

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRED PELIAS JONES, DEFENDANT-APPELLANT.

*G.R. No. 61165. June 24, 1985*

Ponente: GUTIERREZ, JR., J.

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### GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Cebu, 16th Judicial District, convicting Fred Pelias Jones of the crime of rape. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused Fred Pelias Jones guilty beyond reasonable doubt of the crime of RAPE described in the aforequoted information. While considering against the accused the aggravating circumstance of relationship, not offset by any mitigating circumstance, the accused should be, as he is, hereby sentenced to the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; and to pay the costs.

On October 19, 1981, Anita Pelias Jones accused the defendant-appellant, who is her own husband of having raped their 9-year old daughter, Mary Jane Pelias Jones inside their toilet. The criminal complaint alleged that:

That on or about the 4th day of October, 1981, at about 8:00 o'clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have carnal knowledge with one Mary Jane Pelias Jones, his daughter of only 9 years of age, against her will, and as a consequence of which, Mary Jane Pelias Jones suffered the following injuries: MEDICAL EVIDENCE OF SEXUAL INTERCOURSE PRESENT. HYMEN ADMITS A TUBE OF 2.8 CM. WITH THIRD DEGREE LACERATION AT 4:00 O'CLOCK FACING ON THE FACE OF THE WATCH.

The facts established by the prosecution and adopted by the trial court as basis for the judgment of conviction are summarized by the court as follows:

The married couple, Fred Pelias Jones and Anita Origines Pelias Jones, residents of 230-K Gorordo Avenue, Cebu City, have been blessed with two (2) children, all girls, — the first, Mary Jane, 9 years of age, and, the second, Jennifer, 4 or 5 years of age.

According to Anita Pelias Jones, her husband has been a ne'er-do-well, a jobless being dependent mostly on his mother for financial support and moral ascendancy, considering which Anita practically had to scrounge for a living if only to maintain and support her children. She tried working as a salesgirl, but she realized that the job necessitated her presence at work during daytime, precisely in periods when her children would need her loving care and attention. Mary Jane attends school as a Grade III pupil at the Lahug Elementary School. Before she goes to school, someone, and certainly it could not be her father, had to attend to her needs, prepare her for school, feed her, and guide her, if not bring her, to school and fetch her from there. Jennifer could not be left alone in the house. Consequently, Anita Pelias Jones had to take a job at night and she found one as a waitress of the Sahara Beer House.

In the morning of October 8, 1981, Jennifer was in a hurry to get into the toilet perhaps because she had stomach trouble, but her mother was inside. She struck an interesting conversation with her mother occasioned

by her need to defecate after her mother and she related that, in the night of October 4, 1981, her father gave her P0.25 with which to buy "Cheese Curls" so that she will get out of the house. Her father who was in the toilet called for Mary Jane and told the latter to bring him water. Her father pulled Mary Jane to him and closed the toilet.

Adding two and two together, so to speak, Anita felt sure that the accused ravaged his own daughter. She knew her husband's lust only too well. At times when their youngest daughter, Jennifer, would sleep with them, she rebelled with abhorrence the fact that her husband, the accused, would tickle and manipulate lasciviously Jennifer's sexual organ with his hands. Anita called Mary Jane to her and investigated the young girl. Evident was her hesitancy to spill out the truth immediately, because of her fear of her father. She was tinkering with her fingernails when the child blurted out the vile and heinous act of rape perpetrated by her father on her.

"Papa took off my panties, Then, he inserted his hand into my sexual organ. He later replaced this with his penis", the offended party declared to her mother.

Anita brought her daughter forthwith to the Southern Islands Hospital where the child was examined and treated by Dr. Semilla.

The then totally enraged Anita Pelias Jones confronted her husband the moment he showed himself in the house. The accused at first denied the commission of the act and it took him a long time to comment on the matter

At long last, the accused told Anita, his wife, that even if he were guilty as charged by Mary Jane, it would not make any difference. The act will be forgotten. Anyway, when the child comes of age, neither her father nor her mother will own her, because she is bound to get married.

The accused promised Anita that he will set things right when his mother comes from Mindanao by bringing the child to a doctor and have her treated and hospitalized.

After this case was filed against him and, while he was lodged in jail, he sent his wife the following letters: xxx

xxx xxx xxx

The nine-year-old victim who gave her name as Mary Jane Pelias Jones gave evidence in an unaffected and childish manner to the effect that her father, whom she pointed to in open court, to be the accused Fred Jones raped her in the toilet of their house at Gorordo Avenue in the evening of October 4, 1981.

