

SECOND DIVISION

[G.R. No. 123140, September 23, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BERNARDO
CORTEZANO AND JOEL CORTEZANO, APPELLANTS.**

DECISION

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Camarines Sur, Libmanan, Branch 56, in Criminal Cases Nos. L-1679 and L-1680, convicting appellants Bernardo Cortezano and Joel Cortezano with four counts of rape and sentencing them to suffer the penalty of *reclusion perpetua* for each count; and ordering each of them to pay damages to the victim as follows: P200,000 as moral damages and P200,000 as exemplary damages in all the cases.

The Indictments

On November 22, 1994, two separate Informations for rape were filed against the appellants. The first Information docketed as Criminal Case No. L-1679 reads:

That on or about the 6th day of May, 1990, in the afternoon at Bgy. (sic) [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, conspiring, confederating together and mutually helping one another, taking advantage of their superior strength with force, intimidation and with grave abuse of confidence, did then and there wilfully (sic), feloniously and unlawfully have carnal knowledge one after the other with AAA (sic), 7 years old, minor, against her will and the offended party suffered damages.

ACTS CONTRARY TO LAW.^[2]

The second Information docketed as Criminal Case No. L-1680 reads:

That on or about the 10th day of June, 1990, in the afternoon at Bgy. (sic) [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, conspiring, confederating together and mutually helping one another, taking advantage of their superior strength with force, intimidation and with grave abuse of confidence, did then and there wilfully (sic), unlawfully and feloniously have carnal knowledge one after the other with AAA, 7 years old, minor, against her will and the offended party suffered damages.

ACTS CONTRARY TO LAW.^[3]

On arraignment, the accused entered their plea of not guilty. A consolidated trial of the two criminal cases then ensued.

The Case for the Prosecution

Sometime in March 1990, ██████████ decided to take a leave of absence from her part-time job in Cubao, Quezon City, to spend her vacation with her three children: eight-year-old AAA, three-year-old ██████████, and ██████████, who was barely a year old. ██████████ decided to stay in the house of her parents-in-law, ██████████ and ██████████, located at Barangay ██████████. ██████████ was also sick with asthma so ██████████ could rely on her mother-in-law to take care of him while she was at work. ██████████'s husband, ██████████, remained in their residence in Caloocan City.

The Cortezano residence was located at an isolated patch of land. ██████████ and ██████████ slept in a room separated from the *sala* by a curtain. Their children, the accused Bernardo (Butchoy) Cortezano, who was then twelve years old; the accused Joel Cortezano, who was then only thirteen; Tinggang, who was six years old, and Boyet Orcine, their six-year-old nephew, also lived with the couple. At night, ██████████ and her children, as well as Joel, Bernardo and Tinggang, slept beside each other in a room near the kitchen, beside the couple's room. By mid-April of 1990, ██████████ returned to Caloocan City, leaving her children in the care of her parents-in-law.

Early in the afternoon of May 6, 1990, Joel and Bernardo ordered their niece AAA to sleep in their parents' room. AAA protested because it was hot in that room. Joel threatened to whip her if she refused. AAA had no choice; she went to the room and slept. AAA suddenly awoke when she sensed pressure on her arms and legs. When she opened her eyes, she saw her uncles Joel and Bernardo; they were holding her hands and feet as she was being undressed. AAA struggled but was easily overpowered by her uncles. She threatened to shout, but she was told that nobody would hear her. Joel and Bernardo wet her vagina with their saliva. Bernardo then held her hands as Joel mounted her. Joel inserted his penis into her vagina, while Bernardo stood by the window to serve as a lookout. AAA felt something slippery inside her vagina. After Joel dismounted, Bernardo went on top of AAA and inserted his penis into her vagina. It was Joel's turn to stand by the window as a lookout. AAA once more felt something slippery in her vagina. Bernardo then stood up.

Momentarily, Boyet Orcine arrived and inquired what Joel and Bernardo were doing to AAA. Joel and Bernardo ordered Boyet to rape AAA and threatened to box him if he refused. Joel and Bernardo laughed as Boyet was having his turn with AAA. Joel and Bernardo then called ██████████ and ██████████ into the room, letting them see their sister naked.

Joel and Bernardo threatened to kill her and the members of the family if she told anyone about what happened to her. Joel, Bernardo and Boyet left the room together. AAA went out of the room and washed her vagina.

Petrified, AAA did not reveal to her grandparents what happened to her. After that first harrowing incident, Joel and Bernardo subjected her to sexual abuse daily. After every sexual intercourse they had with AAA, Joel and Bernardo would threaten to kill her and her family if she told anyone what they had been doing to her.

On June 10, 1990, Joel and Bernardo again ordered AAA to go to her grandparents' room. She did as she was told. Joel and Bernardo undressed her. AAA was told to lie down, and Joel and Bernardo again wet her vagina with their saliva. Joel then laid on top of her, holding her hands and pinning her legs with his, as he inserted his penis into her vagina. Bernardo stood by the window as a lookout. AAA tried to fight Joel, but the latter was enraged. She was about to shout, but Joel told her that it would be futile to do so because their neighbors were far away. Joel dismounted and Bernardo had his turn, with Joel standing by the window to see if anyone was coming. Joel and Bernardo again threatened to kill AAA if she told anyone about the incident.

The next day, June 11, 1990, was [REDACTED]'s birthday. [REDACTED] arrived at Brgy. [REDACTED] and brought her children back to Caloocan City, in time for AAA's enrollment at the Kalayaan Elementary School in Brgy. Silang, Caloocan City. Because of the sexual abuse she suffered at the hands of her uncles, AAA felt pain in her lower abdomen (*puson*). Every now and then, she would feel numbness on the left side of her body.

Sometime in March 1993, [REDACTED] and [REDACTED] once again stayed with their grandparents in Brgy. [REDACTED]. On May 21, 1993, [REDACTED] arrived in Sipocot and stayed with his parents. [REDACTED] followed her family to Sipocot on June 20, 1993. AAA remained in Caloocan City to continue her schooling. Her studies were financed by the Department of Social Welfare and Development.

On August 23, 1993, [REDACTED] had a quarrel with his parents and left Brgy. [REDACTED]. Since then, [REDACTED] did not hear from her husband and did not know where he was. On September 20, 1993, [REDACTED] left Brgy. [REDACTED] and brought her children to Pili, Camarines Sur.

On May 27, 1994, [REDACTED] learned from Boyet Orcine that her daughter AAA had been sexually abused by Joel and Bernardo way back in 1990. Boyet told [REDACTED] that [REDACTED] had suffered the same fate as AAA.^[4] [REDACTED] immediately contacted a certain Mrs. Monares, a social worker at the DSWD of Pili, Camarines Sur, and inquired whether the information relayed to her by Boyet Orcine could be true. Mrs. Monares advised [REDACTED] to ask AAA herself. [REDACTED] left Pili and arrived in Caloocan City on June 1, 1994. She asked AAA if she recalled anything that happened to her while on vacation in Sipocot in 1990. AAA told her mother that Joel and Bernardo had whipped her and she did not want to return to Sipocot. When [REDACTED] asked her daughter, the latter replied that Joel and Bernardo had raped her.

[REDACTED] brought AAA to the PNP Crime Laboratory in Camp Crame, Quezon City. Dr. Ma. Cristina B. Freyra examined AAA and submitted Medico-Legal Report No. M-0807-94, with the following findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts are conical with pale brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3, 7 and 9 o'clock. External vaginal orifice offers strong resistance to the introduction of the examining index finger.

[5]

On June 16, 1994, [REDACTED] and AAA arrived in the Criminal Investigation Field Office in Naga City where they gave their respective sworn statements to PO3 Elmer V. Caceres.[6]

The Case for the Accused

Bernardo was born on January 22, 1978. He denied the charges. He admitted that he was charged with raping [REDACTED] on April 21, 1994 in *People v. Bernardo Cortezano*, [7] filed with the Regional Trial Court of Pili, Camarines Sur, and that he pleaded guilty on his arraignment. He testified that on March 28, 1990, he arrived in Bagadiong, Libmanan, Camarines Sur, to help his cousin, Alvin Reoval, to plow and harrow his rice field and plant *palay*. He had lost his school bag, and his father, [REDACTED], had punished him for it. He had nowhere to go except to his cousin's house. Barangay Bagadiong was adjacent to Barangay Busak, and one would take four and half-hours by carabao to traverse Busak from Bagadiong. There were, however, many passenger jeepneys and buses plying the Busak-Sipocot route. When Bernardo thought that his parents were no longer mad at him, he returned to Sipocot on April 5, 1993. He received P3,150 for his services. He met his sister-in-law [REDACTED] only in 1994, when she charged him with the rape of [REDACTED].

