

## SECOND DIVISION

[ G.R. Nos. 135667-70[1], March 01, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE VENTURA COLLADO, ACCUSED-APPELLANT.**

### D E C I S I O N

**BELLOSILLO, J.:**

TO TIE A CHILD of tender years spread-eagled to her bed to abuse her in the privacy of her home is despicable enough; to encroach on her innocence unashamedly in front of her younger brother is to descend to the deepest recesses of depravity. Thus the incorrigible lothario transgressed all norms of decency, morality and rectitude when he molested his nine (9)-year old victim in the presence of her six (6)-year old brother and severed all strands of gratefulness to her parents who gave him food, shelter and livelihood for four (4) years.

Messeah is the daughter of Jose Noli Dumaoal, a seaman. His household was composed of his wife Julie, and their three (3) children, Reggie, Messeah and Metheor. The accused Jessie Ventura Collado, son of Jose Noli's cousin Benjamin, was living with them since 1989. While waiting for an opportunity to become a seaman himself like his uncle Jose, Jessie served as the family driver. Aside from driving Julie, Jessie would also drive the school service vehicle operated by the Dumaoal spouses. Since Jose was almost always at sea and having no househelp, their children were oftentimes left in the care of Jessie. But, instead of taking care of them as their surrogate father, he took advantage of Messeah by sexually molesting her at home, and worse, even in the presence of her younger brother.

The first of four (4) unfortunate occasions was on 27 April 1993 when Julie and her oldest son Reggie went to Cubao. Messeah was resting in her bedroom upstairs when Jessie suddenly barged into her room. "What are you doing here?" she demanded, knowing fully well that he was not allowed upstairs without her parents' permission. Jessie simply smiled and said, "*Wala*," and added that her mother was not around to get mad at him. Then he left only to return after three (3) to five (5) minutes with a straw rope in hand. Messeah asked him why he was holding the rope, and Jessie told her to keep quiet and not to ask questions or else he would hurt her. Alarmed, Messeah rushed to the window and screamed for her brother Metheor, but Jessie reached out to cover her mouth with one hand while he closed the window with the other. She heard Metheor call out from downstairs, "What's going on?" but Jessie stopped her from answering.

Hearing no response from Messeah upstairs, Metheor went up to her room and discovered that Jessie had tied Messeah's hands to the bed and was about to tie her feet down. Metheor asked, "What are you doing to my Ate?" Messeah screamed to her brother to call for help from the neighbors, but Jessie threatened to hurt him if he left the room. Jessie then moved the bed to block the way to the door. At some

point, he also punched Messeah on her right cheek. Jessie then parted her legs and tied them apart, pulling down her garterized shorts and panties until her ankles. He tried forcing his penis into her vagina, but when he failed in his attempt, he inserted it into her anus instead.

Messeah felt pain in her anus and something sticky "like paste" flowed out from his penis. Her vagina ached from Jessie's earlier attempt to defile her. She saw Jessie close his eyes as though he was enjoying himself. She cried out and Metheor, unable to bear what Jessie was doing to his sister, told the older man, "Let my Ate go," and boxed him futilely with his baby fists. Jessie punched Metheor in the stomach and the latter was rendered helpless by the pain. Jessie told Messeah to dress up and threatened to set them and their house on fire if they said anything.

When Julie and Reggie arrived home in the afternoon she noticed that Messeah's cheek was red. She asked her what was the matter, but Messeah saw Jessie listening close by and looking at her with dagger eyes, so she simply lied and told her mother that she hurt herself while playing. Metheor also gave their mother the same excuse. That night, although she knew that Jessie was no longer on the second floor where she and her family slept, she could not muster enough courage to tell her mother what happened because of Jessie's threats.<sup>[2]</sup>

Because of this incident, Messeah asked her mother to buy a lock for her bedroom door, but her mother passed the errand on to Jessie, who, predictably did not buy the lock. Messeah began to hate Jessie and asked her mother to find another driver without however telling her what he did, but her mother only told her that it would be difficult to find another one.

That was not the end of Messeah's ordeal. On 5 June 1993 Julie and Reggie went to the Marikina public market, again leaving Messeah and Metheor alone with Jessie. Messeah was resting on the sofa while Metheor was in the garage when Jessie grabbed Messeah and dragged her upstairs. She screamed and Jessie tried to cover her mouth. She was crying as Jessie told her to take off her shorts and panties, took off his shorts, pressed her legs apart with his two (2) legs, and rubbed his penis against her thighs, until it touched her vagina. She told him to stop because she was hurting but he did not heed her plea. The intimate encounter went on for some ten (10) to fifteen (15) minutes. Metheor heard her screams for help, went upstairs and saw what Jessie was doing. He told Jessie to let his sister go, but Jessie merely ignored him. Metheor went downstairs and got a 7" to 8"-inch breadknife which had a narrow point at the end. Metheor again told Jessie to let his sister go, and threw the knife at Jessie's back. Jessie felt the knife hit his back that left a reddish mark, and let Messeah go. Before he left, he told the children that he would throw them into a volcano if they told anybody about what happened.<sup>[3]</sup>