Her father who was then in the toilet defecating had sent her younger sister, Jennifer, outside of the house to buy "Cheese Curls". After her father had thought that Jennifer was already out, he called for Mary Jane to bring water to him so he can wash himself. After he was clean, he pulled Mary Jane to him and kissed her hard. He then took off her panties and inserted his finger into the child's vagina. This the accused replaced with his hard and erect penis. Suffering excruciating pain upon feeling her in vagina injured, the child cried by way of futile protest.

The foul deed accomplished, the accused fled and left his children alone in the house, but not before he threatened his child, Mary Jane, not to reveal the happening to her mother, otherwise he will kill her.

The unsuspecting Anita Pelias Jones arrived home at dawn while her daughters were still sleeping.

Dr. Cesar V. Semilla, the Medical Specialist and Chief, Medico-Legal Officer of the Southern Islands Hospital examined Mary Jane Pelias Jones. The medical certificate dated October 16, 1981 issued by Dr. Semilla contained the following findings:

#### GENERAL FINDINGS

Pelias, Mary Jane, 9 years old, ambulatory breast flat on the stage of development.

Genital Examination — Pubic hair absent with blood clot at the external genitalia, labia majora coaptated, hymen crescentic with third degree laceration at 4:00 o'clock facing in the face of the watch. Hymenal orifice admits a tube of 2.8 cm. with resistance.

Extra genital injury not present. Sperm cell exam. negative.

Conclusions:

1. Medical evidence of sexual intercourse present.

2.

Hymen admits a tube of 2.8 cm. with third degree laceration at 4:00 o'clock facing on the face of the watch.

The defendant-appellant on the other hand denied having raped his own 9-year old daughter. He claims that on the night of October 4, 1981, he could not have raped Mary Jane because he was in the house of his paramour, and that, his wife, Anita Origines only fabricated the crime of rape against him because of their turbulent domestic life. The defense evidence is summarized in the defendant-appellant's brief as follows:

On August 24, 1971, appellant and Anita Origines were married in a civil ceremony before the Mayor of Jimenez, Misamis Oriental and later confirmed in a religious ceremony performed in Pagadian, Zamboanga del Sur, in May, 1972 (TSN-Camomot, pp. 7-8).

Anita had just freshly graduated from her BSEED course when they got married (TSN-Semilla, pp. 5-6). She was then pregnant and Mary Jane (their daughter and offended party) was thereafter born on December 17, 1971 (Exh. F; TSN-Camomot, pp. 7-8). She had to marry him, so-to-speak, in order to save her honor and that of her family.

Their marriage was far from idyllic from the very start because appellant had an illegitimate child by another woman in Anita's hometown and her brothers and sisters vehemently opposed it as they wanted her to continue her studies and then go abroad (TSN-Daclan, p. 7; TSN-Sevilla, p. 6) and worse, appellant had then used the name "Pelias" (the surname of his stepfather) and hid his true name "Jones", the surname of his American father, Fred Jones (TSN-Daclan, p. 7).

The couple thereafter came to Cebu City seeking greener pastures and probably to escape from wagging tongues in their own hometowns. By this time, Mary Jane's younger sister, Jennifer, was already born.

In 1976, the couple lived in a small house at the interior of Gorordo Avenue, Cebu City (TSN-Daclan, p. 11). It was a one-storey affair with bamboo flooring and consisting of two (2) bedrooms, a sala/kitchen, and as an adjunct thereto a toilet measuring one (1) square meter with a hole at the center for defecation measuring 8 inches wide and 1 1/2 feet long (TSN-Bagano, 11/11/81, pp. 13-14). The toilet was the situs of the alleged rape in question.

Before the alleged crime on October 4, 1981, and until appellant's arrest on October 16, 1981, the couple lead a turbulent life and most often the appellant stayed away from the conjugal dwelling (TSN-Bagano, 11/11/81, pp. 8-9). As a matter of fact, appellant only stayed at the house a few hours in the morning and slept elsewhere during nighttime, making Anita very unhappy about it (TSN-Bagano 11/11/81, p. 9; TSN-Daclan, p. 8). On those occasions he was at the house, he always find his wife sleeping in the morning (since she goes home from work at 3:00 a.m.), but he managed to be with the children (TSN-Daclan, p. 8).

