

EN BANC

[G.R. Nos. 135554-56, June 21, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO DELA CRUZ Y CARIZZA, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

Before the Court on automatic review is the Decision dated August 13, 1998 of the Regional Trial Court of Baguio City, Branch 6, in Criminal Cases Nos. 15163-R, 15164-R and 15368-R finding accused-appellant Danilo dela Cruz y Carizza guilty of two (2) counts of rape and one (1) count of acts of lasciviousness.

On August 29, 1997, two informations for rape were filed against accused-appellant in the RTC of Baguio City. The informations alleged:

Criminal Case No. 15163-R -

That sometime in the month of September, 1990, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter, JEANNIE ANN DELA CRUZ, a minor, then 11 years of age, against her will and consent.

CONTRARY TO LAW. ^[1]

Criminal Case No. 15164-R -

That sometime in the month of July, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of force and intimidation, have carnal knowledge of his daughter, JEANNIE ANN DELA CRUZ, a minor, then 16 years of age, against her will and consent.

CONTRARY TO LAW. ^[2]

On December 11, 1997, another information was filed against accused-appellant charging him with violation of Republic Act No. 7610 (The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act). The information stated:

That on or about the 2nd day of August, 1997, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual abuse on his daughter either by raping her or

committing acts of lasciviousness on her, which has debased, degraded and demeaned the intrinsic worth and dignity of his daughter, JEANNIE ANN DELA CRUZ as a human being.

CONTRARY TO LAW.^[3]

This case was docketed as Criminal Case No. 15368-R.

Upon motion of the prosecution, the trial court ordered the consolidation of the three cases. When arraigned, accused-appellant entered a plea of not guilty to each of the charges. Thereafter, a joint trial of the cases ensued.

The prosecution presented as its witnesses complainant Jeannie Ann dela Cruz; Dr. Ronald R. Bandonill, the medico-legal officer of the National Bureau of Investigation-Cordillera Administrative Region (NBI-CAR); Mrs. Jean dela Cruz, mother of complainant and spouse of accused-appellant; and SPO2 Melchor Ong of the Baguio City Police.

The prosecution established that accused-appellant married Jean dela Cruz in civil rites on 14 April 1977 and again in Catholic rites on 27 December 1978. They begot four children, namely: Jeanie Ann (the private complainant), Divine Grace, Daniel Jay and Gerard Niño.^[4]

Accused-appellant, a teacher, worked at the Don Bosco Technical Institute in Tarlac from 1978 to 1986. He transferred to the Don Bosco Elementary School in Baguio City sometime in 1986 and taught there until the following year. In 1987, he worked at the Saint Louis Center in Baguio City until his dismissal therefrom in 1993. Accused-appellant again taught at the Don Bosco Technical Institute in Tarlac from 1993 until his arrest in August 1997.^[5] While working there, he and his son Daniel stayed in Sto. Cristo, Tarlac on weekdays and went home every 15 days or every payday. They would go home to Baguio City, where the rest of their family stayed, on Friday evening and return to Tarlac on Sunday afternoon.^[6]

Jeannie Ann dela Cruz ("Jeannie Ann") testified that she was born to accused-appellant and Jean Aqui-dela Cruz on April 18, 1979 in Tarlac, Tarlac. Not long after her birth, her family transferred to the house of her maternal grandmother in No. 2 Sumulong Street, Baguio City. Her family lived in an extension of her grandmother's house which had a basement, a second floor and an attic. The second floor had four rooms and a stairs leading to the attic, which served as a stockroom. Jeannie Ann's parents and her two brothers, Daniel and Niño, stayed in the basement while she and her sister, Divine stayed in the second floor.^[7]

Jeannie Ann revealed that accused-appellant started molesting her when she was seven years old. While he helped do her homework at night, accused-appellant would on occasion make her hold his penis and masturbate him. There were also instances when he would put his penis inside her mouth and withdraw the same when a white liquid came out.^[8] Accused-appellant warned Jeannie Ann not to tell her mother what he was doing to her and told her that it was a normal thing between father and daughter. He further warned Jeannie Ann that her mother might kill them should she learn about the things that they did. Jeannie Ann believed accused-appellant and did not tell anyone about the sexual acts he

performed on her. As she was growing up, accused-appellant continued to engage in the aforementioned sexual activities with her, and continuously threatened to hurt her, her siblings or her mother if she did not give in to his desires. Jeannie Ann still refrained from complaining because she was convinced by the accused-appellant that the sexual activities which he performed on her were proper.^[9] She recounted before the trial court three particular occasions when accused-appellant molested her.

Jeannie Ann said that sometime in September 1990, she was sexually abused by accused-appellant in their house in No. 37 Leonard Wood Road, Baguio City. She was only 11 years old then. According to Jeannie Ann, their family had moved to said house when her grandmother's house in Sumulong St. was destroyed in the July 16, 1990 earthquake that hit Baguio City.^[10] They occupied the basement of the house in Leonard Wood Road. The basement had two bedrooms, a comfort room and a living room. Nobody stayed in the second floor thereof but during the day they stayed in the main house.^[11] Sometime that month, Jeannie Ann, her three year-old brother Niño and accused-appellant were left in the house while her mother and her sister Divine went to market. She was in the living room with Niño when her father undressed her. Her father removed his pants and she was made to lie down on a cushion. Her father played with her genitalia and rubbed his penis against her private part until a white liquid came out of his penis. Jeannie Ann said that after said incident, she felt pain in her vagina whenever she would urinate (mahapdi). She did not resist because she thought that what her father was doing to her was a normal act.^[12]

Jeannie Ann narrated that accused-appellant again abused her one night in July 1995 when she was 16 years old. She was watching television with her siblings in the living room. At that time, their mother was attending a meeting in church. Accused-appellant called her three times but she refused to respond to his call as she was watching television. Exasperated, accused-appellant pulled her inside one of the bedrooms and asked her to lie down on the bed saying, "This is only for a while." Accused-appellant then undressed her, removed his pants and underwear, inserted his finger inside her vagina, mashed her breasts and licked her vagina. Accused-appellant proceeded to rub his penis against her vagina and thereafter inserted his penis therein and kept it there until his semen started to come out. Accused-appellant placed his penis on Jeannie Ann's stomach where he made his semen flow. While all this was happening, Jeannie Ann could only cry, as she was afraid of accused-appellant, because he threatened her that he would kill her or her mother and siblings.^[13]

The third incident recounted by Jeannie Ann occurred in their house in No. 2 Sumulong Street, Baguio City on August 2, 1997. She was then 18 years old. When she came home at around 10:30 in the morning after her classes at Saint Louis University, she saw accused-appellant at the door. He told her to proceed to the attic shortly. She ignored him and went directly to her room and started cleaning the same. While she was cleaning the outer portion of her room, she saw accused-appellant go up the attic. While he was there, he repeatedly called her and asked her to go there. When Jeannie Ann remembered that her mother had earlier instructed her to clean the attic, she went up when she was done cleaning her room.

^[14]

Accused-appellant lay on the bed in the attic as Jeannie Ann swept the floor. When she was done, accused-appellant asked her to join him on the bed. He went near her and again asked her to sit on the bed when she refused to heed his call. Accused-appellant whispered to her that he was running out of time. He talked in whispers so that the other people in the house at that time would not be able to hear what he said. Sensing that accused-appellant would again molest her, Jeannie Ann became nervous and started to cry. He told her to stop crying and to relax, as what he was about to do would only take a while. Accused-appellant then lifted Jeannie Ann's t-shirt and brassier, mashed her breasts with his left hand and inserted his right hand inside her pants. Jeannie Ann resisted, but accused-appellant proceeded to insert a finger of his right hand inside her vagina. While he performed the aforementioned acts on his daughter, accused-appellant told her, "I love you very much. Promise me that I will be the only one who will do this to you."^[15]

Accused-appellant only stopped what he was doing when he heard Aileen, a boarder in their house, calling Jeannie Ann. He immediately fixed her clothes and hair, then moved away from her. Accused-appellant instructed Jeannie Ann not to go down and to keep quiet about the incident. When accused-appellant noticed that Aileen had left because Jeannie Ann did not respond to her, accused-appellant embraced Jeannie Ann and said: "Please cooperate with me and trust me. I have given you my life. Promise that I will be the only one who will touch you." Accused-appellant began touching her again. He inserted his fingers inside her vagina. As he touched her, he said, "Please cooperate with me and trust me. This is for your own good and for the good of our family. If you will not follow me, you might regret it. I want you to have a bright future. And after you finish, I can already die and you will no longer have any problem."^[16] Although Aileen, Divine, Niño and Rogel, another boarder in their house were also there at the time of the incident, Jeannie Ann did not have the courage to call for help because she was very much afraid of accused-appellant, and she saw anger in his eyes.^[17]

When accused-appellant was done with her, Jeannie Ann insisted on going down. She cried as she returned to her room to fix herself. Thereafter, she went out of the house to deal with what had just happened to her. While walking outside toward the bridge, she saw a white L-300 van belonging to the police. She flagged down the vehicle and narrated to the two police officers riding therein, SPO2 Bravo and SPO2 Ong, what accused-appellant had just done to her. The policemen accompanied her back to their house where they met accused-appellant whom Jeannie Ann identified as the person who had raped her. Accused-appellant voluntarily went with the policemen to the Baguio City Police Station.^[18]

When they arrived at the Baguio City Police Station, Jeannie Ann narrated her experience to the police officer stationed at the Women's Desk. In her statement, Jeannie Ann described what accused-appellant did to her on August 2, 1997.^[19]

Jeannie Ann also denied accused-appellant's claim that she had sexual relations with her boyfriend Charles, and that she accused her father of rape to get back at him for causing her breakup with Charles.^[20]

Dr. Ronald R. Bandonill, the NBI-CAR medico-legal officer who conducted a physical examination of Jeannie Ann on August 8, 1997, testified that he found two old

healed lacerations at 5 o'clock and 7 o'clock positions on Jeannie Ann's hymen. He said that the lacerations could have been inflicted more than three months prior to the date of the examination and considering the proximity of their location, could have been inflicted at the same time. A hard rigid instrument like an erect male organ, a rigid wood or a finger could have caused these lacerations. Dr. Bandonill also opined that the positions of the lacerations did not rule out the possibility that the victim had sexual intercourse less than three months prior to his examination of her, since intercourse would not create further lacerations when done in the same position. He likewise noted that the vaginal walls were lax and the vaginal rugosities were slightly flattened and smoothed. The victim's hymenal orifice admitted a tube 2.4 cm. in diameter with ease. Dr. Bandonill said it was possible that penetration happened several times. He further testified that the frequent insertion of a finger or other rigid object, with a diameter of more than an inch, could cause the lacerations as well as the lax condition of vaginal walls.^[21]

Jean dela Cruz ("Mrs. dela Cruz"), Jeannie Ann's mother and wife of accused-appellant, testified that she learned that accused-appellant had sexually abused their daughter Jeannie Ann on August 2, 1997 when she arrived at home after her marketing chores. She was told by her daughter Divine that accused-appellant was picked up by the police. Mrs. dela Cruz followed accused-appellant to the police station and found Jeanie Ann crying while the latter was reporting what had happened to her at the Women's Desk. Upon seeing her daughter, Mrs. dela Cruz hugged her and they cried together.^[22]

Mrs. dela Cruz further stated that she was shocked upon hearing Jeannie Ann's statement before the police that accused-appellant had been performing oral sex on their daughter Jeannie Ann since the latter was seven years old, as it was the first time that she learned about it. In her anger, she rushed to the other room where the accused-appellant was being questioned and slapped him, kicked him and scratched his face. She said accused-appellant denied all the accusations against him. When accused-appellant was already incarcerated, Mrs. dela Cruz received several letters^[23] from him asking for forgiveness from her and from Jeannie Ann.^[24] She also informed the trial court that after accused-appellant's incarceration, she went to Tarlac to get her husband's things since he usually stayed there on weekdays while he taught at Don Bosco.^[25] She discovered several love letters by a certain Emily addressed to accused-appellant,^[26] Emily's photograph^[27] and accused-appellant's draft love letters to Emily, dated March 21, 1995,^[28] September 4, 1995,^[29] and March 7, 1996.^[30] Mrs. dela Cruz also found a letter from a certain Maureen telling accused-appellant that he had a chance of winning her heart,^[31] and a photograph of Maureen.^[32] She said that the tenor of the letters indicated that accused-appellant was having relations with other women.^[33] Mrs. dela Cruz also denied accused-appellant's claims that she had a paramour and that she helped Jeannie Ann file the complaints against him because she (Mrs. dela Cruz) wanted to get back at him for being unfaithful to her.^[34]

SPO2 Melchor Ong, the police officer assigned to the Baguio City Mobile Group, also testified that on August 2, 1997, between 11:30 a.m. and 12:00 noon, while he and his companion inside an L-300 van of the Baguio City police were passing along Sumulong St., Baguio City, they saw Jeannie Ann walking towards them. The latter