

## SECOND DIVISION

[ G.R. No. 182521, February 09, 2011 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO  
FRAGANTE Y AYUDA, APPELLANT.**

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

**CARPIO, J.:**

#### **The Case**

On appeal is the 28 September 2007 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR H.C. No. 01980, affirming with modification the 4 July 2003 Decision<sup>[2]</sup> of the Regional Trial Court, Parañaque City, Branch 260, convicting appellant Ernesto Fragante y Ayuda of nine (9) counts of acts of lasciviousness and one (1) count of rape, all committed against his minor daughter, AAA.<sup>[3]</sup>

#### **The Facts**

In ten (10) Informations filed on 14 July 1998, appellant was charged with nine (9) counts of acts of lasciviousness and one (1) count of rape all committed against his own minor daughter AAA. The Informations<sup>[4]</sup> read:

CRIMINAL CASE NO. 98-651 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That in between the period of April-May 1993, in Parañaque, Metro Manila, and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breast of [AAA].

CRIMINAL CASE NO. 98 - 652 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in May 1993, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breasts of [AAA], touched (sic) and inserted (sic) his finger into the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 653 for Violation of Art. 336 of the RPC, as

amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in June 1993 until August 1993, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breasts of [AAA], touched (sic) and inserted (sic) his finger into the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 654 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period of October to December 1993 at Shaolin Chinese Restaurant located at Sucat Road, Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) and sucked the breasts of [AAA], and thereafter touched the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 655 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in December 1993 at Shaolin Chinese Restaurant located at Sucat Road, Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) and sucked the breasts of [AAA], and thereafter touched the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 656 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in January 1994 to August 1994, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 657 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in August 1994 until September 1995, in Parañaque, Metro Manila and within the jurisdiction

of this Honorable Court, above-named accused, by taking advantage of his then twelve (12) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 658 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in September 1997, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then fifteen (15) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 659 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in (sic) October 25, 1997, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then fifteen (15) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 660 for Violation of Article 335 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in September 1995, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above named accused, by taking advantage of his then thirteen (13) year old biological daughter [AAA], and with lewd designs, did then willfully, unlawfully and feloniously, lie and had carnal knowledge with the said minor victim, against her will.<sup>[5]</sup>

The Court of Appeals narrated the facts as follows:

Ernesto A. Fragante (Ernesto hereafter) married CCC on October 6, 1975, in Sta. Cruz Manila, and such marriage was ratified on December 7, 1995 celebrated in San Sebastian Parish Church. That union, produced three offsprings. [AAA], the victim herein, is their third child. She was born on August 23, 1982. x x x

Sometime in April 1993 to May 1993, three or four months before her

eleventh (11) birthday, [AAA] woke up one early morning to prepare for the driving lessons which her father Ernesto, promised to teach them that day. [AAA] was the first to wake up. She was in her room when her father entered and lay on her bed. He then asked [AAA] to lie beside him to which [AAA] obeyed. While lying beside her, Ernesto was talking to her about a lot of things, and as he talked he started to fondle her breast and suck her nipples.

x x x x

The incident was repeated sometime between June 1993 and August 1993. Ernesto told [AAA] to get inside his room, then he would lock the door. Once inside the room, he would scold [AAA] for reasons unknown to her. When she would start to cry, her father would start to touch her breast, then he would suck her nipples while he was rubbing her vagina.

On two occasions, between October 1993 and December 1993, at Shaolin Chinese Restaurant located in Sucat, Parañaque, which the Fragante family owned, there was a small back room used as an office which later was converted into a room where they could rest. [AAA] was told by her father to rest in that room and once inside, while talking to her, he covered the windows with manila paper. He lay down beside her in the folding bed. He fondled her breast, squeezed them and then later inserted his hand under her shirt as he pull it up and put his mouth on her breast to suck it alternately. He started stroking her genitals with her shorts on. She did not do anything as she was in shock at that time.

In December 1993, [AAA] and her father bought food from Jollibee. She was instructed to eat it at the back room of their Shaolin Chinese Restaurant so that other employees would not see it. After eating, Ernesto asked her to lie down in the folding bed and he again lay down beside her and massaged her breast and sucked her nipples while continuously rubbing her vagina by inserting his hand inside her shorts.

Sometime in January 1994, around 10 o'clock in the evening, while [AAA] was sleeping in another room, Ernesto entered her room. He lay beside her, and started sucking her breast. He removed her shorts and then touched her vagina. He then inserted his finger inside her vagina.

In August-September 1994, she was around twelve (12) years old, Ernesto molested her again inside his room, by massaging her private parts and sucking her nipples while continuously rubbing her vagina and afterwards inserting his finger inside it.

In September 1995, at the age of thirteen (13), [AAA] was raped by her father Ernesto. She was told to get inside his room and was scolded by him before she was made to lie down in his bed. Her shirt was removed, and her breast and vagina were fondled by him. Thereafter, he sucked her nipples while continuously touching her vagina. He removed her shorts and panty, then spreaded her legs and inserted his penis in her vagina. She struggled and begged him to remove his penis. She said she could not recall the exact details of what her father was doing. He stayed

on top of her despite her pleas. x x x

Ernesto was not able to find time to molest [AAA] in September 1995-1996, because he was hardly home and was busy with his bookstore business in Visayas and Mindanao.

x x x x

In the evening of October 25, 1997, Irma, together with their brother Marco accompanied their mother Gaudencia to a wake of their mother's friend. [AAA] wanted to go with them but she was left home alone with Ernesto who refused to allow [AAA] to go with them. x x x

x x x x

Her father started massaging her breast and [AAA] removed his hands and stood up but she was bitten and pushed towards the bed. Her father strangled her and asked whether she preferred to be strangled first and she answered no. He started touching her private parts again and this time she continued warding off his hands and when she heard their car entering their garage, she told her father that her mother had arrive. That was the only time she was allowed to leave but was stopped by her father and warned not tell her mother what happened.

x x x They later proceeded to the NBI, Taft Ave. Manila to report the incidents and where [AAA] executed her complaint-affidavit. Her mother and siblings also executed their affidavits.<sup>[6]</sup>

x x x x

During arraignment on April 26, 1999, the accused entered separate pleas of "Not Guilty" to all the crimes charged.

Joint trial ensued thereafter.

Prosecution presented the following witnesses: [AAA], BBB, CCC, and Dr. Bernadette Madrid. The defense presented Ernesto Fragante as the sole witness.<sup>[7]</sup>

### **The Ruling of the Trial Court**

On 4 July 2003, the trial court rendered a Decision convicting appellant for the crimes charged. The dispositive portion of the trial court's decision reads:

WHEREFORE, after careful perusal of the evidence presented, this Court finds as follows: for (sic)

Criminal Case No. 98-651 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT