

EN BANC

[G.R. No. 129289, July 29, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE CARULLO Y SARMIENTA, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

Accused-appellant Jose Carullo was charged with two counts of rape in Criminal Case Nos. 3532 and 3533 before the Regional Trial Court, Branch 13,^[1] of Ligao, Albay under separate informations which read as follows:

I. In Criminal Case No. 3532 - Rape

"That on or about 8:00 o'clock in the evening of October 20, 1996, at Barangay Kinale, Municipality of Polangui, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with lewd design, and with grave abuse of his parental authority, did then and there wilfully, unlawfully and feloniously had sexual intercourse with his daughter, Emily A. Carullo, a 17 year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW."^[2]

II. In Criminal Case No. 3533 - Rape

"That on or about 2:00 o'clock in the early morning of October 21, 1996, at Barangay Kinale, Municipality of Polangui, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with lewd design, and with grave abuse of his parental authority, did then and there wilfully, unlawfully and feloniously had sexual intercourse with his daughter, Emily A. Carullo, a 17 year old girl against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW."^[3]

When arraigned, appellant entered a plea of not guilty to both charges. Thereafter, by order of the court dated January 29, 1997, upon joint manifestation of the prosecution and the defense, the two criminal cases were consolidated and tried jointly.

The evidence for the prosecution which led to appellant's conviction are as follows:

Jon-jon Carullo, the son of appellant and brother of private complainant Emily

Carullo, testified that on or about eight o'clock in the evening of October 20, 1996, he was watching television at his cousin's house which is approximately 20 meters away from their house in Barangay Kinale. At around 8:30 p.m., Jon-jon headed for home to rest but before he could knock at the door, he heard his sister crying and his father angrily shouting at her to stop crying so that she will not be hurt and to submit herself to him. He also heard the sound of a bolo being unsheathed from its scabbard while his father was threatening Emily. Upon hearing such menacing remarks, he left and met his cousin Rodolfo Carullo on the road . Both of them proceeded to the house of former barangay captain Santiago Creolo to report what Jon-jon overheard. Creolo, however advised them to talk to Kagawad Domingo Remolacio who, unfortunately, was drunk at the time. Forthwith, Jon-jon and Rodolfo proceeded to Centro Kinale and had the incident recorded in the blotter. With nowhere else to go, Jon-jon spent the night at his Aunt Miling's house.

The next day, at around 7:00 o'clock in the morning, Jon-jon waited for his sister Emily to pass by her way to school. Upon meeting her, he asked what their father did to her the night before but Emily did not answer and simply cried. Together they went to the house of Santiago Creolo and the latter accompanied them to the Polangui police station where the complaints against the appellant were filed.

Illuminada Arbo Carullo, the mother of private complainant and the common law wife of the appellant, testified that she started cohabiting with the appellant in 1975 and they begot two children, Emily and Jon-jon. At the inception of their purported marital relations, they resided in Manila and went home to Kinale, Albay only in April 1996.

Private complainant Emily Carullo, 17 years old at the time of the alleged rape, narrated that appellant ravished her on two occasions, the first at around 8:00 o'clock in the evening of October 20, 1996 and later, at about 2:00 o'clock in the morning of October 21, 1996. Emily testified that on October 20, 1996, there was a get-together at their house to commemorate the death anniversary of her paternal grandmother. After prayers were offered, snacks were served. According to Emily, the gathering lasted until 5:00 o'clock p.m. but a few of the guests stayed a little longer as her father engaged them in a drinking spree. By 7:00 o'clock p.m., all the visitors had already left, so Emily went to her room to sleep. As she was dozing off, she was startled when someone beamed a flashlight to her face. She asked who that person was and she recognized her father's voice when he replied, "I". Her father then held her hand saying, "*Intindihin mo ako.*" When she asked why he was asking for her understanding, her father simply said, "*Kailangan mo akong intindihin.*" Thereafter, appellant embraced her and started kissing her on the lips and neck while groping for her breasts. At this point Emily started crying and, to cow her into silence, appellant unsheathed a bolo from its scabbard and poked the same at her neck threatening her that if she did not stop crying she would get hurt. Emily tried to resist her father's advances but was completely overpowered as he was holding her tightly. Appellant thus succeeded in removing her shorts and underwear. Then, while pinning his daughter to the bed, appellant hurriedly removed his pants and underwear, at which point Emily freed herself from his grip and got up from the bed, but just as quickly, appellant grabbed her and pushed her down again where the former finally consummated the carnal act.

As if Emily had not suffered enough, the appellant allegedly sneaked into her room once again at around 2:00 o'clock a.m. and forced himself on her. Emily pleaded

that she be spared this time, but her pleas fell on deaf ears.