The appellant, according to Anita, was incorrigibly a ne'er-do-well-husband, highly irresponsible and a compulsive philanderer who had an insatiable appetite for women. He usually came home during mornings only at around 9:00 or 10:00 o'clock and left afterwards (TSN-Camomot, p. 12; TSN-Bagano, 11/11/81, p. 9).

Adding insult to injury, her husband had the bad habit of mauling her if she provoked him (TSN-Bagano 11/11/81, p. 8). Because her husband seldom gave her money, if ever, she was compelled to work in a beer house as a lowly waitress on an on-and-off basis, from 7:00 p.m. to 3:00 a.m., to support and maintain the family (TSN-Bagano 11/11/81). Whenever she was working, only Mary Jane and Jennifer were left alone and unattended at the house (TSN-Camomot, p. 12).

Thus, it came to pass that two (2) months before the alleged crime, the appellant had acquired a new paramour by the name of Emy Endecir and this came to the knowledge of Anita (TSN-Daclan, p. 5) who was quite angry and disgusted about his having a brand-new inamorata (Ibid., pp. 6-7).

From October 4 to 15, 1981, the appellant came home during mornings to change his clothes, without so much exchanging pleasantries with Anita, and then left shortly afterwards (TSN-Daclan, pp. 8, 11), until he was arrested at home in the morning of October 16, 1981 (TSN-Daclan, p. 7). He stayed nights with his paramour, Emy, at a house in Lapu-Lapu Street, Cebu City (TSN-Daclan, p. 5, 8). No wonder then that Anita loathed, detested and abhorred her husband, more so since she had to scrounge for a living to feed the family while he spent his time, money and affection with another woman. She was, in short, seething with hate and jealousy and it would not be surprising if she wished him dead or worse.

In the morning of October 8, 1981, Anita was washing clothes at their house together with Mary Jane, aged 9 years old, and Jennifer, aged 5 years old (TSN-Camomot, p. 10), the appellant being then absent (TSN-Camomot, p. 8). It just so happened that Jennifer told Anita that previously, on October 4, 1981, she was given P0.25 by her Papa to buy "cheese curls" and that Mary Jane and their Papa were together inside the toilet (Ibid., pp. 9-10). Suspiciously, she summoned Mary Jane who did not say anything at first and who was fidgeting with her fingernails. Grilling her, Mary Jane finally told Anita that her Papa (appellant) had sexual intercourse with her inside the toilet on October 4, 1981 (Ibid., p. 9-11).

As narrated by Mary Jane, it was in the evening of October 4, 1981, when her Papa (the appellant) copulated with her inside the toilet of their house. She was certain of the date because she looked at the calendar afterwards (TSN-Bagano 11/11/81, p. 40). It was the very first time she learned the functions of a male and female sex organs and their differences (Ibid., p. 22).

Her father (appellant) was at the house that night and he was defecating inside the toilet. Thereafter, he called for her to fetch water to wash his anus. She did as she was told by bringing to him water in a can. She had to enter the toilet to hand it over to him. (TSN-Bagano 11/11/81, pp. 18-19, 26, 27). Earlier, he had given P0.25 to Jennifer to buy cheese curls (Ibid., pp. 20, 35).

As mentioned earlier, the toilet space measured one (1) square meter with a hole for personal necessities measuring 8 inches wide and 1 and 1/2 foot long (TSN-Bagano 11/11/81, p. 13). Serving as door to its opening was a piece of lawanit board placed across it as a barrier where one can step over it and affording privacy to the user of the toilet (Ibid., pp. 26-28). There was no bench or anything inside where one could sit down (Ibid., p. 33).

She positively asserted that the inside of the toilet was totally dark at the time (TSN-Bagano 11/11/81, pp. 25, 26, 35), but later on changed her mind by saying it was illuminated (Ibid., p. 32).

At the time, Mary Jane (aged 9) was only 3 ft. and 6 inches tall (3'6") and if standing together with appellant, the top of her head only managed to reach the level of his waistline (TSN-Bagano 11/11/81, pp. 33-34).

After appellant had washed himself and was standing up, he pulled Mary Jane towards him (TSN-Bagano 11/11/81, pp. 19, 37). He took off her panties, told her to wait, and went outside to the sala where he left them and then came back to the toilet (Ibid., pp. 38-39).

The appellant hugged and kissed her, then inserted a finger in her vagina and after which he inserted his penis, which penetrated and injured her vagina (TSN-Bagano 11/11/81, pp. 19, 29, 34, 35, 39).

The alleged intercourse was committed when they were facing each other and both were then in a standing position (TSN-Bagano 11/11/81, pp. 33, 39); however, upon suggestive questioning, she said her buttocks were raised from the floor when it took place (Ibid., p. 39).

When he did these (bad) things to her, she was crying and said "Pa, don't. I will report you to Mama" and then he desisted and let her go (Ibid., p. 19-20). She said her vagina was injured and she felt pain, yet she did not experience any bleeding afterwards (Ibid., pp. 19, 40). She did not tell her mother (Anita) about the incident because her father (appellant) threatened to kill her (Ibid., p. 20).

On the same date, October 8, 1981, Anita at once brought Mary Jane to the Southern Islands Hospital, Cebu City, to be physically examined thereat (TSN-Bagano, 11/11/81, p. 21, TSN -Camomot, pp. 9-10).

Dr. Cesar V. Semilla, a medical specialist and Chief, Medico-Legal Officer, at said hospital physically examined Mary Jane who was then accompanied by Anita. The date he conducted the examination was October 16, 1981 (TSN-Camomot, p. 2; Exh. A),

Upon examination, Dr. Semilla found a blood clot in the external genitalia, an indication of bleeding, and the labia majora was coaptated; there was 3rd degree laceration in the vaginal opening at 4:00 o'clock; he explored the vaginal orifice with a tube having a diameter of 2.8 cms. that went one-half inside but he desisted fearing of lacerating it further; the presence of sperm cell was negative as he was informed the alleged intercourse took place 2 to 3 (or 3 to 4) days before his examination; and that he found no other external injuries (TSN-Camomot, pp. 2 - 5).

The days following the alleged rape incident, particularly on October 5, 6 and 7, 1981, Anita did not notice anything unusual in the behaviour or physical condition of Mary Jane; that as usual, she bathed Mary Jane while entirely naked and in the process applying soap in her entire body and shampooing her hair (TSN-Bagano 11/11/81, pp. 12-13).

Mrs. Virginia V. Mahinay, a Grade III public school teacher at the Lahug Elementary School, Cebu City, declared that one of her pupils was Mary Jane. She testified positively that from October 5 to 16, 1981, excluding Saturday and Sunday, Mary Jane was always present in class except only on October 7, 1981, when Mary Jane was absent and who later told her she was then sick (TSN-Bagano 12/9/81, pp. 3, 4 and 6). She did not notice anything unusual in the behaviour, character and manner of Mary Jane. In fact, she was one of the active participants in the practice rehearsals for the dance scheduled on October 28th, and Mary Jane was observed by her to be talking animatedly and playing games with her classmates during the period in question (Ibid., p. 4).

On October 16, 1981, or after the medical examination, Anita (as mother of Mary Jane) lodged a complaint with the police but her affidavit and that of Mary Jane were subscribed and sworn to before the City Fiscal of Cebu on October 19, 1981, and the criminal complaint (Exh. B) was filed with the trial court on the same date (see record of the case).

On the other hand, the appellant denied vehemently having committed any offense against Mary Jane (TSN-Daclan, p. 6; TSN-Sevilla, p. 9). He learned for a fact of Mary Jane's alleged vaginal injury only when he was already imprisoned (TSN-Sevilla, pp. 4, 12). He stoutly maintained that he came home during mornings only to change clothes and he left thereafter, and this was particularly true from October 4 to 16, 1981 (TSN-Daclan, pp. 8-11), and after work he always went to his paramour and stayed with her for the night (TSN-Daclan, pp. 5-8) and this was particularly true on the night of October 4, 1981, when the incident allegedly took place.

The appellant expostulated that Anita brought the false charges (or rape) against him because two (2) months before October 4, 1981, she learned that he was maintaining a young girl named Emy Endecir as his paramour; upon being angrily confronted by Anita about it, he had promised to give her up; that he never kept his promise

and Anita discovered his deceptions on October 1, 1981; which made her very furious and mad, so much so, she dropped things heavily in anger during these times he happened to be at home (TSN-Daclan, pp. 5-7; TSN-Sevilla, p. 5).

