

## FIRST DIVISION

[ G.R. No. 141766, November 18, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER OSPIG,  
APPELLANT.**

### DECISION

**AZCUNA, J.:**

Before us is an appeal from the decision of the Regional Trial Court, Branch 6, of Baguio City, in Criminal Case No. 16420-R, finding appellant Roger Ospig guilty beyond reasonable doubt of the crime of rape.

The Information<sup>[1]</sup> against appellant reads:

That on or about the 19<sup>th</sup> day of October, 1998, in the City of ██████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, a minor who is 13 years of age, against her will and consent.

When arraigned on April 19, 1999, appellant pleaded not guilty.<sup>[2]</sup> Trial ensued.

#### *The Prosecution's Evidence*

Private complainant AAA (AAA) is the 13-year-old daughter of ██████ (██████). ██████ is the common-law wife of ██████, who is working in Saudi Arabia. Aside from AAA, ██████ has three other children, namely, ██████, ██████ (████) and ██████.<sup>[3]</sup>

Appellant Roger Ospig was the boyfriend of ██████. In 1998, they lived together, without the benefit of marriage, at the boarding house of ██████ at ██████ ██████. ██████'s children were not aware of their relationship.<sup>[4]</sup>

The house of ██████ comprised of a living room and kitchen and one bedroom. The living room and bedroom were divided by a wooden wall, and the door was covered with a curtain. The children slept in the bedroom, which had two beds: one for the two boys and the other for the two girls. Appellant slept on a chair or a foam in the living room. ██████ slept with the children, particularly on the bed of the boys. When appellant was around and the children were still awake, ██████ would sleep in their room. After the children were asleep, ██████ would transfer to the living room and sleep with appellant. They had sexual intercourse only in the living room, unseen by the children.<sup>[5]</sup>

When appellant stayed with ██████ and her children, he helped wash the dishes

and the clothes, he took care of the children and cooked for them. He also helped AAA and [REDACTED] in their studies.<sup>[6]</sup>

At that time, [REDACTED] was working as a production worker at the Bay-Sport Manufacturing Inc.<sup>[7]</sup> at the Export Processing Zone in Loakan, Baguio City.<sup>[8]</sup>

On October 18, 1998, [REDACTED] worked on night shift, that is, from 7:00 p.m. of October 18 to 7:00 a.m. of the next day, October 19, as evidenced by her daily time record<sup>[9]</sup> and certificate of employment.<sup>[10]</sup> AAA testified that in the early morning of October 19, 1998, when her mother was still at work, she woke up and saw appellant beside her. Appellant kissed her and her nipples, and inserted his finger in her vagina. He had already removed her underwear. AAA resisted by turning around and lying down on her front. Appellant went out to the sala. AAA put back her underwear and went to sleep. Thereafter, appellant went back inside AAA's room and removed her shorts and underwear. AAA was not able to resist because appellant pinned her down with his hands. She did not shout because she was scared as he told her that he would kill her and her brothers and sister if she would shout. Appellant went on top of her, parted her legs and inserted his penis in her vagina and made an up and down movement. She felt pain. She kicked him as hard as she could. He got off her and went to the living room. She put on her shorts and underwear and went back to sleep. She told her 9-year-old sister, [REDACTED], about the incident. She did not inform her mother because every time they would approach her, appellant was around with a menacing look.<sup>[11]</sup>

On December 24, 1998, appellant left the house of [REDACTED] because her common-law husband, [REDACTED], was expected to arrive the next day, December 25. [REDACTED] stayed in the Philippines until January 1999.<sup>[12]</sup>

On February 10, 1999, [REDACTED] went home at lunchtime and told [REDACTED] about the incident which AAA confided in her. Thereafter, [REDACTED] fetched AAA in school. They went to the Department of Social Welfare and Development.<sup>[13]</sup> AAA executed a sworn statement<sup>[14]</sup> at the police station.

On February 15, 1999, upon referral by the Chief of the Women and Children Desk Section of the Baguio City Police Office, Dr. Vladimir V. Villasenor, regional chief of the PNP Crime Laboratory Service, Cordillera, examined AAA. He found that AAA's vagina exhibited deep healed lacerations at the 5:00 o' clock and 8:00 o'clock positions, and her labia majora was already gaping. According to Dr. Villasenor, the lacerations and gaping labia majora could have been caused by the insertion of a foreign object like a fully erect male genital organ. He also testified that the deep healed lacerations were compatible with the reported rape on or about October 19, 1998. Dr. Villasenor concluded that AAA was no longer a virgin.<sup>[15]</sup> He prepared a Medico-legal Report,<sup>[16]</sup> with the following findings:

xxx xxx xxx

General & Extra-genital:

Fairly nourished, fairly developed, coherent female child. Breast are conical with light brown areola and nipples from which no secretion could

be pressed out. Abdomen is flat and tight.

Genital:

There is lanugo-type growth of pubic hair. Labia majora are full convex and gaping with the dark brown labia minora presenting in between. On separating the same, is disclosed an elastic and fleshy-type hymen with deep healed lacerations at 5 & 8 o' clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-size vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color & consistency.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of physical violence.

REMARKS:

Peri-urethral and vaginal smears are negative for gram (-) diplococci and for spermatozoa. x x x.

