

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY DELA CUESTA Y RAMOS, ACCUSED-APPELLANT.

G.R. Nos. 138545-46. April 16, 2002

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Joey Dela Cuesta y Ramos was charged before the Regional Trial Court of Pasay City with the crime of rape and acts of lasciviousness committed against his niece, Frances Grace Alcido. The information alleged:

“Criminal Case No. 98-0094

That on or about the 3[rd] day of January, 1998 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Joey dela Cuesta y Ramos, uncle of the victim, by means of force and intimidation employed upon the person of complainant Frances Grace Alcido, a minor, 11 years old, did then and there wilfully, unlawfully and feloniously have carnal knowledge of complainant against her will and consent.[1]

Criminal Case No. 98-0095

That on or about 13[th] day of January 1998 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Joey dela Cuesta, uncle of victim, with lewd designs, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of Frances Grace Alcido, a minor, eleven (11) years of age, by then and there kissing her vagina and fondling her private parts.”[2]

Accused-appellant pleaded not guilty during the arraignment.[3]

Trial followed.

Private complainant Frances Grace Alcido testified that on January 3, 1998, at about 1:00 in the morning, while she was sleeping with her brothers and sisters, she felt somebody kissing her vagina. She later realized that it was her uncle, accused-appellant Joey dela Cuesta. She cried, went to her grandmother and told her what accused-appellant had done. Accused-appellant thereafter left.

On January 13, 1998, at about 12:00 midnight, her aunt, Imelda dela Cuesta, caught accused-appellant kissing her private part while she was asleep. She again cried when she saw her uncle molesting her. Imelda scolded accused-appellant. Private complainant went to the Pasay City Police Station and gave a sworn statement[4] about the incidents on January 3 and 13, 1998. In her sworn statement, she said that accused-appellant would abuse her whenever she was left alone in the house. She further stated that on January 3, 1998, accused-appellant carried her to the room upstairs. Inside the room, he removed her short pants and kissed her organ. Then he spread her legs and inserted his organ into hers. She felt pain. She, however, could not do anything as her uncle was holding her hands. Accused-appellant went down after satisfying his lust. Private complainant added that she did not tell

anybody about the sexual assault because her uncle threatened to kill her if she did. She likewise testified that she underwent medical examination at the National Bureau of Investigation. When asked about her age, private complainant declared that she was eleven (11) years old and her birthday is on November 1, but she does not know the year.[5]

Imelda dela Cuesta, the sister of accused-appellant, stated on the witness stand that at about 12:00 midnight on January 13, 1998, she caught her brother inside the room where private complainant was sleeping. He was kneeling in front of private complainant with his head bowed down. She said to him, "Now I caught you." He told her not to make a scandal as it was already midnight. Then he said, "Nagsusuyod lang naman ako." Imelda ordered accused-appellant to go down. She woke private complainant and asked her what accused-appellant was doing in the room when she had previously warned her to always lock the door. Private complainant replied that she did not know because she was sleeping. Imelda went down and confronted her brother. Accused-appellant again requested her not to start a scandal. Imelda woke up their mother, Avelina dela Cuesta, and talked to her. She asked her mother to send accused-appellant out of the house because they could not stand each other. Avelina went back to bed after their talk. Imelda also testified that private complainant has been living with them since birth. She stated that she was eleven (11) years old on January 13, 1998, but she does not have her birth certificate. Private complainant is under the custody of the Department of Social Welfare and Development (DSWD).[6]

Joel Atibola, a neighbor of the Dela Cuestas, testified that on January 13, 1998,[7] at about 1:00 in the morning, he was at the house of his friend, Jerry. They were with two other friends, Rodel and Junel, watching a movie on VHS tape. As their houses were adjacent to each other, he could see private complainant and accused-appellant from where he was. While they were watching the movie, he saw accused-appellant near the foot of private complainant who was then deep in sleep. Accused-appellant placed his hands under the blanket of private complainant. He noticed his hands moving under the blanket, near complainant's private part, but the movement would stop whenever he would look their way. He also observed that private complainant would kick accused-appellant whenever she would feel him touching her. When he went home, he met private complainant's sister, Carmela Alcido, and told her to check on her sister. He told Carmela that accused-appellant was touching her sister on the sensitive parts of her body.[8]