Joel Cortezano testified that he was born on November 1, 1976. He and his mother arrived in Manila on May 6, 1990 and stayed in the house of his aunt Concordia Hernandez in San Andres, Manila. On May 9, 1990, he went to the Philippine General Hospital (PGH) for treatment of leukemia and stayed there for three days. Thereafter, he was advised by the doctor not to leave the hospital, as he needed blood transfusion. Joel stayed in the hospital for one week. Joel was discharged from the hospital and stayed in the house of his aunt, Concordia Hernandez, in San Andres, Manila, for about a month and helped the latter manage her store. Every now and then, he returned to the hospital for check-ups.

In August 1990, Joel's mother fetched him from San Andres and brought him to Novaliches for two days. Thereafter, he returned to Sipocot, Camarines Sur.

When asked about his medical certificate regarding his treatment at the PGH during the period stated, Joel testified that he lost the same during a typhoon. He claimed that efforts to secure copies of the said medical certificates proved futile, as the employees who released the certificates were busy. Joel denied raping his niece AAA.

[REDACTED] testified that she left Sipocot on May 6, 1990 for Manila to accompany her son Joel to the PGH, as the latter was suffering from leukemia and needed blood transfusion. They stayed in the hospital for about two weeks. They did not immediately return to Sipocot as they were ordered by the attending physician to stay in Manila. On May 28, 1990, she and Joel went to [REDACTED]'s house in

Caloocan City where they saw AAA. It would have thus been impossible for AAA to be in Sipocot on May 6, 1990 to June 10, 1990. █████ further testified that it was only in 1991 when AAA and her siblings were first brought to Sipocot by █████. The second instance was in 1992, but it was their father █████ who was with the children at the time.

█████ corroborated in part his wife's testimony. He testified that between May 6 and June 10, 1990, AAA and her siblings indeed spent their vacation in Sipocot. However, during that time, Joel was brought to Manila for a check-up at the PGH. Bernardo, on the other hand, left the household in June 1990. Aside from this, his daughters Melanie and Teresita, who were 16 years old and 10 years old, respectively, and his grandson Boyet (Bulilit) stayed in his house. His son █████ also arrived in Sipocot during this time.

Sancho Cortezano testified that he went to the house of his older brother █████ in Caloocan City on May 10, 1990 to inform the latter of his marriage. █████ was not in his house but █████ and her children, including AAA, were there. Sancho left on May 11, 1990 for Cebu where he got married seven days later. On June 3, 1990, Sancho returned to Manila and when he went to visit █████ at his house, only █████ and the children were there.

Boyet Orcine testified that on May 6, 1990, he was in the hills with his mother Emerlina Cortezano in Barangay Tulay, which was very far from the house of the Cortezanos in Barangay █████. He returned from the hills only in 1993. He testified that he "did nothing" while he was away.

On rebuttal, the prosecution presented two letters from Mrs. Fe B. Baes, Chief of the Medical Records Division of the PGH, that as an outpatient, Joel consulted the hospital on August 16, 1989, November 2, 1989 and April 6, 1990, and that he was never confined at the PGH in 1990. The said letters read as follows:

In connection with the letter received by this office requesting for a record of a certain Joel Cortezano, whether or not he was hospitalized in this hospital way back 1989, please be informed that as per hospital records, a certain Joel Cortezano consulted on an outpatient basis sometime on August 16, 1989, November 2, 1989 and April 6, 1990.^[8]

...

In reply to your letter dated August 15, 1995 re: JOEL CORTEZANO, may I inform you that he was never confined in this hospital anytime in 1990. He only consulted on April 6, 1990 on an outpatient basis.^[9]

After trial, the court rendered a decision convicting the appellants of four counts of rape, the dispositive portion of which reads as follows:

WHEREFORE, in view of the aforecited considerations, this Court finds the accused, JOEL CORTEZANO and BERNARDO CORTEZANO, GUILTY beyond reasonable doubt of the two crimes of Rape as defined and punished under Article 335, of the Revised Penal Code, as amended. They are sentenced to suffer the penalty of **FOUR RECLUSION PERPETUA** each, in both criminal cases, considering that they acted in conspiracy in the