

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOHNNY BARTOLOME Y CABINONG, ACCUSED-APPELLANT.***G.R. No. 133987. January 28, 2000*

Ponente: DAVIDE JR., C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133987/>**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[1] 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." [2]

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. [3]

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. [4]

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[5] on the same date regarding her findings.[6]

Thus, on the basis of CHERRY ANN's complaint[7] 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,[8] were filed against JOHNNY before Branch 19 of the RTC of Cauayan, Isabela. The information[9] 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.[10]

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 in Criminal Cases Nos. 19-1110 and 19-1111, judgment is further rendered acquitting him in said cases.

Costs against the accused.

SO ORDERED.

In his Appellant's Brief, JOHNNY contends that the trial court erred in faulting him for not presenting other witnesses to corroborate his alibi. He also claims that although alibi is a weak defense, the rule that it must be satisfactorily proven was never intended to shift the burden of proof from the prosecution to the accused. Finally, he asserts that assuming he is guilty as charged, the trial court committed a minor lapse in granting a civil indemnity of P100,000, which is clearly excessive.

After a meticulous review of the record of this case, and evaluation of the evidence adduced, we are convinced that JOHNNY's guilt for the crimes of rape as charged in Criminal Case No. 19-1034 was proven beyond reasonable doubt and, therefore, affirm his conviction therefor.

CHERRY ANN positively identified JOHNNY as the person who raped her on 11 September 1995. It is settled

that alibi cannot prevail over and is worthless in the face of the positive identification of the accused by a credible witness.[11] JOHNNY has offered no credible evidence that CHERRY ANN was impelled by any ulterior motive to fabricate a story of defloration against him. Accordingly, the presumption that she was not actuated by any improper motive stands.[12]

We agree with JOHNNY that the amount of P100,000 awarded to CHERRY ANN as indemnity ex delicto is excessive. As will be demonstrated shortly, JOHNNY is liable only for simple rape. Conformably with current case law, the indemnity should be P50,000 only. JOHNNY must also pay an additional P50,000 in moral damages to CHERRY ANN, without need of alleging and proving that she suffered the trauma of mental, physical and psychological sufferings, which are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility.[13]

While we concede that JOHNNY's guilt was proven beyond reasonable doubt, we do not, however, concur with the trial court's imposition of the death penalty. The death penalty was imposed by the trial court on the sole basis of the relationship between JOHNNY and CHERRY ANN, in light of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No.7659, which partly states:

The death penalty shall be imposed if the crime is committed with any of the following attendant circumstances:

- When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Fortunately, for JOHNNY, the special qualifying circumstance of relationship was not alleged in the information. We have declared that the circumstances under the amendatory provisions of Section 11 of R.A. No. 7659, the attendance of which could mandate the imposition of the single indivisible penalty of death, are in the nature of qualifying circumstances which cannot be proved as such unless alleged in the information, and even if proved, the death penalty ca not be imposed.[14] To impose the death penalty on the basis of this relationship, which has not been alleged in the information, would violate JOHNNY's constitutional and statutory right to be informed of the nature and the case of the accusation against him.[15]

What was alleged in the information as a qualifying circumstance which but was not proved at the trial, was the use of a deadly weapon. Had it been proven, then the imposable penalty pursuant to the third paragraph of said Article 335, as amended by R.A. No.7659, would have been reclusion perpetua to death.

As JOHNNY could only be convicted of simple rape, the proper imposable penalty is reclusion perpetua under the second paragraph of Article 335, as amended by R.A No.7659.

WHEREFORE, the challenged decision of 7 May 1998 of the Regional Trial Court of Cauayan, Isabel, Branch 19, in Criminal Case No.19-1034 finding JOHNNY BARTOLOME y CABINONG guilty of rape is hereby **AFFIRMED** with the following **MODIFICATIONS**:

- Accused JOHNNY ARTOLOME y CABINONG is declared guilty of simple rape and is sentenced to suffer the penalty of reclusion perpetua;
- The amount of civil indemnity awarded by the trial court is reduced from P100,000 to P50,000; and
- The amount of P50,000 is awarded to CHERRY ANN DALOG as and by way of moral damages.

With costs de oficio.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Original Record (OR), 74-80; Rollo, 14-20. Per Judge Artemio R. Alivia.

[2] TSN, 12 September 1997, 5-8.

[3] Id., 8-16.

[4] TSN, 12 September 1997, 16-27.

[5] Exhibit "B"; OR, 9.

[6] TSN, 17 September 1997, 12-14; 19 September 1997, 4-11.

[7] OR, 5.

[8] Entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for That Purpose the Revised Penal Code, Other Special Penal Laws, and for Other Purposes." It took effect on 21 December 1993 (People v. Simon, 34 SCRA 555 (1994))

[9] Id., 2. The informations in Criminal Cases Nos. 19-1110 and 19-1111, under which JOHNNY was acquitted, are not attached to the records.

[10] TSN, 4 November 1997, 4-26.

[11] People v. Lee, 204 SCRA 900 (1991); People v. Florida, 214 SCRA 227 (1992)

[12] People v. Ramos, 222 SCRA 557 (1993)

[13] People v. Prades, 293 SCRA 411 (1998); People v. Sacapaño, G.R. No. 130525, 3 September 1999.

[14] People v. Garcia, 281 SCRA 463 (1997); People v. Ramos, 269 SCRA 559 (1998); People v. Ilao, 269 SCRA 658 (1998)

[15] People v. Garcia, supra note 14; People v. Ilao, supra note 14.

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