

EN BANC

[G.R. No. 142749, March 18, 2003]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNARDO C. GAVINO, DEFENDANT-APPELLANT.**

D E C I S I O N

PUNO, J.:

"The family is under attack," declared the Pope in the recently concluded Third World Meeting of Families. With the growing number of incestuous rape cases, however, it is unfortunate that one such attack comes from within the family.

AAA charged her father, appellant **BERNARDO C. GAVINO**, with multiple rape in an Information which reads:

"That sometime in the year 1989 and up to March 10, 1995 in the premises and vicinity particularly at the house of the accused located at [REDACTED] Philippines and within the jurisdiction of this Honorable Court, the above-named accused by force, threats and intimidation, with lewd design, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter **AAA**, a girl who (was) then nine (9) years of age, of good reputation, against her will and consent to the damage and prejudice of the said victim consisting of moral, actual and compensatory damages.

CONTRARY TO LAW. Article 335 of the Revised Penal Code."^[1]

AAA, a resident of [REDACTED] recounted the sexual betrayal she suffered in the hands of her own father, the appellant. Sometime in 1989, **AAA**, then nine (9) years old, was ordered by the appellant to sleep beside him in the bedroom. When she refused, the appellant got mad and she had to obey him. Her younger brothers slept in the living room while her mother spent the night in the town of Gakob where she had a teaching job. **AAA** was only able to sleep briefly that night for, at about midnight, the appellant, wearing a sando and brief, suddenly pulled her close to him. He hit her thrice on the abdomen and she felt dizzy. He then made her lie on the bed with her back against him. He inserted his fingers into her organ before he finally penetrated her. **AAA** felt intense pain but could not shout for help as the appellant covered her mouth with his palm. While molesting her, appellant told her that it was she he loved and not her mother.

After satiating his savage urge, appellant left the bedroom and repaired to the living room. **AAA** continued to lie on the bed. She touched her organ and felt it bleeding. She wretched with pain, too weak to move. Sleep eluded her that night. She kept silent about her ordeal as the appellant threatened to kill her, her mother and siblings should she reveal her defilement.

Appellant's sexual assaults on AAA continued for the next six (6) years, until AAA reached the age of fifteen. AAA recounted that she was last abused on March 10, 1995, at about 6:30 a.m. Her mother was then outside the house, bathing at the spring. The appellant ordered her brothers to go to school earlier than usual. Then, alone in the house, AAA was pulled by the appellant to the bedroom. He hit her abdomen and kicked her back. He then lifted her, dropped her on the wooden bed and succeeded on having carnal knowledge of her. Pain engulfed her body.

AAA finally decided to break her silence. She reported to her science teacher, Ms. Ismael, that the appellant had been beating her up. Nonetheless, she did not disclose the sexual abuses she suffered in the hands of the appellant out of embarrassment. Ms. Ismael advised her to seek the assistance of the DSWD. Accompanied by a friend, AAA summoned enough courage to reveal her sexual molestations to the DSWD in Cagayan de Oro City. A DSWD personnel accompanied her to the police station where she executed a statement. They proceeded to the Patin-ay Provincial Hospital for medical examination and then to the Bahbah Municipal Trial Court for preliminary investigation. AAA was placed under the protective custody of the DSWD in Cagayan de Oro City for her total rehabilitation.

[2]

On February 2, 1996, after the filing of the rape charges, AAA was accosted by her mother [REDACTED], Neneng Amper and Dodong Angub in her school in Cagayan de Oro City. They forced her to go with them to Agusan del Sur. On February 7, 1996, AAA and her mother fetched Pastor Elizardo Amper and then proceeded to the house of Atty. Germiniano Demecillo, appellant's counsel in the rape cases. Atty. Demecillo directed AAA to sign a document.^[3] She inquired about the nature of the document but her mother dismissed her query. Her mother threatened that she would not be able to return to Cagayan de Oro City unless she affixed her signature on the document. She signed even as she could not see or read its contents as Atty. Demecillo covered its upper portion.