Rolando Cruz Alavera, Barangay Chairman of Barangay 61, Zone 8, Pasay City, testified that at about 9:00 in the evening of January 22, 1998, Mrs. Teresita dela Cuesta, together with private complainant, approached him to complain that private complainant has been molested and abused. They immediately conducted an investigation and had it blotted. The following day, a Barangay Tanod fetched accused-appellant from their house to the Barangay Hall for investigation.[9]

Dr. Aurea Villena, a medico-legal officer of the National Bureau of Investigation (NBI), stated that she conducted a physical examination of private complainant. She did not find any extra-genital nor genital injuries on private complainant during the examination. Her hymen was also intact and the hymenal orifice was small, measuring .5 centimeter.[10]

Mrs. Erlinda Aguila, a social worker from the DSWD, testified that on January 23, 1998, at about 11:30 in the morning, she received a phone call from SPO3 Milagros Carasco seeking her assistance on a child abuse case. She immediately went to the Pasay City Police Station where the private complainant was undergoing investigation. Private complainant related to her what accused-appellant had done to her. Based on her interview, Ms. Aguila learned that private complainant was only eleven (11) years old. She said that private complainant is presently under the custody of the DSWD.[11]

The defense denied the charge.

Jerry Yap, a neighbor of accused-appellant, testified that on January 3, 1998, at about 1:00 in the morning, he and his friends, Rodel, Joel and Jonnel, were watching an x-rated film on VHS tape. They stayed up until 4:00 dawn. From his house, he could see the place where accused-appellant and private complainant slept. He belied the testimony of private complainant that accused-appellant raped her on that evening. He said that all the members of the Dela Cuesta household were already sleeping at that time, except for their mother, Adelina Ramos dela Cuesta. He stated that accused-appellant slept beside his father on the wooden bed while private complainant lay beside her sister, Manilyn, on the folding cot. He also said that the movement under the blanket of private complainant seen by Joel Atibola was only caused by a puppy.[12]

Accused-appellant's mother, Avelina Ramos Dela Cuesta, corroborated Jerry's testimony. She stated that she stayed awake the whole night of January 3, 1998 because she was finishing her sewing work. No unusual incident transpired that night as all her companions in the house were sleeping. She, however, saw four of her neighbors go to the house of Jerry Yap to watch a movie on VHS tape. On January 13, 1998, she again stayed up late to do her sewing job. At 12:00 midnight, she heard her grandchild, the daughter of Imelda Dela Cuesta, cry. She called on accused-appellant to check on the baby. Accused-appellant went upstairs to see why the child was crying. While he was upstairs, Imelda dela Cuesta arrived. She was drunk. Avelina then heard Imelda shouting, ordering accused-appellant to go down. Accused-appellant acceded and went back to bed. Avelina disputed the prosecution's evidence that accused-appellant molested private complainant. Avelina also testified that private complainant turned twelve (12) on November 1, 1997 as she was born on November 1, 1985. She said that private complainant does not have a birth certificate.[13]

Accused-appellant also took the witness stand and denied violating the person of private complainant. He said that he did not rape private complainant in the evening of January 3, 1998 because he was sleeping at the time. He went to bed at 10:00 p.m. and woke up at 8:00 in the morning of the following day. He said that he slept on the wooden bed while private complainant slept on the folding cot near the foot of the wooden bed. He likewise denied the second charge of acts of lasciviousness allegedly committed on January 13, 1998. He testified that at 12:00 midnight on January 13, 1998, his mother roused him from sleep to check on her niece, Erika, who was crying. Erika is the daughter of his sister, Imelda. He took Erika to his arms to pacify her. When Imelda came home, and saw him carrying Erika, she shouted at him and commanded him to go down. Imelda was drunk at the time. He left the room and went back to bed. Accused-appellant said that he and Imelda have always been at odds with each other. He said that Imelda would always get angry at him whenever he would go up to the second floor of the house and she would always blame him for lost things. She would always prod him to work and to help around the house, but he could not do so because of his handicap. His right foot suffered from polio. Accused-appellant said that private complainant was born on November 1, 1985.[14]

The trial court found accused-appellant guilty of both charges. It sentenced him to death for the crime of rape and to imprisonment of fourteen (14) years, two (2) months and one (1) day to seventeen (17) years for the acts of lasciviousness. The dispositive portion of the decision stated:

“WHEREFORE, in view of all the foregoing and there being no mitigating circumstances present, the Court finds accused Joey dela Cuesta y Ramos, uncle of minor Frances Grace Alcido guilty beyond reasonable doubt for the crime of RAPE in Criminal Case No. 98-0094 and hereby sentences him to DEATH.

Likewise, in Criminal Case No. 98-0095 for Acts of Lasciviousness in relation to RA 7610 as amended there being present the aggravating circumstance of relationship as accused is the uncle of the victim who is only eleven (11) years old, the Court finds the accused Joey dela Cuesta y Ramos guilty beyond reasonable doubt for Acts of Lasciviousness in relation to RA 7610 as amended and hereby sentences him to imprisonment of

fourteen (14) years, two (2) months and one (1) day to seventeen (17) years and to indemnify the complainant in the amount of P75,000.00 in both cases.”[15]

In view of the death penalty imposed upon accused-appellant, the case is now before the Court on automatic review.

In his Brief, accused-appellant raised the following errors:

- The trial court erred in not acquitting the accused-appellant on reasonable doubt.
- The trial court gravely erred in not giving credence to the defense interposed by the accused-appellant.
- The trial court gravely erred in imposing the supreme penalty of death notwithstanding the failure of the prosecution to prove the qualifying circumstance of relationship between the accused and his alleged victim.[16]

We find accused-appellant guilty of two counts of acts of lasciviousness.

In Criminal Case No. 98-0094, accused-appellant was charged with qualified rape for allegedly having carnal knowledge of her eleven-year-old niece, which offense is punishable by death under Article 266-A of the Revised Penal Code, as amended by R.A. 8353.[17] The evidence for the prosecution, however, does not support a judgment of conviction for the crime of rape. To convict the accused of the offense, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent, and in order to warrant the imposition of death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted), ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[18]

The prosecution in this case failed to prove the first element of sexual congress. To prove the charge, it presented the testimony of private complainant. She testified that on January 3, 1998, while she was sleeping, she felt somebody was kissing her private part. It turned out to be accused-appellant, her uncle. The prosecution also presented her sworn statement executed before the Pasay City Police Station where she averred that on said date, her Uncle Joey carried her to the room, kissed her vagina, spread her legs, and then inserted his organ into her organ. Prosecution witness Joel Atibola testified that around 1:00 in the morning of January 3, 1998, the alleged time of the commission of the offense, he and his friends were watching a movie on VHS tape at the house of his friend who is a neighbor of the Dela Cuestas. From where he stood, he could see the area where private complainant and accused-appellant slept. He saw accused-appellant position himself near the foot of private complainant. Then he noticed that accused-appellant placed his hands under the blanket of private complainant and touched her private part. Atibola did not mention anything about the rape, although he said that he occasionally looked to private complainant's place throughout the duration of the movie. In addition, the medico-legal report shows that the hymen of private complainant is still intact. While it is true that a torn hymen is not an essential element of the crime of rape, such finding would be material to this case since the testimony of another prosecution witness clouds the veracity of complainant's assertion that she was raped. In reviewing rape cases, the Court is guided by four well-established principles: (1) an accusation for rape can be made with facility; (2) it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (3) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (4) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[19] The Court has thoroughly examined the prosecution evidence and we find it insufficient to prove the element of carnal knowledge. The totality of the evidence does not satisfy the quantum of proof required in criminal cases which is

proof beyond reasonable doubt. We cannot convict accused-appellant for the crime of rape.

Nonetheless, although it was not established that accused-appellant had carnal knowledge of private complainant, the evidence showed that he touched private complainant's private parts while the latter was deep in sleep. Such act constitutes acts of lasciviousness penalized under Article 366 of the Revised Penal Code. The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force or intimidation or (b) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[20] All the elements of the offense are present in this case.

As regards the second charge in Criminal Case No. 98-0095 for acts of lasciviousness, we find that the prosecution sufficiently proved the same. Imelda Dela Cuesta, accused-appellant's sister, testified that on January 13, 1998, she caught accused-appellant kneeling in front of complainant who was then sleeping. His head was bowed down toward complainant's private part. The defense has not shown any evil motive on Imelda's part to fabricate such story against her own brother and expose her own niece and her own family to public scandal were it not her intention to seek redress for her young niece. Although accused-appellant averred that he and his sister had constant disagreements, such is not sufficient reason for her to falsely charge him with a criminal offense which would send him to prison. Furthermore, we respect the trial court's conclusions regarding the credibility of the witnesses who testified before the court as it is in a better position to observe their demeanor on the witness stand. Accused-appellant has not shown that the trial court committed any grave error in evaluating the credibility of the witnesses.

We now go to the penalty. Under Article 336 of the Revised Penal Code, the penalty for acts of lasciviousness is prision correccional. Considering that there was neither aggravating nor mitigating circumstance that attended the commission of both offenses, the penalty should be applied in its medium period. Applying the indeterminate sentence law, we sentence accused-appellant to imprisonment of six (6) months of arresto mayor as minimum to four (4) years and two (2) months of prision correccional as maximum in Criminal Case No. 98-0094. The same penalty is imposed on accused-appellant in Criminal Case No. 98-0095. We further order accused-appellant to pay private complainant moral damages in the amount of P75,000.00 for both cases.

IN VIEW WHEREOF, the Court finds accused-appellant GUILTY of two (2) counts of acts of lasciviousness. In Criminal Case No. 98-0094, he is sentenced to six (6) months of arresto mayor as minimum to four (4) years and two (2) months of prision correccional as maximum. In Criminal Case No. 98-0095, he is likewise sentenced to another six (6) months of arresto mayor as minimum to four (4) years and two (2) months of prision correccional as maximum. He is further ordered to pay private complainant the amount of P75,000.00 as moral damages.

SO ORDERED.

Bellosillo, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

Davide, Jr., C.J., Melo, Kapunan, and Austria-Martinez, JJ., on official leave.

Corona, J., took no part in the deliberation.

[1] Original Records, p. 1.

[2] Id., p. 14.

[3] Id., pp. 35-36.

[4] Exhibit "I", Id., p. 126.

[5] TSN, March 9, 1998, pp. 2-8.

[6] TSN, February 18, 1998, pp. 2-7.

[7] The date stated in the TSN is January 13, 1998, but it should be January 3, 1998 as stated in Atibola's sworn statement executed before the Pasay City Police Department (Exhibit "C", Original Record, p. 121).

[8] TSN, February 18, 1998, pp. 12-16.

[9] TSN, February 16, 1998, pp. 2-7.

[10] TSN, February 26, 1998, pp. 2-4; Exhibit "H", Original Record, p. 125.

[11] TSN, February 23, 1998, pp. 2-8.

[12] TSN, March 27, 1998, pp. 3-9.

[13] TSN, March 31, 1998, pp. 2-6.

[14] TSN, April 13, 1998, pp. 2-6.

[15] Rollo, p. 29.

[16] Rollo, pp. 43-44.

[17] An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for other Purposes (Approved on September 30, 1997).

[18] Article 266-B, Revised Penal Code, as amended; *People vs. Lasola*, 318 SCRA 241 (1999); *People vs. Silvano*, 309 SCRA 362 (1999).

[19] *People vs. Painitan*, 349 SCRA 266 (2001); *People vs. Salazar*, 346 SCRA 735 (2000).

[20] *People vs. Gianan*, 340 SCRA 477 (2000); *People vs. Contreras*, 338 SCRA 622 (2000).

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