The next morning, after she woke up, Emily headed for the house of her aunt, Maria Coderes, and on the way, she met her brother, Jon-jon, who accompanied her to Santiago Creolo. After reporting the incident to the barangay authorities, Emily, together with Jon-jon and Creolo, proceeded to the Polangui police station and filed the rape charges.

Municipal Health Officer of Polangui, Albay, Dr. Arnel Borja, testified in court that on October 21, 1996, he examined the private complainant and his findings revealed that, although there were no signs of external physical injuries on her body, he noted two hymenal lacerations in the complainant's private organ which, he said, could have been caused by the penetration of a male organ.

The defense, on the other hand, presented three witnesses to refute the allegations of rape committed by the accused-appellant:

Alfredo Calpe, 51 years old, a farmer and resident of Balangibang, Polangui, Albay, asserted that, in the afternoon of October 20, 1996, appellant Carullo invited him to the latter's house in Barangay Kinale to commemorate the death anniversary of Carullo's mother. After the prayers and snacks, appellant brought out four bottles of gin and engaged his guests, including Calpe, in a drinking spree to cap the day's affair. At around 8:00 o'clock p.m. and after consuming three of the four bottles of gin, Calpe left even as the appellant and the others set out to finish the last bottle.

Norma Peña, b a niece of the appellant, testified that she was at the appellant's house on October 20, 1996 to commemorate her grandmother's death anniversary. She averred that on said date, Emily arrived late for the family affair, and appellant scolded his daughter for not helping in the preparations. According to Peña, she left the Carulllos' house past 9:00 o'clock in the evening, and by that time, she said, appellant was visibly too drunk to have committed the crimes charged. She likewise controverted Emily's claim that the first rape was committed at around 8:00 o'clock that night as the drinking spree had just started then.

Appellant Jose Carullo, for his part, acknowledged that private complainant and Jon-jon are his children by common-law wife Iluminada Arbo. He testified that before his detention, he lived with Iluminada and Jon-jon in their house in Barangay Kinale while Emily stayed at her aunt's place in Magurang. On direct examination, Carullo denied the accusations against him, saying that at the time the first rape was allegedly committed, there were a few guests still present and the drinking spree in his house was in full swing. In fact, he claimed, he was not able to finish the sixth bottle of gin with his guests because he passed out and fell asleep on a bench where he found himself the following morning.

According to Carullo, he even roused Emily from sleep at around 6:00 o'clock the next morning, urging the latter to prepare breakfast as she had to go to school. After giving his daughter's allowance, he left his house to tend to his farm. Later that day, a policeman and a barangay councilman of Kinale invited him to go with them to the municipal building where he saw Emily conversing with the investigator who, when asked what the problem was, ignored him and instead locked him in a cell. When asked about the probable motive behind his daughter's accusations, appellant replied that Emily is the type of person who wants to get things done

regardless of who gets involved. He likewise theorized that probably, someone is courting his daughter and this person hatched this evil scheme against him.

After due trial, the lower court convicted the appellant in a decision dated March 25, 1997, the decretal portion of which reads:

"WHEREFORE, in view of the foregoing consideration and finding the accused Jose Carullo y Sarmienta guilty beyond reasonable doubt of the crime of rape against his then 17-year old daughter, the Court hereby:

1. In Criminal Case No. 3532 sentences him to suffer the supreme penalty of DEATH; and
2. In Criminal Case No. 3533 sentences him to suffer the supreme penalty of death.

The accused is ordered to indemnify the offended party the amount of P100,000.00 and to pay the costs."^[4]

Hence, this appeal.

After a careful scrutiny of the entire record of the case, and considering the abhorrent nature of the crime of rape which, in this case, is punishable by the supreme penalty of death, we are constrained to affirm the conviction of the trial court.

Appellant maintains that the circumstances surrounding the commission of the crimes charged negate the veracity of the prosecution's claim that his identification as the malefactor was clear, positive and convincing. We do not subscribe to this conclusion. While it is true that the Carullo residence did not have any electricity at the time of the alleged rapes, the fact, however, remains uncontroverted that appellant entered the victim's room with a flashlight in hand, thus illuminating the room which has a floor area of only 4 x 3 meters. The identity of the appellant as the rapist is bolstered by the finding of the trial court that, prior to the sexual assault, the appellant engaged his daughter in a conversation, thus,

"Q-Did you recognize the person who focused that flashlight?

xxx.

A- Yes.

Q- Who?

A- My father.

Q- Why were you able to say that it was your father who was focusing the flashlight on your face?

A- I asked who he was.

Q- Was there ever an answer coming from the person who was focusing the flashlight?

A- Yes.

Q- What was the answer?