

EN BANC

[G.R. No. 142856-57, August 25, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROBERTO NEGOSA
ALIAS "JOVIN," APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

Before us on automatic review is the Decision^[1] of the Regional Trial Court of Camiguin, Branch 28, convicting the appellant Roberto Negosa alias "Jovin" of rape in Criminal Case No. 918, and sentencing him to the supreme penalty of death; and convicting the said appellant guilty of acts of lasciviousness in Criminal Case No. 919, and sentencing him to an indeterminate penalty of six months of *arresto mayor* maximum, as minimum, four years and two months of *prision correccional* medium, as maximum. The appellant was also ordered to pay the victim AAA the sum of P50,000.00 as civil indemnity *ex delicto* in Criminal Case No. 918, and the amount of P25,000.00 in Criminal Case No. 919.

In Criminal Case No. 918, the Information filed against the appellant reads:

"That on or about June 28, 1997 at 9:00 o'clock in the morning more or less, at their residence, in [REDACTED] Philippines, within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the victim and resident of [REDACTED] employing force and intimidation upon the victim, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA, who was ten years old at the time of the commission of the crime."

CONTRARY to law and in violation of Article 335 of the Revised Penal Code.^[2]

The said appellant was charged with the same felony in Criminal Case No. 919 under an Information which reads:

"That on or about September 4, 1998 at 10:00 o'clock in the morning more or less, at their residence in [REDACTED] Philippines, within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the victim and resident of [REDACTED] employing force and intimidation upon the victim, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA, who was eleven years old at the time of the commission of the crime."

CONTRARY to law and in violation of Article 335 of the Revised Penal Code.^[3]

The appellant, assisted by counsel, was arraigned in both cases on April 8, 1999, and entered a plea of not guilty to both charges.

The Case for the Prosecution

Living as husband and wife without the benefit of marriage,^[4] [REDACTED] and [REDACTED] had a daughter AAA who was born on May 26, 1986.^[5] However, [REDACTED] and [REDACTED] fell out of love for each other and went their separate ways, with [REDACTED] having to keep their daughter AAA.

Thereafter, [REDACTED] met the appellant who himself was also separated from his erstwhile wife, Tonia Gok-ong, with whom he had four children namely, Levy, 19; Sammy, 18; Ruel, 16; and Sheila, 13.^[6] Sometime in 1992, [REDACTED] and the appellant decided to live together in [REDACTED]. [REDACTED] entrusted AAA to the care of her parents who also resided in [REDACTED].^[7] In 1996, AAA eventually joined her mother and the appellant.^[8] AAA was then enrolled in Grade IV at the [REDACTED] Elementary School. In the meantime, [REDACTED] gave birth to a son, [REDACTED] ([REDACTED]), fathered by the appellant.

When school year 1997-1998 started, AAA went to live with her mother's sister, [REDACTED], in [REDACTED]. She enrolled in Grade V at the [REDACTED] Elementary School, but went home every Saturday in [REDACTED] to visit her mother.^[9]

June 28, 1997, a Saturday,^[10] was the eve of the fiesta in Sitio [REDACTED]. [REDACTED] went to [REDACTED] to buy some items to sell during the fiesta the next day. AAA and the appellant were left in the house. He asked AAA to get some liniment for him and AAA did as she was told. When AAA was about to hand over the liniment to the appellant, he suddenly held her hand, pulled her towards himself and made her lie down on the floor. The appellant pulled down and removed her shorts and panties, after which, he also removed his shorts and underwear. Placing himself on top of AAA, Roberto inserted his aroused phallus into her vagina. AAA felt excruciating pain but was too afraid to cry for help, for fear that the appellant would harm her, as he used to whenever he was angry at her.^[11] The appellant pulled out his penis after having ejaculated. AAA felt a sticky substance flowing on the periphery of her vagina which the appellant wiped off. He warned AAA not to tell her mother what he had done to her.^[12] AAA kept the harrowing experience to herself because she was afraid that her mother would side with the appellant if she found out what happened. Every now and then the appellant abused her sexually but she did not tell her mother about it. However, she revealed her ordeal to some of her close friends in school, like Germalin Bacorro, Rogelyn Madale, Recheney Pole, Corazon Apal, Mary Ann Ihong and Greta Bacorro.^[13]

The following school year, 1998-1999, AAA went back to [REDACTED] and lived with the appellant and her mother [REDACTED]. She was enrolled as a Grade VI pupil at the [REDACTED] Elementary School.^[14] AAA decided to record her ordeal at the hands of the appellant in the pages of a notebook. Recalling the sexual abuse she suffered on June 28, 1997, AAA wrote on September 2, 1998, thus:

I am AAA, nicknamed AAA. My mother is [REDACTED] and my father is [REDACTED] but they are separated and her live-in partner now is Oben together with my brother [REDACTED].

This Oben is my step-father. One day during the fiesta of [REDACTED], a Saturday year 1997 my mother was in Catarman and while she was there he raped me; first he asked me to get "haplas" (a liniment) then he immediately held my hand and pulled me and let me lie down and he started to rape me. After that he warned me not to tell my mother and because of fear I did not report; after that he always abused me when my mother was out or when we are alone with [REDACTED] only. But he does not do it when [REDACTED] is still awake. This incident is known by my female classmates Germelyn or Dayet, Roselyn, Retchale or Cheche, Cristi (illegible), Charry me and Oben.^[15]

...

