

101 Phil. 749

[ G. R. No. L-7295. June 28, 1957 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARINA PADAN Y ALOVA, COSME ESPINOSA, ERNESTO REYES AND JOSE FAJARDO, DEFENDANTS. MARINA PADAN Y ALOVA AND JOSE FAJARDO, DEFENDANTS AND APPELLANTS.**

## **D E C I S I O N**

### **MONTEMAYOR, J.:**

In the Court of First Instance of Manila, Marina Padan, Jose Fajardo y Garcia, Cosme Espinosa, and Ernesto Reyes were charged with a violation of Article 201 of the Revised Penal Code, said to have been committed as follows:

That on or about the 13th day of September, 1953, in the city of Manila, Philippines, the said accused conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously exhibit or cause to be exhibited inside a building at the corner of Camba Ext. and Morga Ext., Tondo, this City, immoral scenes and acts, to wit: the said accused Jose Fajador y Garcia, being then the manager and Ernesto Reyes y Yabut, as ticket collector and or exhibitor, willfully, unlawfully and feloniously hired their co-accused Marina Palan y Alova and Cosme Espinosa y Abordo to act as performers or exhibitionists to perform and in fact performed sexual intercourse in the presence of many spectators, thereby exhibiting or performing highly immoral and indecent acts or shows thereat."

Upon arraignment, all pleaded not guilty. Later, however, Marina Padan, with the assistance of her counsel de parte and counsel de oflcio, asked for permission to Withdraw her former plea of not guilty, which was granted, and upon rearraignment, she pleaded guilty to the charge. In a decision dated October 12, 1953, Marina Padan was found guilty as charged and sentenced to six months and one day of *prision correccional* and a fine of

P200, with subsidiary imprisonment in case of insolvency, not to exceed one-third of the principal penalty, with the accessory penalties prescribed by the law, and to pay the proportionate costs. After trial of the three remaining accused, they were all found guilty; Cosme Espinosa and Ernesto Reyes were sentenced each to not less than six months and one day of *prision correccional* and not more than one year, one month and eleven days of *prision correccional*, to pay a fine of P500, with subsidiary imprisonment in case of insolvency, not to exceed one-third of the principal penalty, and to pay the proportionate costs. Jose Fajardo was sentenced to not less than one year, one month and ten days of *prision correccional* and not more than one year eight months and twenty days, also of *prision correccional*, to pay a fine of P1,000, with subsidiary imprisonment in case of insolvency, not to exceed one-third of the principal penalty and to pay the proportionate costs. The army steel bed, the army woolen blanket, the pillow, the ladies' panties, and the men's underwear, described in Exhibit C, were declared confiscated.

The four accused appealed in the decision, the appeal having been sent to us. Appellants Espinosa and Reyes failed to file their briefs within the period prescribed by law and their appeal was dismissed by resolution of this Court of November 25, 1955, and the decision as to them became final and executory on January 7, 1956, as appears from the entry of judgment.

Because of her plea of guilty in the lower court, appellant Marina in her appeal does not question her conviction; she merely urges the reduction of the penalty by eliminating the prison sentence. We do not feel warranted in interfering with the exercise of discretion in this matter, made by the lower court presided by Judge Magno S. Gatmaitan. According to his decision of October 12, 1953, in imposing the sentence, he already considered Marina's plea of leniency, and so despite the recommendation of the fiscal that she be fined P600.00 in addition to the prison sentence of six months and one day, his honor reduced the fine to only P200.

We believe that the penalty imposed fits the crime, considering its seriousness. As far as we know, this is the first time that the courts in this jurisdiction, at least this Tribunal, have been called upon to take cognizance of an offense against morals and decency of this kind. We have had occasion to consider offenses like the exhibition of still or moving pictures of women in the nude, which we have condemned for obscenity and as offensive to morals. In those cases, one might yet claim that there was involved the element of art; that connoisseurs of the same, and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as

models in tableaux vivants. But an actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art. One can see nothing in it but clear and unmitigated obscenity, indecency, and an offense to public morals, inspiring and causing as it does, nothing but lust and lewdness, and exerting a corrupting influence specially on the youth of the land. We repeat that because of all this, the penalty imposed by the trial court on Marina, despite her plea of guilty, is neither excessive nor unreasonable.