During the trial, appellant wrote ██████ a letter<sup>[17]</sup> dated August 20, 1999, which he handed to her in court.<sup>[18]</sup> In said letter, appellant explained what happened the night he and ██████ had an argument. He claimed that after their argument, he went home, drunk, and mistook AAA for ██████ as it was dark, and he embraced and kissed her. He, however, denied that he raped AAA. He asked for forgiveness.

*The Defense's Evidence*

Appellant Roger Ospig, 23 years old, single, a resident of Irisan, Baguio City, testified that beginning January 1998, he stayed in the residence of ██████ at ██████, as her lover. ██████ told him that she was already separated from her husband.<sup>[19]</sup>

Appellant declared that on October 18, 1998, he was in the boarding house of ██████ the whole day. ██████ was scheduled to work from 7:00 p.m. to 7:00 a.m. the next day. When she was preparing to go to work, he asked her why she always arrived home late in the morning and told her that maybe she already found someone to replace him. ██████ got mad and shouted at him. She kept on shouting at him, so he left the house to avoid her. He drank with one Danny at the billiard hall. They stopped drinking between 10 p.m. to 11:00 p.m., and he went home, drunk. He knocked at the door of the boarding house, but nobody answered. When he leaned on the door, it suddenly opened. He entered the house and switched on the light, but there was no electricity. He went straight to the bedroom and lay down on the bed of ██████. He embraced a person lying there, thinking that she was ██████. He kissed her and inserted his hand inside her underwear. He was surprised that he did not feel any pubic hair. When he was about to remove his hand, he felt a strong kick. It was AAA who kicked him. He fell down from the bed and AAA was spitting. He went out and washed his face, then slept in the sala. He

did not inform [REDACTED] about the incident. He stayed at [REDACTED]'s house until December 24, 1998 because [REDACTED]'s husband was expected to arrive. [20]

Appellant was served a warrant of arrest when he was at his residence in Irisan, Baguio City. He voluntarily went with the person who served said warrant of arrest. [21]

He admitted that he personally handed a letter to [REDACTED] in court. He was asked why he wrote a part of the letter, marked as Exhibit "I-6," which reads: "*Inamin ko na sa iyo ang pangyayari at kung mahatulan man ako ng death sentence ay wala akong magagawa. Patawarin ninyo na lang ako. Nagpapaliwanag lang ako. Hindi pa ito alam ng attorney ko kaya duda rin siya sa akin.*" Appellant explained that he wrote said part of the letter to tell them that he did not commit the rape. If he will be hanged, it will be in their conscience. He denied that he raped AAA. [22]

On January 12, 2000, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Roger Ospig Guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 266-A in relation to Article 266-B of Republic Act 8353 as charged in the Information and hereby sentences him to the penalty of *Reclusion Perpetua*; to indemnify the victim AAA the amount of P50,000.00; and to pay the costs.

The accused Roger Ospig being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code in the service of his sentence.

SO ORDERED. [23]

Appellant raised this lone issue:

WHETHER OR NOT THE JUDGE COMMITTED ERRORS IN THE APPRECIATION OF THE FACTS OF THE CASE AND RENDER[ED] A DECISION CONTRARY TO LAW AND JURISPRUDENCE. [24]

#### *The Court's Ruling*

Appellant contends that the trial court failed to appreciate the contents of the private complainant's diary dated October 18, 1998, which was partly written in coded symbols, wherein she stated that she was only nearly abused by appellant on the night her mother went to work and that the next day, appellant did not abuse her. Appellant claims that the diary would show that he did not commit the crime of consummated rape, but only acts of lasciviousness or attempted raped.

We are not persuaded.

The entry referred to by appellant in private complainant's diary, [25] which is dated October 18, 1998, and marked as Exhibit "F-1," reads:

Sunday

You know what now only that I know that Tikay is pregnant. Mommy went to work and Kuya Roger went home (that's what I know). You know what when he nearly (coded symbols) me (coded symbols) I (coded symbols) the next day he did not already (coded symbols) I'm really so smart. Last day (coded symbols) gave me P20.00 but that (coded symbols) get it for the rice daw (dirty finger) him. You know what Tikay is just like hard up to breathe.

Private complainant sufficiently explained the meaning of the aforequoted entry, and clarified that there was penile insertion by appellant which justified the complaint of rape, thus:

XXXX XXXX XXXX

Atty. Andres:

Q Ms. Witness, what did the accused do to you for you to write this in Exh. F-1?

A He inserted his penis Ma'am.

Q And what did you feel?

A Pain.

Q Now, you likewise testified that the accused inserted both his fingers in your vagina?

A Yes Ma'am.

Q And what did you feel when he did that to you?

A Painful also. [26]

The Court is not convinced by appellant's allegation that his initial attempt to have sex with private complainant was not followed by a subsequent consummated act as private complainant testified in a straightforward manner, thus:

XXX XXX XXX

ATTY. ANDRES:

Q On that specific morning of October 19, 1998 you said you were sleeping. What happened, if any?

A I woke up and then I saw him beside me.

Q Who are you referring to as "he"?

A Roger Ospig.

Q And what was he doing?

A He was kissing me, my nipples and inserting his finger in my vagina.

Q When he was doing that, what did you do?

A I turned around.

Q Why, what was your position at that time?

A I was lying on my back.