

EN BANC

[G.R. No. 132044, October 05, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO @ TONY EVANGELISTA Y BINAY, ACCUSED-
APPELLANT.**

D E C I S I O N

PUNO, J.:

This is the story of another family wrecked by the insatiable lust of a man. Ten-year old **JANE GARA** charged her stepfather, accused **ANTONIO EVANGELISTA**, with rape in an Information which reads:^[1]

"That on or about the 20th day of April, 1996, at around 5:00 o'clock in the afternoon and prior dates thereto, at Barangay Aninuan, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the offended party JANE GARA, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie and succeeded in having carnal knowledge of the offended party JANE GARA, a ten-year old girl, against her will.

"Contrary to Art. 335 RPC in relation to R.A. 7659 (Death Penalty Law)."

JANE is the daughter of EDNA GARA EVANGELISTA by her live-in partner Jose Bayta. Edna testified that after the death of Jose, she married accused ANTONIO EVANGELISTA on December 20, 1994.^[2] After a year and four months, Edna witnessed an event that completely shattered their life.

On April 20, 1996, at about 5:00 p.m., JANE was in their house with the accused when the latter directed his two sons, Melvin and Monico, to go out of the house. The accused then wasted no time in executing his evil design. He kissed Jane on the cheeks and lips. **He lowered her shorts and panty down to her knees. He kissed and fingered her sex organ.** Thereafter, he **inserted his penis into her vagina but failed to completely penetrate it. Jane felt intense pain** but she could not shout as the accused threatened to beat her up.

It was this sordid scene that greeted Edna when she arrived from work. Unsuspectingly, Edna went to the kitchen and caught the accused naked and lying on top of Jane. **Accused was forcing open Jane's thighs and was inserting his organ into hers.** Jane had her blouse on but **her shorts were lowered to below her knees.** Jane was trying to push away the accused. When Edna saw the revolting scene, her judgment became blurred. Her first reaction was to grab a bolo

and hack the accused. Luck was still on the accused's side. A bible fell off the cabinet while Edna was charging towards the accused. It distracted Edna. She momentarily stopped on her tracks to pick it up. This gave the accused a chance to jump out of the window and flee.

Edna turned to her ten-year old Jane who was in tears. She asked Jane if it was the first time that the accused molested her. Jane revealed that the accused had been sexually abusing her since January, 1996 when Edna started working. Jane kept mum about her ordeal as the accused threatened her. A flashback of memories then flooded Edna's thoughts. She recalled the admonition of her neighbor, Rosenie Anyayahan, after her marriage to the accused. Rosenie warned her to watch her husband closely as she had a bad vibration about him and he might molest Jane. Since then, she became wary of how the accused treated Jane. She recalled one particular night when she saw the accused kissing Jane. She confronted the accused but the latter rationalized that he just gave Jane a fatherly kiss. Edna nonetheless cautioned him not to do it again.^[3]

Deeply shaken by what she witnessed that day, Edna and her four kids immediately left the house. They stayed in the nearby house of her brother. **Edna then contemplated on what course of action to take. On May 7, 1996, she decided to report the matter to the police authorities.** She brought Jane to the Oriental Mindoro Provincial Hospital where she was examined by Dr. Maria Christina L. Gonzales. **Her findings revealed healed lacerations on Jane's genitalia which admitted the smallest finger.**

In August, Edna and her kids transferred to Victoria, Oriental Mindoro, as they were afraid that the sons of the accused would kill them for reporting the incident to the police.

The accused denied molesting Jane. He gave an entirely different account of what transpired that day. He testified that on said date and time, he was in the kitchen, setting up a fire in the stove as he was about to cook rice. The children were then playing in front of the house. Shortly, Edna arrived from work. He scolded her for coming home late, thus: "*Galing ka na naman yata sa iyong lalaki,*" referring to one Martin Alfon. The statement angered Edna and an argument ensued. Their altercation ended with Edna leaving their house with her four children. Thus, the accused contended that Edna fabricated the rape charge against him so she could carry on with her illicit affair. He also declared that at the time of his testimony, Edna was already cohabiting with another man.

The accused recalled that he and Edna started their relationship in 1989. Edna was then his househelp. Before the year was over, they were cohabiting in the same house. They lived together for five years. They already had two children, Dina and Lenlen, before they decided to get married in 1994. The accused admitted that their marriage was sometimes marred by jealousy. When Edna would arrive home late from the office, he would get jealous and suspect her of carrying on an affair with Pedro and Ruben Noche. During their five-year cohabitation, the accused charged that Edna had affairs with brothers Pedro and Ruben Noche. These men would either eat with Edna or sleep in their house when he was not around. Despite her loose ways, he married Edna as he loved her and she promised to mend her ways once they were married. He also wanted to legitimize the status of his two kids with Edna.

The accused insisted that even after their marriage, Edna carried on with her illicit affair with Pedro. After his incarceration and during his testimony, Edna was already cohabiting with one Martin Alfon and was bearing his child.^[4]

Two witnesses corroborated the accused's story.

MARIO CEPILLO and **NICANOR LALONG-ISIP** recounted that on April 20, 1996, at about 4:30 p.m., they were in the house of accused's brother, Estanislao Evangelista. Estanislao's house was about ten (10) meters away from that of the accused. They visited Estanislao to find out if the cockfight scheduled the next day would push through. They were inspecting the cocks and conversing with Estanislao when they overheard the accused and Edna having an argument. The accused was jealous and he suspected Edna of having an affair with another man. They overheard the accused exclaim in a furious tone: *"Gabi ka na naman dumating. Galing ka naman sa `yong panlalaki."* Edna did not reply and immediately left the house with their children. Later on, they learned that the accused was charged with rape. Months later, they learned from the townsfolk that Edna was cohabiting with another man in Macatoc.^[5]

According to Nicanor, Edna has a loose reputation in their town. She was known as having had numerous relationships with various men which was the reason for her frequent fights with the accused. Rumor had it that Edna had affairs with Pedro and Ruben Noche. She had another live-in partner in Naujan where she and her children transferred residence.^[6]

On November 12, 1997, the **trial court found the accused guilty of statutory rape and sentenced him to death.** The dispositive portion reads:

"ACCORDINGLY, the court finds accused Antonio Evangelista, alias Tony, guilty beyond reasonable doubt, as principal, of the crime of rape, defined and penalized in Article 335 of the Revised Penal Code, as Amended by Section 11 of R.A. 7659 which took effect on December 31, 1993 (People vs. Martin Simon, G.R. No. 93026, dated July 29, 1994) by death when the victim is under 18 years of age and the offender is a step-parent of the victim and hereby sentences him to suffer the supreme penalty of death, together with the accessory penalties provided (for) by law, to indemnify the victim, Jane, the amount of P50,000.00 as damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

x x x

"SO ORDERED."^[7]

On automatic appeal, the appellant assigns the following errors: