

## EN BANC

[ G. R. Nos. 120625-29, January 28, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CARLITO MARAHAY Y MORACA, ACCUSED-APPELLANT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

For automatic review is the Joint Decision of the Regional Trial Court (RTC), Branch 19, Catarman, Northern Samar, in Criminal Cases Nos. 1964, 1965, 1967, 1968, and 1969 convicting Carlito Marahay y Moraca, accused-appellant, of five counts of rape and sentencing him to suffer death for each count, and to pay each of the victims, AAA and BBB, the amounts of P50,000.00 as moral damages and P30,000.00 as exemplary damages, in each case.

Initially, on November 24, 1994, Provincial Prosecutor Romeo M. Resuello of Catarman, Northern Samar, filed with the RTC two Informations charging accused-appellant with rape, thus:

Criminal Case No. 1964

"That on or about the 24<sup>th</sup> day of August, 1994, at 7:00 o'clock in the evening more or less in Sitio [REDACTED], Brgy. [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and with force, intimidation and threats to kill, did then and there, willfully, unlawfully and feloniously embrace, kiss and finger AAA, a 12-year old girl and own daughter of accused, after which said accused succeeded in having sexual intercourse with his daughter AAA against her will and consent.

"CONTRARY TO LAW."<sup>[1]</sup>

Criminal Case No. 1965

"That on or about the 25<sup>th</sup> day of August, 1994, at 7:00 o'clock in the evening more or less, in Sitio [REDACTED], Brgy. [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and with force, intimidation and threats to kill, did then and there, willfully, unlawfully and feloniously embrace, kiss and hold the private parts of BBB, a 14- year old girl and own daughter of accused, after which said accused succeeded twice in having sexual intercourse with his daughter BBB, against her will and consent.

"CONTRARY TO LAW."<sup>[2]</sup>

Subsequently, or on November 29, 1994, [REDACTED], mother of AAA and BBB, filed with the same court three amended complaints, charging accused-appellant with an additional three counts of rape which read:

Criminal Case No. 1967

"That on or about the 26<sup>th</sup> day of August, 1994, at more or less 3:00 o'clock in the morning at Sitio [REDACTED], Brgy. [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously with force and intimidation, succeeded in having sexual intercourse with his daughter BBB against her will and consent.

"CONTRARY TO LAW."<sup>[3]</sup>

Criminal Case No. 1968

"That on or about the 24<sup>th</sup> day of August, 1994, at more or less 7:00 o'clock in the evening at Sitio [REDACTED], Brgy. [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously, with force and intimidation, succeeded in having sexual intercourse with his daughter BBB against her will and consent.

"CONTRARY TO LAW."<sup>[4]</sup>

Criminal Case No. 1969

"That on or about the 25<sup>th</sup> day of August, 1994, at more or less 3:00 o'clock in the morning at Sitio [REDACTED], Brgy. [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously with force and intimidation, succeeded in having sexual intercourse with his daughter BBB against the will and consent of the latter.

"CONTRARY TO LAW."<sup>[5]</sup>

When arraigned on December 2, 1994, accused-appellant Carlito Marahay pleaded not guilty to all five charges of rape.<sup>[6]</sup>

During the pre-trial, the prosecution and the defense stipulated that accused-appellant and complainant [REDACTED] are legally married and that BBB and AAA are their legitimate children.<sup>[7]</sup> Thereafter, joint trial of the cases ensued.

The Solicitor General, in the appellee's brief, summarized the theory of the prosecution as follows:

"This is a case of rape by the father of his fourteen-year old and twelve-year old daughters.

"BBB is a fourteen-year old girl and a high school freshman while AAA is aged twelve and a fourth-grader. BBB and AAA are the eldest and second eldest, respectively, of six (6) siblings. They have three (3) sisters aged ten, eight, and four and a six-year old brother. Their parents are [REDACTED] and Carlito Marahay, the latter being the appellant himself. BBB and AAA live with their family in a house in Barangay [REDACTED], Municipality of [REDACTED], Province of [REDACTED] (TSN, December 5, 1994, pp. 2 and 11; December 6, 1994, pp. 8-9)

"On August 24, 1994, BBB and AAA accompanied appellant to their farm in Sitio [REDACTED] where they were to make copra (TSN, December 6, 1994, pp. 7-9). At the farm, they had supper at 6:30 in the evening and went to sleep at 7:00 o'clock. They lay on the floor with the appellant between BBB and AAA (TSN, December 5, 1994, p. 12). BBB awoke to find the appellant pinching her. He placed himself on top of BBB, then kissed and embraced her while removing her shorts and panty (*Ibid.*, pp. 12-13). Appellant then exposed his penis from his brief and inserted it into BBB's organ causing her to suffer intense pain. He continued in that position until he ejaculated on the mat (*Ibid.*, pp. 13-15). He again placed his organ against her vagina but BBB started to kick appellant while crying at the same time. AAA saw what was happening and cried (*Ibid.*, p. 15). Appellant turned and placed himself on top of her. He disrobed AAA in the same manner as he did with BBB but could only penetrate her slightly as AAA kept on crying (TSN, December 6, 1994, pp. 5-6). So he inserted his pointing finger in her organ and made a push and pull movement with it (*Ibid.*, pp. 6-7). He again placed his organ inside her vagina but then pulled it out as she jerked backward in pain and cried (*Ibid.*, pp. 7-8). All this time appellant was pinning her arms against the floor and threatening to kill her (*Ibid.*, p. 8). Nearby, BBB just lay and cried. She could not sleep right away because of what happened (TSN, December 5, 1994, p. 16). At about 3:00 o'clock of the following morning, BBB was again sexually assaulted by appellant (*Ibid.*, p. 19). Again that evening, appellant had sexual intercourse twice with BBB (*Ibid.*, pp. 19-20). Scared that they would be killed by appellant, the girls kept to themselves the ordeal they suffered (*Ibid.*, p. 20). Meanwhile, appellant continued molesting BBB everytime he saw her alone in the kitchen by touching and fondling her breast. Because of this, BBB informed her mother [REDACTED] of what appellant did to them at the farm (*Ibid.*, p. 21).

"When AAA was examined by the municipal health officer of San Roque, Northern Samar in the person of Dr. Warren Octadoy, she was described as having a healed laceration of the hymen located at the eleven o'clock position which may be due to sexual intercourse, among other causes (TSN, December 5, 1994, pp. 2-6). In the case of BBB, there were noted healed hymenal lacerations located at the four, six and eight o'clock positions consistent with the insertion of a penis, according to Dr. Lydia Quilatan, acting assistant provincial health officer of the Northern Samar Provincial Hospital (TSN, Decmebr 6, 1994, pp. 10-14)."<sup>[8]</sup>

The defense presented accused-appellant as its sole witness. He testified that his wife [REDACTED] fabricated the rape charges against him. She constantly reproached him for not being rich and for her inability to continue working, being married to him. Their marriage is characteristically unstable due to her habitual drinking and her jealous fits. In 1982, they separated. In 1992, she reconciled with him so that he would continue to support their children. They all reside in Barangay [REDACTED] [REDACTED].<sup>[9]</sup>

On August 24, 1994, accused-appellant asked his wife to accompany him to Sitio [REDACTED] to harvest copra. She refused, suggesting that he bring his daughters instead. Hence, BBB and AAA went with him to Sitio [REDACTED] and stayed at a farmhouse for the night. While they were lying down, his daughter, BBB, informed him that his wife has a paramour. Suddenly, he felt that his "mind became confused" and "the devil possessed him." He claimed he "forgot all around him" and then he sexually assaulted her. BBB said nothing and did not resist him. Accused-appellant further claimed that when they had sexual intercourse that night, "the devil possessed both of them." The next day, or on August 25, 1994, they returned to their house in Barangay [REDACTED].<sup>[10]</sup>

Accused-appellant denied having any sexual contact with BBB anytime thereafter since he was bothered by his conscience. He asserted that the three additional indictments of rape allegedly committed by him against BBB were filed by his wife in order to fortify the case against him.<sup>[11]</sup>

He also denied touching or raping his other daughter, AAA, and reiterated that such charge was concocted by his wife.<sup>[12]</sup>

On January 11, 1995, the trial court rendered its Joint Decision,<sup>[13]</sup> the dispositive portion of which reads:

"WHEREFORE, the Court finds Carlito Marahay y Moraca GUILTY beyond reasonable doubt of the crimes of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 as indicated in the specifications and is hereby sentenced as follows:

"In Criminal Case No. C-1964, to suffer the extreme penalty of death and indemnify AAA by way of moral and exemplary damages in the amount of P50,000.00 and P30,000.00, respectively;

"In each Criminal Cases Nos. C-1965, C-1967, C-1968 and C-1969, to suffer the extreme penalty of death and to indemnify BBB in the amounts of P50,000.00 and P30,000.00 as moral and exemplary damages, respectively.

"The accused shall also pay the costs hereof.

"SO ORDERED."<sup>[14]</sup>

Accused-appellant, in his brief, ascribes to the trial court the following errors:

"...IN CONVICTING THE ACCUSED FOR RAPE IN CRIMINAL CASE NO. 1964 EVEN IF THE EVIDENCE RELATES TO ANOTHER CRIME.

"...IN CONVICTING THE ACCUSED IN CRIMINAL CASES NOS. 1965, 1967 AND 1969 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

"...IN CONVICTING THE ACCUSED IN CRIM. CASE NO. 1968 DESPITE THE ABSENCE OF THE ELEMENTS OF THE CRIME.

"...IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF BBB AND AAA DESPITE A SHOWING THAT THEY WERE COACHED OR INFLUENCED WITNESSES."<sup>[15]</sup>

Article 335 of the Revised Penal Code, as amended, defines the crime of rape, as follows:

"Article 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;  
and
3. When the woman is under twelve years of age or is demented."

In determining the guilt or innocence of the accused in rape cases, this Court is guided by three principles: (a) an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand and fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[16]</sup>

To recall, Criminal Cases Nos. 1965, 1967, 1968 and 1969 refer to four charges of rape committed by accused-appellant against his daughter, BBB. The other criminal case (Criminal Case No. 1964) involves accused-appellant's sexual assault on his other daughter, AAA.

With regard to Criminal Case No. 1968, alleged to be the first rape committed by accused-appellant on August 24, 1994, BBB testified as follows:

"Q: That evening of August 24, 1994, can you tell us of any unusual incident that happened, if any?

A: I noticed that my Papa was pinching me, and then he went on top of me.

(Court)

Q: Where were you being pinched by your father?

A: On my arm and on my body.