The appellant stoutly maintained that Anita had fabricated or concocted the charge of rape against him and that she had coached Mary Jane the things to say against him (TSN-Daclan, p. 7; TSN-Sevilla, p. 9). He vehemently denied playing with the genitalia of Jennifer as claimed by Anita (TSN-Camomot, p. 11; TSN-Sevilla, p. 9), as he was not an abnormal person (or a pedophile).

He asserted that Mary Jane at first refused to sign her prepared affidavit (Exh. 1) before Fiscal Dadole, and at the time she had insisted "why do you place Papa in prison?" (TSN-Sevilla, p. 11). It took her quite sometime before signing her affidavit (TSN-Bagano 11/11/81, p. 28) and only when she was assured nothing would happen to her Papa.

As to the three (3) letters (Exhs. C, D and E) he wrote Anita when he was already incarcerated, he maintained there was nothing incriminating in them and if he had asked forgiveness from Anita it was because of his transgressions against her (TSN-Sevilla, pp. 11-12). As it were, they were written with pathos about his miserable condition in jail, his yearning for Anita and the children to visit him in jail, and his craving to be brought to him his personal things and "Ban Cream".

From his arrest on October 16, 1981, the appellant remained a detention prisoner up to the present since the crime charged was capital offense.

The defendant-appellant raises the following assignments of errors in his brief:

I

THE TRIAL COURT ERRED IN ACCEPTING WITH PRECIPITATE CREDULITY THE TESTIMONY OF THE OFFENDED PARTY WHEN IT WAS INHERENTLY IMPROBABLE, HOPELESSLY VACILLATING AND RIDDLED WITH OBSCURITY OR, OTHERWISE STATED, WHEN THE EVIDENCE OF THE ALLEGED CRIME OF RAPE WAS NOT CREDIBLE IN ITSELF - SUCH AS THE COMMON EXPERIENCE AND OBSERVATION OF MANKIND CAN APPROVE AS PROBABLE UNDER THE CIRCUMSTANCES.

II

THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT FOR RAPE WHEN HIS GUILT WAS NOT SHOWN BEYOND REASONABLE DOUBT AND UPON MORAL CERTAINTY.

The defendant-appellant argues that his wife, Anita Origines falsely accused him of raping their own daughter. The defendant-appellant submits that their turbulent domestic life coupled with the strong belief of Anita that he was well on his way to deserting her and their children for another woman moved her to fabricate the crime of rape and falsely implicate him.

The defendant-appellant's claim deserves scant consideration. We agree with the observation of the Solicitor General that the aforesaid marital problem is not sufficient to impel Anita to fabricate the rape charge against her own husband knowing fully well that it would certainly bring ignominy, humiliation and dishonor to her daughter.

In *People v. Erardo* (127 SCRA 250), we held that:

xxx It is hard to believe that a mother would sacrifice her own daughter to tell a story of defloration, allow the examination of private parts, and thereafter present her to be the subject of a public trial, if they (mother and daughter) were not motivated by an honest desire to have the culprit, is Emilia's own father, punished.

The defendant-appellant likewise submits that the following improbabilities are clear and positive indicia that the crime of rape never existed or was not committed on the occasion in question:

1. The improbability of the antipolo-type toilet with its confined space, gaping hole and foul-smelling odor as the situs of the crime;
2. The physical impossibility and hence, improbability, of having a successful coitus when (a) appellant and offended party were both standing and facing each other and (b) there was very great disparity in their respective heights;
3. The improbability that offended party did not suffer bleeding during or after the rape considering her claim coitus was forceful and violent; it was likewise incredible there was no extensive hymenal injury considering (a) her very tender age, (b) the violent manner of the sex act and (c) the diameter of appellant's sex organ in full erection;
4. The improbability of offended party looking at the calendar after the rape to determine exact date of occurrence; likewise, her incredible story about appellant's care and concern for her panties immediately preceding the alleged rape;
5. The improbability that offended party's sister, five-year old Jennifer, could recall an incident allegedly happening four days earlier when she did not observe anything unusual about it;
6. The improbability of the hymenal injury still showing signs of bleeding and not showing signs of healing twelve (12) days after coitus;
7. The improbability that Mary Jane had departed herself with aplomb or evident naturalness, and of being able to perform her usually hectic physical activities, the day immediately following the rape incident;
8. Improbability in Mary Jane's story to the effect she had entered the toilet to hand to appellant a can of water.