Thereafter, AAA asked her mother if she could return to Cagayan de Oro City as she had a school examination. Her mother refused but AAA was able to return to the DSWD in Cagayan de Oro City a week later. She told social worker Evelyn Sagusay that her mother forced her to sign a piece of paper. Evelyn suspected that the document was a desistance and would be used to cause the dismissal of the rape charges against the appellant. AAA grew apprehensive. She went to the NBI and executed an affidavit of retraction^[4] deposing that she signed the desistance under duress.^[5]

AAA's testimony was corroborated by social worker **CATALINA JOMOCAN**.^[6] Likewise, **DR. FLORIANO MANTILLA**, who examined AAA on the day she was last abused by the appellant, corroborated her claim of defloration. His medical examination revealed that AAA's organ had a gaping introitus or vaginal canal; there were also fresh and healed lacerated wounds on the fourchette; and, AAA's organ admitted two (2) fingers with ease, indicating her non-virgin state.^[7]

The defense proffered the theory that AAA filed the rape charges to get back at the accused. [REDACTED], appellant's wife, testified that throughout their marriage, appellant never hurt her and had been a loving and caring father to all

their children. The rape charges were precipitated by the February 13, 1995 incident when AAA came home late. [REDACTED] and the appellant noticed a stain on AAA's skirt, near her buttocks. Upon questioning, AAA revealed that she has been sexually abused but refused to identify the culprit. They did not persist to know his identity and allowed AAA to rest.

[REDACTED] then sought the help of **NENENG AMPER**, a friend of their family at the United Pentecostal Church. Neneng tried to discuss with AAA about the reported sexual assault but the latter initially kept silent. On February 15, 1995, Neneng accompanied AAA to a doctor for physical examination. On their way, AAA confided to Neneng that she had sexual congress with her boyfriend Lino Racho. She, however, requested Neneng not to reveal anything to her parents as she wanted to tell them herself. At the hospital, the doctor refused to examine AAA for lack of referral from a government physician authorizing him to perform the examination on the alleged rape victim.

As she wanted, AAA later divulged to her parents that it was Lino Racho who sexually assaulted her. The revelation angered the appellant. They did not, however, file a complaint against Lino as AAA did not want to see him put behind bars. On March 3, 1995, Neneng and Lino Racho's mother went to the Gavinos to ask for AAA's hand in marriage.

On March 10, 1995, AAA did not return to their house. [REDACTED] asked the appellant to look for her. That same day, appellant was arrested by the police as a suspect in the rape charges. [REDACTED] brought Lino Racho to the police headquarters to shed light on the charges but the police officers refused to investigate him as he was not implicated by AAA in her complaints.

On cross-examination, [REDACTED] admitted that she, Neneng and other relatives fetched AAA from Cagayan de Oro and brought her to the office of Fiscal Clapis where she signed the affidavit repudiating her charges of rape against the appellant.

[8]

NENITA "Neneng" AMPER, a friend of the Gavinos in the United Pentecostal Church, testified that she has known the accused since 1989 as they lived in the same barangay. He was a good father and provider. Neneng said that AAA admitted to her that her boyfriend Lino Racho was the one who raped her. On cross-examination, however, Neneng confirmed that on February 2, 1996, she accompanied [REDACTED] to Cagayan de Oro to visit AAA. She claimed she could not recall whether they brought AAA to the house of Atty. Demecillo, counsel of the appellant.[9]

LEODEGARIO PULIDO, a neighbor and co-worker of the appellant, attested to his good moral character. He said he never noticed any unusual incident in the appellant's house during the alleged six (6) years' molestation of AAA by the appellant. He confirmed that AAA had a boyfriend named Lino Racho and that sometimes Lino visited AAA in his house. AAA's parents suspected about the relationship when AAA started going home late from school. On March 10, 1995, at about 6:30 a.m., the date when the appellant allegedly last molested AAA, Leodegario was in his house and heard how AAA was scolded by her parents.[10]