Going to the appeal of Jose Fajardo y Garcia, while he does not deny the fact of the commission of the offense charged, he insists that he was not the manager or the imperson incharge of the show or proceedings on the night of September 13, 1953; that his participation, if he participated at all, was to play the role of an innocent bystander, but that because of his popularity in the neighborhood, being popularly known as a "siga-siga" character, he was requested by the spectators to select the man and the woman to engage or indulge in the actual act of coitus before the spectators; that after making the selection, he did not even care to witness the act but left the scene and returned to it only when he heard a commotion produced by the raid conducted by the police.

The evidence on his active participation and that he was the manager and one in charge of the show is however ample, even conclusive. We have carefully examined such evidence, and we are satisfied that they fully support the findings of the trial court. Such facts may be briefly stated as follows: At the corner of Morga Extension and Camba Extension, Tondo, Manila, was a one story building which judging from the picture exhibited is nothing but a shed, with a floor space of eight by fifteen meters which was mainly used for playing ping-pong. A ping-pong table must have been placed in the center and on two sides were built benches in tiers, so that the spectators seated on them could look down and see the game. On September 13, 1953, however, the building was used for a different purpose. It was to be the scene of what was said to be an exhibition of human "fighting fish", the actual act of coitus or copulation. It must have been advertised by word of mouth; tickets therefor were sold at P3 each, and the show was supposed to begin at 8:00 o'clock in the evening. About that time of the night, there was already a crowd around the building, but the people were not admitted into it until about an hour later, and the show did not begin until about 9:15. The Manila Police Department must have gotten wind of the affair; it bought tickets and provided several of its members who later attended the show, but in plain clothes, and after the show conducted a raid and made arrests. At the trial, said policemen testified as to what actually took place inside the building. About two civilians who attended the affair gave testimony as to what they saw.

The customers not provided with tickets actually paid P3 at the entrance to defendant Ernesto Reyes. He also collected tickets. In all, there were about ninety paying customers, while about sixteen were allowed to enter free, presumably friends of the management. Jose Pajardo y Garcia was clearly the manager of the show. He was at the door to see to it that the customers either were provided with tickets or paid P3.00 entrance fee. He even asked them from whom they had bought the tickets. He ordered that an army steel bed be placed at the center of the floor, covered with an army blanket and provided with a pillow. Once the spectators, about 106 in number, were crowded inside that small building, the show started. Fajardo evidently to arouse more interest among the customers, asked them to select among two girls present who was to be one of the principal actors. By pointing to or holding his hand over the head of each of the two women one after the other, and judging by the shouts of approval emitted by the spectators, he decided that defendant Marina Padan was the subject of popular approval, and he selected her. After her selection, the other woman named Concha, left. Without much ado, Fajardo selected Cosme Espinosa to be Marina's partner. Thereafter, Cosme and Marina proceeded to disrobe while standing around the bed. When completely naked, they turned around to exhibit their bodies to the spectators. Then they indulged in lascivious acts, consisting of petting, kissing, and touching the private parts of each other. When sufficiently aroused, they lay on the bed and proceeded to consummate the act of coitus in three different positions which we deem unnecessary to describe. The four or five witnesses who testified for the Government when asked about their reaction to what they saw, frankly admitted that they were excited beyond description. Then the police who were among the spectators and who were previously provided with a search warrant made the raid, arrested the four defendants herein, and took pictures of Marina and Cosme still naked and of the army bed, which pictures were presented as exhibits during the trial.

From all this, there can be no doubt that Jose Fajardo y Garcia contrary to what he claims, was the person in charge of the show. Besides, as found by the trial court and as shown by some of the tickets collected from the spectators, submitted as exhibits, said tickets while bearing on one side printed matter regarding an excursion to Balara to be held on August 30, 1953, from 7:00 a.m. to 5:00 p.m., sponsored by a certain club, on the other side appears the following typewritten form, reading:

"P3.00 Admit one

PLEASURE SHOW

Place: P. Morga Ext. and Camba Ext.

Time: 8:00 o'clock sharp",

and superimposed on the same is the rubber stamped name "Pepe Fajardo," which defendant Fajardo admits to be his name. Considering all the above circumstances, we agree with the trial court that Jose Fajardo is the most guilty of the four, for he was the one who conducted the show and presumably derived the most profit or gain from the same.

As regards the penalty imposed by the trial court on appellant Fajardo, we agree with the Solicitor General that the same is correct, except the minimum thereof which is beyond the legal range, and which should be reduced from one year, one month, and ten days of *prision correctional* to only six months of *arresto mayor*.

With the modification above-mentioned, the decision appealed from by Marina Padan and Jose Fajardo are hereby affirmed, with costs against both.

*Paras, C. J., Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.*

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Date created: October 13, 2014