Relative to the physical impossibility of sexual intercourse considering the disparity in the respective heights of the defendant-appellant and Mary Jane, this was fully explained by the latter when she testified that:

xxx xxx xxx

Q. What was the position of your father when he was committing the act?

A. Standing.

Q. What was your position when your father was committing the act?

A. Standing.

Q. By standing you mean that both your feet were on the floor?

A. Yes.

Q.

Are you telling me that this was the position when sexual intercourse was made? You are sure of that?

A. Yes.

Q. Considering that your father is then very much taller than you, how could the penis of your father be inserted in your vagina in a position in which your mouth would be practically in the level of his waist?

A. He took off his clothes.

Q. Did he raise you from the floor?

A. Yes.

Q.

Alright. While sexual intercourse was being committed, where were your buttocks placed? In his hands?

A. In his hands.

Q. In his hands. So you were raised with both his hands holding your buttocks?

A. Yes.

While it is true that the toilet has a confined space of one (1) square meter with a gaping hole at its center, this does not mean that the crime could not have been committed there. The fact that the sexual act was consummated by the defendant-appellant by raising Mary Jane up to a point where his penis could directly penetrate her vagina, erases all doubts that the crime was committed inside the toilet.

Anent the fact that Mary Jane did not notice any bleeding after the sexual act, we agree with the observation of the Solicitor General that Mary Jane could not have bothered to examine her body immediately after the sexual act. More important is the fact that, Dr. Semilla positively testified that the hymenal laceration was caused by forceful sexual intercourse. He testified that:

Q. Can you inform the court what caused that laceration?

A. Forceful carnal connection.

Q. Caused by a penis or organ of a man?

A. It could be due to carnal connection. In other words, sexual intercourse.

The medical certificate issued by Dr. Semilla categorically shows that there is a third degree laceration of the hymen at 4:00 o'clock and admits a tube of 2.8 cm.

Moreover, we held in *People v. Basas* (130 SCRA 178), that:

The rupturing of the hymen is not indispensable to a conviction of the consummated crime of rape; entry of the labia of the female organ without rupture or laceration is generally held to be sufficient (*Syllabus, People vs. Hernandez*, 49 Phil. 980). There must be proof of some degree of entrance of the male organ within the labia of the pudendum. (*People vs. Rivers*, 147 Mich. 643).

The defendant-appellant next wonders how Jennifer, the five (5) year old sister of Mary Jane could recall an incident which happened four (4) days earlier when she did not observe anything unusual. Jennifer merely mentioned to her mother an innocent story. Jennifer did not tell her mother that Mary Jane was abused by their father. Jennifer merely told her that their Papa gave her P0.25 to buy "chiz curls" and that their Papa and Mary Jane closed the toilet.

The defendant-appellant also questions the evident naturalness of Mary Jane after the sexual act. This deserves scant consideration. Again we agree with the observation of the Solicitor General to the effect that:

xxx Be it remembered that Mary Jane was then a 9-year old child — innocent and without full awareness of the painful actualities and realities of life. Were she a full-bloomed woman, she undoubtedly would have revolted against the dastardly act to which she was subjected. But young and fragile as she was, she remained unaffected by the incident.

The defendant-appellant next questions the credibility of Mary Jane by pointing out several contradictory statements in her testimony such as whether or not the toilet was totally dark or was illuminated from a light coming from the neighboring houses; whether at the time of the alleged intercourse, she and the defendant-appellant were standing and facing each other or her buttocks were raised by him; whether they were using only a kerosene lamp or there was an electric bulb at the center of the house; whether the defendant-appellant first inserted his fingers inside her vagina; and whether or not two months prior to and up to October 16, 1981, the defendant-appellant was sleeping at their house at night and comes home only during mornings to change clothes.

These inconsistencies are of minor details which do not affect the credibility of Mary Jane. They only refer to collateral matters which do not touch the commission of the crime itself. More important than these alleged inconsistencies is the straightforward testimony of Mary Jane that she was abused inside the toilet of their house. She testified that:

xxx xxx xxx

Q. Now. Will you tell the court if there was anything that happened to you in the evening of October 4, 1981 at about 8:00 o'clock?

A. There was.

Q. Will you tell the court what was the incident all about?

A. He took off my panty and inserted his penis?

Q. Who took off your panty and inserted his penis?

A. My Papa.

Q. Where did your father insert his penis after taking off your panty?

A. To my vagina.

Q.