My Secrets

Sep. (sic) 2, 1998

My mother got married to another man and my father was the second partner of mom and they resided and brought me to [REDACTED]. My mother again left for Bukidnon. I was still very young and do not know my father and mother and I stayed with nanay (mother) and they let me study until I reached third grade. During the fiesta of [REDACTED] my mother returned home. I was still young and not familiar with her and she again left; thereafter she again came back, this time bringing with her a male partner named "Oben." Later they were able to buy a house and we transferred there. A few days later during the fiesta of [REDACTED], a Saturday 1997, my mother went to Catarman to buy some stuff to be sold during the fiesta of [REDACTED] and the only ones left in our house was Oben and myself; and he asked me to get a liniment (haplas). When it was handed to him, he immediately held my hand and let me lie down and he rape me. After that he warned me not to tell anyone and I never told my mother.^[16]

...

because of fear; after that he repeatedly molested knowing that I did not tell my mother although I told some of my female classmates. Others I did not tell.

Sgd. AAA

And I thought now of starting making notes of what he did to me.

In the morning of September 4, 1998, AAA was wearing a pair of loose short pants and was looking after her sleeping baby brother, [REDACTED]. The appellant grabbed and caressed her. He started kissing her neck and shoulder. He then mashed her

prepubescent breasts. Not contented, the appellant slapped her. She wrote the incident in the notebook:

Friday 10:30 date: 4th day, he sucked my breast and fondled it and he abused me slightly after that he slapped me. I came from Catarman because I bought poultry feeds and my mother was searching for coconuts.[17]

AAA tore off the pages and hid them. She inserted her "diary" in a notebook and placed it with her things.

On September 9, 1998, at around 4:30 p.m., AAA had just arrived home from school. Her grandmother asked her to buy rice in a nearby store. She left her school things in her grandmother's house and proceeded to the store.[18] Her auntie, [REDACTED], [19] saw AAA's things and decided to read the notebooks to find out how her niece was doing in school.[20] Upon opening one of the notebooks, the torn pages of AAA's "diary" fell. [REDACTED] read the torn pages and was appalled to discover that the appellant had been sexually abusing AAA.

When AAA returned from the store, [REDACTED] confronted her about the notes, and asked whether the entries therein were all true. AAA admitted the veracity of what she had written. [REDACTED] immediately informed her parents, brothers and sisters about AAA's revelation. They decided not to tell [REDACTED] what had happened to her daughter as she might get angry and cause trouble in their house. Without [REDACTED]'s knowledge, they brought AAA to a doctor for physical examination. [21]

Dr. Wilfredo T.E. Dublin, Jr. examined AAA at the Catarman District Hospital on September 14, 1998. He forthwith issued a Certificate of Treatment/Confinement[22] quoted as follows:

CERTIFICATE OF TREATMENT/CONFINEMENT

00019

Record Number

September 14, 1998

Date

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that MISS AAA, 12 years old, female, child, a resident of [REDACTED] was seen and examined by the undersigned on September 14, 1998 for an alleged sexual abuse.

Pertinent Physical Examination Findings:

Skin : (-) hematoma, (-) abrasions

Breast : (-) hematoma, (-) abrasions

GUT : Hymen not intact, (+) abrasion left labia minora (8 o'clock position);vaginal opening 6 mm.

Speculum exam: (+) bloody discharge at cervical os, (+) abrasion upper cervical lip

IMPRESSION: Sexual abuse - child molestation and sexual intercourse.

This certification is being issued at the request of SPO4 Teodomiro G. Dayo for filing criminal complaint against the respondent.

(SGD.) Dr. Wilfredo T.E. Dublin, Jr., M.D.
Medical Officer IV
License No. 085551

Thereafter, two criminal complaints for rape were filed against the appellant with the Municipal Circuit Trial Court for preliminary examination. Finding a *prima facie* case against the appellant for two counts of statutory rape, the record of the case was forwarded to the Provincial Prosecutor's Office for the filing of the appropriate Informations in court.^[23] Consequently, two Informations^[24] for statutory rape were filed with the RTC.

The Evidence of the Appellant

The appellant denied having raped AAA. He interposed the defense of alibi. He testified that he was self-employed and raised fighting cocks. At around 8:00 a.m. on June 28, 1997, he left the house for Sitio [REDACTED], to help Tado Calustre butcher a pig in preparation for the fiesta. At that time, he was with Bulao Castaño, Ruben Castaño, and Tado's son-in-law. The group also butchered a goat for an hour or so. Thereafter, they had a drinking spree until 1:00 p.m. When he got home, he saw only his live-in partner, [REDACTED]. He had not seen AAA that day since she was in [REDACTED] with her aunt [REDACTED].^[25]

When confronted by [REDACTED] about what happened on September 4, 1998, the appellant admitted that he attempted to have carnal knowledge with AAA, but desisted when he realized that he would be committing a sin. He testified that he could have easily consummated the dastardly act since AAA could not have resisted him.^[26] He admitted that a year before, he had spanked AAA for not helping in the household chores. However, he also admitted that there was no reason for AAA to fabricate the charges against him.^[27]

AAA's mother [REDACTED] testified for the appellant. She testified that she was at home on June 28, 1997. AAA did not go to their house in [REDACTED]. At 8:00 a.m., the appellant left and went to the house of Tado Calustre. He returned home at 1:00 p.m. On September 4, 1998, [REDACTED] was at home washing their dirty laundry and had not noticed anything unusual that had happened between AAA and the appellant. AAA was taking care of her younger brother [REDACTED], while the appellant was taking care of his fighting cocks in front of their yard. However, [REDACTED] admitted that the appellant asked for her forgiveness for attempting to rape AAA on September 4, 1998. ^[28] He told her that "it was the devil's act (sic) that I chose (sic)." He told her that he "desisted because he remembered God."

The appellant's counsel planned to call Tado Calustre to the witness stand to corroborate the appellant's testimony. However, his counsel, upon meeting with Tado