

EN BANC

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

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

DECISION

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 3rd 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 13th 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 blottered. 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:

1. The trial court erred in not acquitting the accused-appellant on reasonable doubt.
2. The trial court gravely erred in not giving credence to the defense interposed by the accused-appellant.
3. 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]