Now. Where did this incident took place when your father took off your panty and inserted his penis inside your vagina?

A. In the toilet.

Q. In the toilet of your house?

A. Yes.

Q. Now. Do you know how did it happen that your father was in the toilet of your house at that time?

A. He was defecating and he sent me to get water.

Q. Where did you get water?

A. From our basin.

Q.

And when you took water from your basin where did you deliver that water?

A. To my Papa.

Q. Inside the toilet?

A. Yes.

Q. And when you delivered that water to your father who was then inside the toilet, what did your father do?

A. He washed himself. After that he pulled me.

Q. And then, after he pulled you, what happened?

A. He took off my panty and inserted his penis.

Q. And what did you feel?

A. I cried.

Q.

Was the penis of your father erect or hard at the time he inserted to your vagina?

A.

Yes. It was hard.

Q. What else did your father do, if any, aside from inserting his erect penis to your vagina?

A. He kissed me hard?

Q. Did you feel any pain at the time your father inserted his penis inside your vagina?

A. Yes.

Q. Was your vagina injured as a result of that insertion of the penis?

A. Yes.

xxx xxx xxx

Q. What did you tell your father while he was doing these to you, if any?

A. I told him, "Pa, don't! I will report you to Mama." Then he released me.

Q. After he released you, where did you go?

A. I stayed in the house and he left.

Q. And did your mother arrive that evening?

A. No.

Q. When did your mother arrive after this incident?

A. Already in the morning.

Q.

Where was then your mother during this incident?

A. She was working.

xxx xxx xxx

Q. Now, Where was then your younger sister during this incident?

A. Outside, because he gave her P0.25 in order to buy chiz curls.

Q. You mean outside the house?

A. Yes.

xxx xxx xxx

Q. Did you tell your mother after this when you first met her?

A. No, because he said that if I will report to my mother he will kill me.

Q.

Now. How many days thereafter or did you reveal this incident to your mother later on?

A. No. It was my younger sister who revealed this to Mama.

xxx xxx xxx

Q. And when your younger sister referred this to your mother, did your mother confront you about this?

A. Yes.

Q. And did you tell your mother that you were abused by your father?

A. I did.

Q. And what did your mother or did your mother bring you anywhere after you told her about this incident?

A. Yes.

Q.

Where did your mother bring you?

A. To the hospital.

Q. Do you remember what hospital was that?

A. Southern Islands Hospital.

Q. Were you treated in that hospital?

A. Yes.

Q. What part of your body was being examined and attended to?

A. He examined my vagina.

The defendant-appellant likewise questions the credibility of Anita by pointing out that she lied on two material points, to wit: (1) when she declared that the rape incident happened on the 4th of October, 1981, and (2) when she declared that she discovered the rape incident only on October 8, 1981. The defendant-appellant submits that it was only on October 16, 1981 that Dr. Semilla physically examined Mary Jane and that his medical certificate issued on the same occasion attested to such fact. Thus, when Anita told him that her daughter was raped three (3) or four (4) days earlier, the probable date the rape could have happened was between October 13th or 14th.

Whether or not she was examined on the 16th or on the 8th of October is of no moment. More important is the fact that Mary Jane was indeed examined by Dr. Semilla and that a medical certificate was issued to this effect.

Moreover, it is a settled doctrine that with respect to the issue of credibility of witnesses we have always accorded the highest degree of respect to the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the court has plainly overlooked certain facts of substance and value, that if considered, might affect the result of the case.

The defendant-appellant likewise submits that (1) he has no pedophilic tendencies; (2) he had manifested sincerity and credulity when declaring his innocence; and (3) prosecution's exhibits "C", "D" and "E", instead of showing his guilt, on the contrary, indubitably showed his innocence.

The arguments of the defendant-appellant are unmeritorious. As correctly stated by the Solicitor General, pedophilic tendencies, are not and have never been an element of the crime of rape under Article 335 of the Revised Penal Code. Whether or not the defendant-appellant has pedophilic tendency is not important. What is important is that, it has been amply proven by the prosecution that the defendant-appellant indeed had sexual

intercourse with his 9-year old daughter, Mary Jane inside their toilet.

The defendant-appellant vehemently denied having committed any offense against his own daughter. He claims that on the night of October 4, 1981, he could not have raped Mary Jane as alleged because he was not at home but in the house of his paramour. He maintains that after working, he always went to his paramour and stayed with her for the night and went home only during mornings. More particularly, he testified that:

Q. Before October 16, 1981, how often do you stay at your conjugal home?

A. Not very long, Sir, because in the morning I will report for work and after I am off from the ALU, I will go to the house of my sweetheart. And then I will go home early in the morning of the following day, and go back to work.

Q. On October 4, 1981, you were, then at the conjugal house?

A. Yes.

Q. How about the succeeding day of October 5, 1981, were you there at the conjugal dwelling?

A.

Yes, every morning I go home. Only during morning, and I stay with my sweetheart during nighttime.

Q. How long do you usually stay in the morning before proceeding to the house or place of your sweetheart?

A. After breakfast at around seven o'clock I will go home to our conjugal house and then leave for my work.

Q. So, how many hour or hours do you stay at your conjugal house during mornings?

A. Less than an hour.

xxx xxx xxx

Appellant's testimony was uncorroborated. He could have presented his alleged paramour and made her testify in his favor, but he did not. The weak denials of the defendant-appellant cannot prevail over the clear, positive and straightforward testimony of his minor daughter, Mary Jane, whose testimony was corroborated by her mother, Anita.

Lastly, the defendant-appellant relies on Exhibits "C", "D" and "E". Exhibits "C", "D" and "E" are letters sent by

the defendant-appellant to his wife, Anita while he was detained in jail. They read:

My dear Anita,

Hi, if you still have pity on me, please visit me here because there were times during meal times that I was not able to eat. The whole day yesterday, I was not able to eat the same way as today. So, if you pity me because I am already very weak, please come to me. You just don't know how much I love you. I have heard from rumors here that you will charge me with rape, won't you pity me, if it is alright, come and visit me because I have no more strength here. Also tell Noy Bening that if they have compassion please do not proceed in filing the case.

Loving you,

Fred.

My dear wife Anita,

Me, if it is alright I will plea for your big heart to pity on me, because what can I do if ever this had happened to our child, do not keep it in your memory, anyway if she grow up to be a lady we still can not have her. So that I am requesting you not to proceed with the case against me because if I will be imprisoned for life because the penalty is life they said, so it is but natural that I can still be released and instead be angry at you, because this accusation of yours that I raped Mary Jane is not true, but you are too hot headed, we can talk this over with but you filed a case against me. Oh! how iron hearted you are.

So, I hope even though this has happened to me, please forgive me, because I am hardup here, it seems that I will not last long here because of the injuries I sustained from maulings I received here and I even vomitted blood one morning. So if you pity me, do not appear during my hearing so that I will be released, I hope you pity me and understand me. If I will already be free I promise that I will be reformed and be faithful to my work.

If you pity me, visit me here, bring the children with you and also my undershirt and Ban Cream.

If I have sinned please forgive me.

Loving you,

Fred Jones

Mi Anita,

If you pity me because now is All Souls Day please forgive me already and please do not attend in my trial. If Mama already arrived tell her to visit me here, and you, together with the children also come and visit me because I long for all of you. You can come today, and it is also alright to come on Wednesday, Saturday and Sunday, my life here is awful, I vomit with blood every morning. If you pity me please come and bring Mary Jane and Jennefer with you and also bring my pants, undershirt, and also the Ban Cream.

I love you,

Fred Jones.

The defendant-appellant claims that in these letters, he was asking for forgiveness because of his infidelity and not for having raped Mary Jane.

The three (3) letters speak for themselves. There is nothing in the letters which shows that the appellant was asking for forgiveness for his infidelity. On the contrary, these letters were his last resort to pacify Anita and convince her not to proceed with the filing of the case.

It is a settled doctrine that carnal knowledge of a girl under twelve (12) years of age is always rape, even if no force or intimidation is used and even if she is not deprived of reason or otherwise made unconscious, and even if she agrees or consents. The gravamen of the offense is the carnal knowledge of a woman below twelve (12) years old (*People v. Villegas, Jr.*, 127 SCRA 195). In the case at bar, the fact of the defendant-appellant having ravished his own nine-year old daughter, Mary Jane was proved beyond reasonable doubt.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** with the modification that the defendant-appellant should likewise indemnify Mary Jane Pelias Jones in the amount of P20,000.00.

**SO ORDERED.**

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, De la Fuente, and Alampay, JJ., concur.

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