

EN BANC

[G. R. Nos. 146097-98, August 26, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUAN CARIÑAGA,
APPELLANT.**

DECISION

PER CURIAM:

Before us on automatic review is the Consolidated Decision^[1] dated 14 September 2000 of the Regional Trial Court of Ligao, Albay, Branch 13, 5th Judicial Region ("trial court"), in Criminal Case Nos. 3836 and 3837. The trial court found appellant Juan Cariñaga ("appellant") guilty of two counts of qualified rape and sentenced him to suffer the death penalty for each count, and to pay damages to his daughter, AAA ("AAA").

In Criminal Case No. 3836, the Information charged appellant with the crime of rape as follows:

That on November 23, 1998 at around 5:00 in the morning, more or less, at Barangay [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, 12 years of age, which act was committed in full view of the latter's sister, 9 years old, [REDACTED], all against the will and consent of said AAA, and to her damage and prejudice.

ACTS CONTRARY TO LAW.^[2]

In Criminal Case No. 3837, the Information likewise charged appellant with the crime of rape as follows:

That on December 15, 1998 at around 5:00 in the afternoon, more or less, at Barangay [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, 12 years of age, against her will and consent, and to her damage and prejudice.

ACTS CONTRARY TO LAW.^[3]

When arraigned for both counts on 17 August 1999, appellant, with the assistance of his counsel, pleaded not guilty.^[4]

The prosecution and the defense admitted the following in the joint pre-trial:

1. Identity of the accused in both cases is admitted;
2. That accused Juan Cariñaga is the legal husband of [REDACTED]; [5]
3. That the accused Juan Cariñaga is the legitimate father of the victim, AAA;
4. That AAA, the victim[,], was born on November 23, 1987 as appearing in the birth certificate. [6]

Thereafter, trial commenced. The prosecution presented four witnesses: (1) the victim AAA; (2) AAA's younger sister and appellant's daughter, [REDACTED]; (3) AAA's mother and appellant's wife, [REDACTED]; and (4) Dr. Lea Remonte, municipal health officer of Ligao, Albay, who conducted the medical examination on AAA.

In its Consolidated Decision, the trial court summarized the prosecution's version of the incident as follows:

AAA, 12 years old, a Grade VI pupil and a resident of [REDACTED], testified she was born on November 23, 1987. Her father is Juan Cariñaga, the accused, and her mother is [REDACTED]. They are five (5) in the family. She is the eldest, next is [REDACTED], then [REDACTED], [REDACTED], and [REDACTED], the youngest. On November 23, 1998 at about 4:00 o'clock in the morning, her mother and father left for the Poblacion of Ligao, Albay to go to the market. After her parents left, she slept again. While she was already sleeping at about 5:00 o'clock her father came back and opened the main door. Their house has no room and at that time she was sleeping on one side of the house. After opening the door, her father put out the fluorescent lamp and pulled down her shorts and panty. Her father also removed his shorts and his brief[s] then laid on top of her. He opened her thighs and applied saliva on her vagina. He attempted to insert his penis inside her vagina but was able to put only the half of it inside. When her father tried to insert his penis she felt pain and pushed him away. Later she felt something slimy and noticed sticky substance on her thighs and vagina. Her father then removed his shirt and wiped her vagina with it and told her not to tell her mother or he will kill them all. After that her father left. Her mother returned home that day but she did not tell her or anybody of what happened because of fear.

On December 15, 1998 at about 5:00 o'clock in the afternoon she was outside their house playing with [REDACTED] together with her other siblings. The nearest house to their house is about 9 to 10 meters [away]. Then her father who was inside their house called her. She and her youngest sister who was then 2 years old went inside the house leaving the others behind outside. Her youngest sister was already walking then. Inside the house her father told her to lie down but she told him she will move her

bowel but her father did not let her go. Then her father removed her shorts and panty and he also removed his shorts and brief[s] and then laid on top of her. Again he tried to insert his penis inside her vagina but half of his penis entered. After inserting his penis his [sic] father tried to press it down while his body was moving up and down. Her father remained on top for sometime. After that her father used his white shirt and wiped her vagina. At that time her mother was in the Poblacion of Ligao, selling vegetables in the market stall. Her mother that December 15, 1998 [sic], arrived already in the evening but she did not tell her again what happened to her. Her sister, [REDACTED], told her mother, that she was raped. And when her mother asked her if she was raped she answered she was. Then her mother brought her to the Poblacion at the Police Station to report the incident. When both incidents happened she was in Grade Five.

On cross-examination, AAA describing their sleeping arrangement in their house testified that on her right was the wall and [to] her left was [REDACTED], next, to [REDACTED] was [REDACTED], [REDACTED], [REDACTED] and next to [REDACTED] was her mother. All sleep on the floor. When her father came back her father slept near [REDACTED] and when she woke up her father was still sleeping beside [REDACTED]. After waking up at 5:30 she cooked then their youngest brother also woke up. She admitted she had a peaceful sleep.

Cross-examined on the December 15, 1998 incident AAA testified that in the afternoon at about 5:00 o'clock she was at their neighbor's place playing with Roda. Roda is 13 years old and is the daughter of her mother's brother. Noise in their house can be heard at Roda's parents' house and at that time Roda's parents were in their house. She went home with [REDACTED] at 4:00 p.m. and her father was in the house sleeping. Inside the house she cooked and after she was finished cooking her father called her. Her other brother and sister were still outside then. After she went near her father, the latter told her to get inside the place they are sleeping and as told she went inside. Their house has a bedroom and a sala. Inside the bedroom her father told her to remove her shorts. She did not remove her shorts because she expected something again to happen. So, her father held her hand and pulled her. She did not shout because her siblings were outside and her father threatened her. Her brothers and sisters came home later and by 6:00 o'clock in the evening together with their father they ate their supper. Her mother arrived home at about 7:00 o'clock in the evening.

Giving a clearer account on redirect of the November 23, 1998 incident, AAA declared her father was to accompany her mother only up to her Aunt's (mother's sister) store which is far from their house. Her mother was the one to proceed to the market. When her father arrived she did not cook yet because it was still dark. What her father did upon arrival and entering the house was to put off the light and then moved her sibling next to her then removed her shorts and panty and laid on top of her. And then while on top [he] applied saliva on the vagina.

She can remember well what her father did on November 23, 1998 because that was her birthday. That time [REDACTED] was about 9 years old

and [REDACTED] was 5 years old. She did not shout because her sister was asleep. She cried when her father raped her but she was not able to cry out loud.

[REDACTED], 10 years old and Grade III pupil when she took the witness stand testified that the accused is her father. On November 23, 1998 at about 5:00 o'clock in the morning she was in their house at [REDACTED] cooking. Her Papa undressed and removed the shorts and panty of her Ate then parted her knees and laid on top of her. Her father held his penis and inserted it to her Ate's vagina. At that time their mother was in Oas, Albay selling. When she returned she told her mother what her father did and her mother cried.

On cross-examination, [REDACTED] said she was in the kitchen cooking rice when her sister was raped by their father. Their bedroom to their kitchen is near. Ate pushed her father but did not shout. She ([REDACTED]) also did not shout for help. Her mother came home about 5:00 in the afternoon while her father was gathering gourds. She reported to her mother that same day. After learning about it her mother went to the doctor. She did not confront her father about it. There are five (5) siblings in their family, three (3) girls and two (2) boys. The eldest is her ate. And in their house there is only one (1) room where all in the family sleep. [REDACTED] declared she can recall that her Ate was raped by their father three (3) times. The second time she cannot recall but it was noon time. The third time she remembers was on December 15, 1998 at 4:00 o'clock in the afternoon. The second and third time her Ate was raped her siblings were with their grandmother.

[REDACTED], 32, married, housewife[,] of [REDACTED], testified she and the accused Juan Cariñaga are legally married (Exh. "A"). AAA, the eldest in the family is their daughter (Exh. "B"). Her daughter [REDACTED] told her on a Friday, January 22, 1999 that her husband raped AAA. [REDACTED] was crying when she told her about it. When she learned about it she felt she lost all her senses and [became] confused. The next thing she did was to dress AAA and brought her to Dr. Prelligera. The latter, however, suggested to bring AAA to the Municipal Health Office. Following Prelligera's advice she brought AAA to the Municipal Health Office where she was examined and after her examination she went to the police where she executed an affidavit and complaint.

On cross-examination, [REDACTED] admitted that prior to November 23, 1998 she and her husband had already a misunderstanding because the latter made "passes" at her sister [REDACTED].

DR. LEA REMONTE, Municipal Health Officer of Ligao, Albay testified that as a member of the municipality's Child Crises Management Unit which takes care of victims of rape and battered housewife, the PNP and DSWD made a request for her to conduct an examination on AAA. The latter was brought to her by the DSWD accompanied by the mother and an aunt. She found out during that examination that the offender was the patient's father, Juan Cariñaga. Her medical findings are contained in the

medical certificate she issued (Exh. "C") to wit:

"External Examination:

- Breast: flat, not yet developed, no signs of abrasions nor hematoma noted
- Abdomen: flat, soft, no organomegaly, no signs of abrasion nor hematomas noted.
- Genitalia: Normal external genitalia, nulliparous introitus, absence of pubic hair over mons pubis

"Internal Examination:

- labia minora slightly protruding beyond labia majora
- prominent clitoris noted
- hymen not intact
- absence of lacerations noted
- vagina admits small finger with ease and one half of the length of the forefinger
- no discharge nor blood upon withdrawal of the examining fingers"

Explaining what could cause the conditions she noted on internal examination of the genitalia, Dr. Remonte mentioned several factors, namely, external manipulation or excessive physical exertion such as running or jumping, or falling on a hard object[,] and sexual intercourse.

[7]

The defense's sole witness was appellant Juan Cariñaga.

The Public Attorney summarized the defense's version as follows:

Accused **Juan Cariñaga** branded the charges that he raped her [sic] daughter AAA on November 23, 1998 and December 15, 1998 as pure fabrications. On November 23, 1998, he woke up early, around 3:00 to 4:00 o'clock in the morning, to accompany his wife to Centro, Poblacion, Ligao, Albay. On his way home, he fetched water for use at the house, then proceeded to tend to the plants. He went home only at around 11:00 in the morning.

On December 15, he was at Pandan, Ligao, Albay, together with his daughter AAA, at the invitation of his "compadre," the godfather of' AAA, Boy Gacad. They proceeded to the place after lunch and only returned home at past 8:00 o'clock p.m.

The accused surmised that the baseless fabrications may have been brought about by his wife's desire to get rid of him. Accordingly, [REDACTED] is having an affair with one Ariel Modestano and the two (2) were [sic] now living together at their residence.

The accused likewise branded the testimonies of his daughter[s], AAA and [REDACTED], as tutored, they being instructed of what to say or declare in court.[8]