

## FIRST DIVISION

[ G.R. No. 170235, April 24, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME CADAG JIMENEZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

For review is the *Decision*<sup>[1]</sup> dated February 28, 2005 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00634 which affirmed the *Consolidated Decision*<sup>[2]</sup> dated July 28, 2000 of Branch 272, Regional Trial Court (RTC), Marikina City, convicting accused-appellant Jaime Cadag Jimenez of two counts of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay the victim the amounts of P50,000.00 as civil indemnity and another P50,000.00 as moral damages on each count.

Consistent with our ruling in *People v. Cabalquinto*<sup>[3]</sup> and *People v. Guillermo*,<sup>[4]</sup> this Court withholds the real name of the private complainant and her immediate family members as well as such other personal circumstance or information tending to establish her identity. The initials AAA would represent the private complainant and the initials BBB would refer to the mother of the private complainant.

To quote, the pertinent portions of the criminal information in each case:

**CRIMINAL CASE NO. 97-1578**

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That in or about the last week of October, 1996, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant, did then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) AAA, a 12-year old girl against her will and consent.

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**CRIMINAL CASE NO. 97-1579**

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That on or about the 8<sup>th</sup> day of August, 1996, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the

above-named accused, by means of force, coercion, intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant, did then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) AAA, a 12-year old girl against her will and consent.

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Accused-appellant Jimenez pleaded not guilty upon arraignment.<sup>[5]</sup> The pre-trial conference followed and, thereafter, trial ensued.

The prosecution presented the testimonies of AAA,<sup>[6]</sup> Dr. Dennis Bellin<sup>[7]</sup> (the medico-legal officer who physically examined the complainant), SPO1 Lucy Mae Robles<sup>[8]</sup> (the police officer who initially conducted the investigation), and Rowena Villegas<sup>[9]</sup> (the social worker who responded to the aid of AAA). The documentary evidence for the prosecution consisted of the Medico-Legal Report No. M-833-97 of Dr. Dennis Bellin,<sup>[10]</sup> the *Voluntary Statements* executed by AAA on February 27, 1998 before SPO1 Lucy Mae Robles,<sup>[11]</sup> and the Certificate of Live Birth of AAA.<sup>[12]</sup> The defense, on the other hand, presented the testimonies of BBB<sup>[13]</sup> and that of the accused-appellant.<sup>[14]</sup>

After trial, the RTC convicted the accused-appellant. The trial court found that the accused-appellant was the biological father of AAA and he started raping his own daughter when she was only eleven (11) years old. However, the accused-appellant was only held criminally liable for two counts of *simple* rape in view of the failure of the prosecution to allege in the informations the qualifying circumstance of relationship of the accused-appellant with AAA.

This case was directly appealed to this Court. The accused-appellant filed his *Brief*<sup>[15]</sup> dated February 12, 2002 and *Reply Brief*<sup>[16]</sup> dated November 7, 2002 while the plaintiff-appellee filed its *Brief*<sup>[17]</sup> dated June 18, 2002. In a *Minute Resolution*<sup>[18]</sup> dated August 25, 2004, we referred this case to the CA for appropriate action conformably with our ruling in *People v. Mateo*.<sup>[19]</sup>

In its assailed decision, the CA recapitulated the evidence for the prosecution as follows:

The testimony of complainant **AAA** was synthesized by the trial court as follows:

On direct examination, the witness testified:

That on August 1996, she was 11 years old, that Jaime Jimenez is her father (at this juncture, the witness positively identified the accused, Jaime Jimenez in the courtroom); that her father raped her during the month of August 1996; that her father crawled on top of her and did what a husband does to his wife "na nakapatong" according to the herein witness, that it was the accused, Jaime Jimenez who did it to her; that said incident took place in their own house at ... Marikina; that their house is a one-storey apartment; that they are five

children in the family; that the name of her mother is BBB; that there is only one room in their house; that during the month of August 1996, they slept in the living room with her mother; that sometimes her father sleeps in the sala or in the room; that she could no longer remember what time in the evening the alleged rape incident happened; that one night in August 1996, her father touched her body and her breast and afterwards, undressed her; that the incident happened while her mother and siblings were sleeping; that the said incident happened inside their room; that she did not do anything because of fear; that her father after undressing her laid on top of her and started kissing her (the witness at this very moment was on the verge of crying); that according to the herein witness, she filed the case voluntarily and she knows that the person she is charging for rape is her own father; that after he father went on top of her, the former inserted his penis into her vagina; that the insertion of the penis into her vagina was so painful; that she did not tell her father anything since she was afraid that he might kill her; that the same incident happened around 5 to 6; that her father abused her again on November 1996 when she already had her period; that after her period, her father inserted again his finger into her vagina; that she cannot remember anymore how many times her father inserted his finger but she remembers that the last time her father inserted his finger into her vagina was around February of 1997; that she reported the incident of rape and act [of] lasciviousness to her classmate and to her religion teacher; that she could no longer remember how old was her classmate then; that she did not report the incident to her mother because of fear; that she finally gave her statement to the police sometime in February; that the said investigation (her statement) was reduced into writing and was signed by her (at this juncture, the herein victim witness identified said document in the court); that she was born on January 25, 1985 (at this point again, the witness identified and recognized her birth certificate when shown to her by her counsel); that she could still remember having been examined by the doctor of the PNP Crime Laboratory; that it was the social worker of Bantay-Bata who got hold of the medico legal certificate (at this point, the witness identified the said document in open court).

On cross-examination, the witness further alleged:

That she is now in Marilac Hills, that she is not living with her mother at present because the latter is telling her to withdraw the case against her father; that she really wanted to file this case against her father; that before she did not want his father to be incarcerated; that nobody convinced her to file this case and let her father be incarcerated; that she does not know if she wants her father to be put to death; that she could no longer recall of the incident that happened in August

is the same thing that his father inserted his finger into her private part; that what she could only remember was that the last time she was abused by her father was on February of 1997; that she knew that it was her father's penis which was inserted into her vagina because she was able to feel it; that the first time she has experience in sexual intercourse, as far as she can remember was in August of 1996 which was the very same incident that brought her to his court; that she was sure that his father's penis which was inserted into her vagina since her father even asked her to hold it but she refused in doing so; that the latest incident of sexual abuse was sometime in February 1997 when her father inserted his finger into her vagina; that that was the only time she filed this complaint."

**Rowena Villegas** said she is [a] social worker connected with ABS-CBN Foundation Bantay Bata 163 which initially took custody of AAA and assisted throughout the investigation and filing of this case. It was on February 28, 1997 when she was instructed by her immediate supervisor to bring her to the police station where she was investigated. On March 1, 1997 she accompanied AAA to the prosecutor's office for inquest which was conducted in the presence of her mother and [accused-appellant] himself. Though she asserted that she was raped by him, she cried and asked that her father be released.

**SPO1 Lucy Mae Robles** testified on the procedure and taking of the statement of AAA on February 28, 1997 on referral by Bantay Bata 163. Later she also took the statement of her mother BBB, and on her invitation [accused-appellant] was present at the investigation.

**Dr. Dennis Bellin** narrated that on February 28, 1997 he received a request from the Marikina police to conduct a medico legal examination on AAA who was there in the company of her mother. With their consent, he conducted an interview and the requested examination. AAA said she was sexually abused by her father on August 26, 1996, and he proceeded with his physical examination the findings and results of which are contained in his Medico Legal Report No. M-833-97 as follows:

#### FINDINGS:

#### GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

#### GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an

elastic, fleshy-type hymen with deep healed lacerations at 3, 6, and 7 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

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## CONCLUSION

Subject is non-virgin state physically.

There are no signs of application of any form of violence.

## REMARKS

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

TIME AND DATE COMPLETED: 1045h, 28 February 1997.<sup>[20]</sup>

The evidence for the defense, on the other hand, was summarized as follows:

**BBB** said that she knew and suspected nothing of the supposed rape until the teacher of AAA summoned her on February 27, 1997. AAA never complained to her about it and there was nothing out of the ordinary in her behaviour nor that of the accused-appellant. She was always home early, and the whole family slept together on the floor in their small sala.

The **accused-appellant** for his part denied that he ever raped AAA and that she charged him only because his wife BBB taught her to. At the time when the alleged rapes were supposed to have happened he was at work as a steelman at the Petron Mega Plaza. He could prove this by his daily time record, but which he could not produce because his wife did not get it as asked and his letter requests to the company have been unanswered. He could not go and get it himself as he is already detained in the national penitentiary because he has been convicted for child abuse in another case filed by AAA.<sup>[21]</sup>

The CA rejected the contention of the accused-appellant that the prosecution failed to prove his guilt beyond reasonable doubt of the crimes charged and affirmed his convictions. The appellate court denied the motion for reconsideration of the accused-appellant in a *Resolution*<sup>[22]</sup> dated April 5, 2005. Thereafter, the case was elevated to this Court.

In a *Minute Resolution*<sup>[23]</sup> dated April 26, 2006, we gave the parties the option to file their respective supplemental briefs within a definite period. Subsequently, the accused-appellant filed his *Supplemental Brief*<sup>[24]</sup> dated May 29, 2006 while the plaintiff-appellee manifested<sup>[25]</sup> that it will no longer file any supplemental brief.