

EN BANC

[G.R. No. 196342, August 08, 2017]

**PEOPLE OF THE PHILIPPINES, PETITIONER, V. NOEL GO CAOILI
ALIAS "BOY TAGALOG", RESPONDENT.**

[G.R. No. 196848, August 8, 2017]

**NOEL GO CAOILI, PETITIONER, V. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

TIJAM, J.:

Assailed in these consolidated petitions for review^[1] under Rule 45 of the Rules of Court are the July 22, 2010 Decision^[2] and March 29, 2011 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00576- MIN, which set aside the June 17, 2008 Decision^[4] of the Regional Trial Court (RTC) of Surigao City, Branch 30, in Criminal Case No. 7363, finding Noel Go Caoili (Caoili) alias "Boy Tagalog" guilty of the crime of Rape by Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353,^[5] and remanded the case to the RTC for further proceedings consistent with the CA's opinion.

The Facts

On June 22, 2006, First Assistant Provincial Prosecutor Raul O. Nasayao filed an Information against Caoili, charging him with the crime of rape through sexual intercourse in violation of Article 266-A, in relation to Article 266-B, of the RPC as amended by R.A. No. 8353, and R.A. No. 7610.^[6] The accusatory portion of the Information reads:

That on or about the 23rd day of October 2005, at 7:00 o'clock in the evening, more or less, in Purok [III], Barangay [JJJ], [KKK], [LLL], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom and intelligence, with lewd design, did, then and there, willfully, unlawfully and feloniously had sexual intercourse with one [AAA],^[7] a minor, fifteen (15) years of age and the daughter of the herein accused, through force, threat and intimidation and against her will, to her damage and prejudice in the amount as may be allowed by law.

CONTRARY TO Article 266-A, in relation to Article 266-B of R.A. 8353, with the aggravating circumstance that the accused is the father of the victim and R.A. 7610[.]^[8]

On July 31, 2006, the RTC issued an Order^[9] confirming Caoili 's detention at the Municipal Station of the Bureau of Jail Management and Penology after his arrest^[10] on October 25, 2005.

Upon arraignment on September 15, 2006,^[11] Caoili pleaded not guilty to the crime charged. After the pre-trial, trial on the merits ensued.

The victim, AAA, testified that on October 23, 2005, at 7:00p.m., her father, Caoili, sexually molested her at their house located in Barangay JJJ, Municipality of KKK, in the Province of LLL. Caoili kissed her lips, touched and mashed her breast, inserted the fourth finger of his left hand into her vagina, and made a push and pull movement into her vagina with such finger for 30 minutes. AAA felt excruciating pain during and after the ordeal. Against her father's harsh warning not to go out of the house, AAA proceeded to the house of her uncle, BBB, located 20 meters away from their house. When he learned of this, Caoili fetched AAA and dragged her home. He beat and hit her with a piece of wood, and boxed her on the stomach.^[12]

On October 26, 2005, AAA disclosed to Emelia Loayon (Loayon), the guidance counselor at AAA's school, the sexual molestation and physical violence committed against her by her own father. Loayon accompanied AAA to the police station to report the sexual and physical abuse. AAA also executed a sworn statement^[13] regarding the incident before the Municipal Mayor.^[14]

AAA underwent a medical examination conducted by Dr. Ramie Hipe (Dr. Hipe) at the [KKK] Medicare Community Hospital. Dr. Hipe issued a medical certificate dated October 26, 2005 showing that AAA had suffered:^[15]

xxxx

1. Contusion, 5 inches in width, distal 3rd, lateral aspect, left Thigh.
2. Contusion, 2 cms in width, distal 3rd, lateral aspect, left Forearm
3. (+) tenderness, left parietal area, head
4. (+)tenderness, over the upper periumbilical area of abdomen
5. tenderness, over the hypogastric area

xxxx

Genital Examination

xxxx

Hymen

- fimbriated in shape
- with laceration on the following:
 - complete laceration - 12 o'clock position
 - partial laceration - 3 o'clock position
 - complete laceration - 6 o'clock position
 - partial laceration - 8 o'clock position
 - complete laceration - 9 o'clock position
 - partial laceration - 11 o'clock position^[16]

Dr. Hipe referred AAA to a Medical Specialist, Dr. Lucila Clerino (Dr. Clerino), for further Medico-Legal examination and vaginal smear. Dr. Clerino issued a

Supplementary Medical Certificate dated October 28, 2005, indicating that AAA's hymenal area had lacerations complete at 6 o'clock and 9 o'clock superficial laceration at 12 o'clock.^[17]

AAA sought the assistance of the Department of Social Welfare and Development which facilitated her admission to a rehabilitation center run by the Missionary Sisters of Mary.^[18]

For his defense, Caoili denied molesting AAA. He alleged that on October 23, 2005, at about 7:00p.m., he saw AAA with her boyfriend at the cassava plantation. He recognized AAA by the fragrance of her perfume and by the outline of her ponytail. He even greeted them "good evening" but they did not respond. He then went home. When AAA arrived at their house, he confronted her and the latter admitted that she was with her boyfriend "*Dodong*" earlier that evening. He was so angry so he struck AAA's right thigh with a piece of wood and pushed the same piece of wood on her forehead. When AAA cried out in pain, he became remorseful and asked for forgiveness, but AAA kept mum. After they had supper, Caoili and his son slept in one room; while AAA and her siblings slept in another room.^[19]

The RTC's Ruling

On June 17, 2008, the RTC rendered its Decision^[20] declaring Caoili guilty of rape by sexual assault. The dispositive portion of the Decision reads:

WHEREFORE, finding the accused NOEL GO CAOILI alias "Boy Tagalog" guilty beyond reasonable doubt, as principal, of the crime of rape, defined and penalized in paragraph 2 of Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, and after considering the aggravating circumstance of being the parent of the complainant, who was fourteen (14) years, one (1) month and ten (10) days old at the time of the incident in question, there being no mitigating circumstance to off-set the same, this Court hereby sentences the said accused to suffer imprisonment for an indefinite period of TEN (10) YEARS and ONE (1) DAY of *Prision Mayor* in its maximum period, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Reclusion Temporal* in its maximum period, as maximum, and to pay the costs. Four-fifths (4/5) of the preventive detention of said accused shall be credited to his favor.

The same accused is hereby ordered to pay complainant [AAA] an indemnity *ex delicto* of P50,000.00; moral damages of P50,000.00; and exemplary damages of another P50,000.00.

SO ORDERED.^[21]

On September 29, 2008, pursuant to a Commitment Order^[22] issued by the RTC on August 27, 2008, provincial jail guards escorted Caoili for his confinement at the Davao Prisons and Penal Farm, Panabo, Davao del Norte (Davao Penal Colony).^[23]

Thereafter, Caoili filed his appeal before the CA.

The CA's Ruling

On July 22, 2010, the CA rendered the assailed Decision,^[24] the dispositive portion of which reads, thus:

FOR THESE REASONS, the appealed Decision of Branch 30 of the Regional Trial Court of Surigao City, in Criminal Case Nos. 7363, is SET ASIDE. Let this case be as it is **IMMEDIATELY REMANDED** to the trial court for further proceedings consistent with this opinion. *Costs de officio*.

SO ORDERED.^[25]

The CA held that although Caoili is clearly guilty of rape by sexual assault, what the trial court should have done was to direct the State Prosecutor to file a new Information charging the proper offense, and after compliance therewith, to dismiss the original Information. The appellate court found it "imperative and morally upright" to set the judgment aside and to remand the case for further proceedings pursuant to Section 14, Rule 110,^[26] in relation to Section 19, Rule 119^[27] of the Rules of Court.

Thereafter, Caoili and the Office of the Solicitor General (OSG) filed their respective petitions for review before this Court: G.R. No. 196342 was instituted by the OSG and G.R. No. 196848 was filed by Caoili. These petitions were ordered consolidated by the Court in its Resolution^[28] dated on August 1, 2011.

In G.R. No. 196342, the OSG assails the CA's Decision for not being in accord with the law and established jurisprudence. Their petition was anchored on the following grounds:^[29]

I.

[CAOILI] WAS CONVICTED OF A CRIME NECESSARILY INCLUDED IN THE OFFENSE CHARGED IN THE INFORMATION AND EMBRACED WITHIN THE SAME ARTICLE OF [R.A. NO.] 8353.

II.

[CAOILI'S] CONSTITUTIONAL RIGHT TO BE INFORMED OF THE CHARGE AGAINST HIM WAS NOT VIOLATED SINCE HE ACTIVELY PARTICIPATED DURING THE TRIAL PROCEEDINGS AND NEVER QUESTIONED THE PRESENTATION OF EVIDENCE SHOWING THAT THE CRIME COMMITTED WAS SEXUAL ASSAULT AND NOT SIMPLE RAPE.

III.

THE HONORABLE [CA] HAS ALREADY AFFIRMED THE CONVICTION OF [CAOILI] FOR THE CRIME OF RAPE BY SEXUAL ASSAULT.

IV.

THE LAST PARAGRAPH OF SECTION 14, RULE 110 OF THE RULES OF COURT, IN RELATION TO SECTION 19, RULE 119, OF THE SAME RULES, IS NOT APPLICABLE IN THE INSTANT CASE.

In G.R. No. 196848, Caoili raises the following issues^[30] for our consideration:

I.

WHETHER RAPE BY SEXUAL ASSAULT IS NECESSARILY INCLUDED IN RAPE BY SEXUAL INTERCOURSE;

II.

WHETHER THE CASE MAY BE REMANDED TO THE COURT A *QUO* FOR FURTHER PROCEEDINGS PURSUANT TO SECTION 14, RULE 110 AND SEC. 19, RULE 119 OF THE RULES OF COURT;

III.

WHETHER THE PROSECUTION HAS SUFFICIENTLY ESTABLISHED BEYOND REASONABLE DOUBT THE GUILT OF [CAOILI] ON [sic] THE CRIME CHARGED IN THE INFORMATION;

IV.

WHETHER THE DECISION OF THE HONORABLE [CA] ACQUITTED [CAOILI.]

The Court's Ruling

The petitions lack merit.

The prosecution has established rape by sexual assault.

R.A. No. 8353 or the "Anti-Rape Law of 1997" amended Article 335, the provision on rape in the RPC, reclassifying rape as a crime against persons and introducing rape by "sexual assault," as differentiated from rape through "carnal knowledge" or rape through "sexual intercourse."^[31] Incorporated into the RPC by R.A. No. 8353, Article 266-A reads:

Article 266-A. Rape, When and How Committed. Rape is committed -

1) By a man who shall have **carnal knowledge** of a woman under any of the following circumstances:

- (a) Through force, threat or intimidation;
- (b) When the offended party is deprived of reason or is otherwise unconscious;
- (c) By means of fraudulent machination or grave abuse of authority; [and]
- (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present[.]

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of **sexual assault** by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.^[32] (Emphasis ours)