

## EN BANC

[ G.R. No. 133987, January 28, 2000 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOHNNY BARTOLOME Y CABINONG, ACCUSED-APPELLANT.**

### DECISION

**DAVIDE JR., C.J.:**

Accused-appellant Johnny Bartolome y Cabinong (hereafter JOHNNY) was charged with three counts of rape in Criminal Cases Nos. 19-1034, 19-1110, and 19-1111, allegedly committed against his niece, Cherry Ann Dalog (hereafter CHERRY ANN) in a joint decision<sup>[1]</sup> rendered on 7 May 1998 by the Regional Trial Court of Cauayan, Isabela, Branch 19, JOHNNY was acquitted in Criminal Cases Nos. 19-1110 and 19-1111, but convicted in Criminal Case No.19-1034 and sentenced to suffer the penalty of death. He was further ordered to pay CHERRY ANN the amount of P100,000 as, civil indemnity.

JOHNNY's conviction in Criminal Case No.19-1034 is the subject of this automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659.

The following facts were established by the evidence for the prosecution:

On 10 September 1995, CHERRY ANN, barely thirteen years old, and her younger brothers, Mark, Marlon, and Michael, moved into the two-storey house of their maternal grandmother, Elisa Bartolome, at San Fermin, Cauayan, Isabela, because their mother, Gemma Bartolome, was leaving for Kuwait the next day to work as a domestic helper. Since the second floor of the house was tenanted, they shared the ground floor with Elisa and their uncle JOHNNY, Gemma's brother. Cabinets in their floor served as partitions that divided the area into several "rooms."<sup>[2]</sup>

Around midnight of the following day, 11 September 1995, while she was sleeping in one of the "rooms" with 9-year old Mark, CHERRY ANN woke up when she felt JOHNNY pulling her legs. Initially, the darkness prevented her from immediately recognizing him. She just instinctively kicked the person at her feet and sprang up, but he pulled her legs again, causing her to fall back. JOHNNY tried to remove her T-shirt and shorts, succeeding only after several attempts because of her resistance. CHERRY ANN realized it was JOHNNY when she heard his voice warning her not to shout or he would kill her and her brothers. JOHNNY went on top of her and forced his penis into her vagina. CHERRY ANN felt excruciating pain. After satisfying his lust, JOHNNY ordered her to dress up, then he went back to sleep, leaving her in tears.<sup>[3]</sup>

JOHNNY repeated his dastardly act on the 13 and 16, September 1995, employing the same mode of assault. Because of his threats, however, she just moved to her

grandmother's room instead of telling anybody about what her Uncle JOHNNY had done to her.<sup>[4]</sup>

Sometime in December 1995, when another uncle, Boyet, and his family also moved into their ground floor dwelling, CHERRY ANN and her brothers had to transfer to the house of their father's sister, Teresita Agabao. The latter noticed that CHERRY ANN was always absent-minded or deep in thought and often lost her bearings. Teresita asked her niece CHERRY ANN what was wrong, but the latter just cried. It was only on 4 September 1996 when she learned about CHERRY ANN's sad experience at the hands of JOHNNY. They quickly reported the matter to the police. After investigation, they proceeded to the Cauayan District Hospital where CHERRY ANN was examined by Dr. Corazon L. Cabanilla, who issued a Medical Certificate<sup>[5]</sup> on the same date regarding her findings.<sup>[6]</sup>

Thus, on the basis of CHERRY ANN's complaint<sup>[7]</sup> dated 5 September 1996, alleging that she was raped by JOHNNY on 11, 13, and 16 September 1995, three informations for rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,<sup>[8]</sup> were filed against JOHNNY before Branch 19 of the RTC of Cauayan, Isabela. The information<sup>[9]</sup> in Criminal Case No. 19-1034, under which JOHNNY was eventually convicted, reads as follows:

That on or about the 11th day of September, 1995, in the municipality of Cauayan, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a fan knife (*balisong*), and by means of force, intimidation and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay (sic) with and have carnal knowledge the one Cherry Ann B. Dalog, a girl of 13 years old (sic), against her will and consent.

CONTRARY TO LAW.

JOHNNY denied the accusations against him and interposed the defense of alibi. He claimed that from January 1994 to 14 May 1997, the date he was arrested, he had been working as a household helper for a certain Natividad Dy in her house at Greenhills, San Juan, Metro Manila. The only time he was in Isabela was during the May 1997 elections. He was visiting his brother and sister at Echague, Isabela, when apprehended by the police. In proclaiming his innocence, JOHNNY ascribed CHERRY ANN's false charges of rape to her father, Mariano Dalog, who allegedly suspected him to be behind the breakup between his sister Gemma and Mariano.<sup>[10]</sup>

After trial on the merits, the trial court rendered a joint decision, the decretal portion of which reads as follows:

WHEREFORE, in view of the foregoing considerations and finding the accused guilty beyond reasonable doubt of the crime of rape committed by him against Cherry Ann Dalog on 11 September 1995, judgment is hereby rendered in Criminal Case No.19-1034 sentencing him to suffer the penalty of death. He is further ordered to indemnify the victim in the amount of P100,000.00.

For failure of the prosecution to prove his guilt beyond reasonable doubt