finding that they were already inside, he proceeded to hack the door and demanded to know why they disobeyed his orders. He struck the door six more times and kept telling Angela to come down. Trembling with fear, Enecita and Angela felt that appellant really intended to hack them if Angela refused to obey. Thus, Angela decided to go down but only after asking her mother to come with her.

When the two of them went downstairs, appellant took Angela's hand and ordered Enecita to go back upstairs and stay in the house. Enecita testified that appellant brought her daughter to a grassy area about 60 meters from their house. She in turn was unable to sleep and just sat down. At around 11:00 p.m., she heard her daughter's pleas, saying "Don't do it Tio, do not do it." At around 1:00 a.m. of March 3, 1998, she also heard her daughter shouting "Mama, please help. Mama, please help."<sup>[11]</sup>

Accompanied by appellant, Angela returned to the house at around 5:00 a.m. Angela sat at the kitchen table. Her hair was crumpled and she appeared pale. Appellant was eating and was trying to convince Angela to eat as well but the latter refused. Appellant then told Enecita to go and fetch Gemma's husband, Ernesto Gutierrez. Appellant said he wanted to tell Ernesto that Angela should no longer stay at Ernesto's house.<sup>[12]</sup> Enecita did not move at first, but appellant again ordered her to get Ernesto. Just as she was about to leave, appellant changed his mind and said, "Do not go you just call him, and do it because I will be leaving at 6:00 o'clock. If you are not going to do that I might kill both of you." She obeyed him because she was afraid.<sup>[13]</sup>

Her son-in-law, Ernesto Gutierrez, later arrived and went directly to their kitchen and asked, "What is it, Nanay?" Enecita replied that appellant no longer wanted Angela to stay in Ernesto's house because Ernesto was allegedly molesting Angela. Ernesto then said, "You [are] just accusing falsely, Nanay. This Angela does not even know how to wipe [her] nose, how could I do that to her? If you doubt me you better have her examined by a doctor."<sup>[14]</sup>

While Enecita and Ernesto were talking, appellant was lying down about four meters away. Upon hearing Ernesto's reply, appellant asked, "You are not going to admit?" Immediately thereafter, appellant struck Ernesto with his bolo, despite Ernesto's protestations of innocence. Ernesto sustained five wounds on his body and two wounds on his head.<sup>[15]</sup>

Appellant ran and left Ernesto, whose body was already covered in blood. The latter was immediately brought to the hospital and Enecita was instructed to bring Angela to a doctor.<sup>[16]</sup>

Enecita further testified that she pitied her daughter very much, especially

considering her physical condition. It had been stated earlier that when Angela was born, both the latter's feet were "bent towards her head" and "the knees do not have kneecaps" which was why Angela noticeably limps while walking.<sup>[17]</sup> She stated that she was not asking for any amount in recompense but only that the accused be imprisoned for the rest of his life.<sup>[18]</sup>

On cross-examination, Enecita said that the wake which her husband was attending was about four kilometers away from their house. To get to the place, one needs to ride a jeep although they sometimes walked. After she fetched Angela, they couldn't go to her husband at the wake because she also feared for the safety of her two small grandchildren who were left in the house. In turn, her husband was only able to come home when he heard about the hacking incident.

When appellant arrived at their house on March 2 and ordered her to fetch Angela, Enecita observed that appellant was not drunk although she could tell that he had taken some wine because she could smell liquor on his breath.

When appellant arrived with Angela at 5:00 a.m. of March 3, Enecita had no chance to talk privately with her daughter as appellant had immediately ordered her to call Ernesto. She also did not ask her daughter whether the alleged molestation by Ernesto was true because Enecita was already confused.

During her testimony, ANGELA corroborated the statements of her mother with regard to the occurrences prior to the rape. At the time in question, she had been living with her sister Gemma Gutierrez and her husband as they were the ones spending for her schooling.<sup>[19]</sup> At around 10:00 p.m., she was already asleep when her mother arrived. She went with her mother, and on the way to her parents' house, they saw appellant on the road, raising his hand and holding a bolo. When Angela saw appellant about to hack her mother, she immediately shouted, "Tio, do not hack Mama because anyway I am already going home." The appellant heeded her plea and she and her mother were able to reach the house. The two of them proceeded upstairs but appellant followed them and when appellant was already downstairs inside the kitchen, he struck a part of the kitchen with his bolo, demanding that the two women come down. When Angela went down with her mother, appellant instantly pulled her by the hand and ordered her mother to go back upstairs.

In narrating her ordeal in the hands of appellant, Angela had these to say:

#### DIRECT Testimony

Q And when the accused ordered your mother to go upstairs and pulled your hand, what did the accused do to you?

A He then brought me to a grassy area.

Q This grassy area where you were brought by the accused is how far from your house?

A Quite far.

Q Could you show to the Honorable Court the distance by pointing any object outside taking for granted where you are sitting to be your house outside of the courtroom?

A (Witness is pointing to a distance of 100 meters).

Q When the accused brought you to a grassy place which is about 100 meters from your house, what did the accused do to you?

A He undressed me.

Q And he removed all your dress including your underwear?

A Yes.

Q And when he removed your dress including your underwear, was the accused also naked or not?

A Already undressed.

Q And when the accused already undressed and also you were undressed, what did the accused do to you?

A He placed himself on top of me.

Q Were you lying on the ground at your back when this incident happened when the accused was on top of you?

A Yes.

Q And what did he do when he was on top of you, both of you were naked?

A He inserted his penis inside my vagina.

Q At about what time was that if you can recall, just estimate?

A 10:00 o'clock.

Q Before that act of the accused inserting his penis inside your vagina that happened at about 10:00 o'clock in the evening, can you not shout?

A I shouted for my mother, saying, "Ma help, help."

Q When you shouted calling your mother for help, what did the accused do to you?

A He then said, "You ke[ep] qui[et] or I might kill you."

Q When he said to you keep qui[et] because he is going to kill you, where was his bolo then?

A Beside him.

Q Now, how long was the accused on top of you w[ith] his penis inside your vagina at about 10:00 o'clock in the evening?

A For a long time.

Q Now, if you can remember, how many times did the accused make his penis get inside your vagina that evening of March 2, 1998 in the grassy place?

A Three (3) times.

Q The first one happened at about 10:00 o'clock. How about the second time, what time was that already?