The third molestation happened on 7 July 1993. Again, only Metheor, Jessie and Messeah were at home. Metheor was upstairs sleeping while Messeah was resting on the sofa when Jessie suddenly entered the living room armed with a knife. Messeah called for her older brother twice, but Reggie had already gone out. She only stopped when Jessie pointed the knife at her and threatened to stab her if she shouted again. He then forced her to walk backwards to the kitchen where he told her again to remove her shorts and panties. She resisted but Jessie insisted and even tried twice to stab her if she did not comply. He used one of his hands to

remove his shorts and briefs. He forced Messeah to sit on a steel chair and told her to spread her legs. She sat with her legs closed together but he got mad and threatened to stab her if she did not open her legs. She reluctantly opened her legs slightly and Jessie spread them wider with his free hand as the other hand was holding the knife. Jessie then told Messeah to sit at the edge of the steel chair, like before. He stood with one hand holding on to her shoulder, the other holding the knife, and stood straddling her legs. He then inserted his penis between her thighs and used his legs to press her thighs together (apart?). Then he rubbed his penis against her thighs for some three (3) to five (5) minutes until it touched her vagina. She could then feel something sticky coming out from his penis and reaching her vagina. Although her hands were free, she could not slap, box or scratch him because she was afraid that he might stab her as he threatened. Jessie only stopped when he heard a noise. It was Reggie entering the gate. Jessie ordered Messeah to get dressed immediately. Although she did not want to, Messeah stood up, got dressed, and met her brother in the living room. As she walked away, Jessie, who had also put his clothes back on, threatened to kill her whole family and Messeah knew that she could not get any help from her brother Reggie, who was only thirteen (13) years old and no match for Jessie who was much older and bigger.<sup>[4]</sup>

In August 1993 Jose came home for his annual vacation, but Messeah and Metheor were too afraid of Jessie and his threats that they did not tell their father about the ongoing abuse by Jessie. Once Jessie even borrowed a video tape of the *Vizconde Massacre* and forced Messeah and Metheor to watch it, telling them that the same thing would happen to them if they revealed to their parents what he was doing to them.<sup>[5]</sup> Not even the arrival in May 1993 of Julie's relative, Alipio Martin, could prevent Jessie's sexual assaults as he always waited until he was alone in the house with the children.

Jessie again took advantage of the situation on 17 October 1993 when everybody in the Dumaoal household, except for the two (2) youngest children, were away from home. Messeah's parents had gone shopping, while Reggie was playing computer with his friends at a neighbor's house. Julie's parents, who were staying for a visit, were busy with other things. Her mother was at the parlor having a cold wave, while her father was talking to a neighbor at the latter's house some distance away. Alipio was also out of the house and Metheor was playing in the garage. Messeah was aware of how alone she was and felt afraid that she might be molested again, but she could not do anything since the door of her room still had no lock. She had wanted to go to Cubao with her parents but Jessie had convinced them to leave her and Metheor behind since they had been invited to go to a birthday party. By the time they returned from the party, Jose and Julie had already left for Cubao.

As Messeah was changing her clothes after coming from the party, Jessie again entered her room, told her to remove her panty, and inserted his smallest finger (*kalingkingan*) into her vagina while telling her to keep silent. He then removed his pants and briefs and went on top of her. This time, he was not able to touch her vagina with his penis because Messeah cried and screamed and called for Metheor who again went up and told Jessie, "Get away from my sister." Jessie stopped but threatened to throw the children to the sharks if they told their parents what happened.<sup>[6]</sup>

That night Messeah learned from her father that he was about to board his ship

again. The next day, 18 October, she waited until Jessie left to drive the schoolbus to school. She was crying, and it was only after some prompting that she told her mother, "*Tinorotot ako ni Jessie.*"<sup>[7]</sup> Julie brought her to Jose and asked her what she meant by "*tinorotot.*" Messeah replied, "Jessie was forcing his penis into [my] vagina." She also mentioned that Jessie had inserted his penis into her anus, and that he had also inserted his finger into her vagina.<sup>[8]</sup>

Jose was shocked because he had treated Jessie as if he were his own child, and that morning, had even told Jessie to make sure his papers were in order because he might be able to bring him along with him to sea.<sup>[9]</sup> After promising Messeah that they would talk to Jessie, Jose and Julie brought her to school, then went home and talked to Jessie, who denied everything. However, Jessie looked pale, and told the Dumaoal spouses to just send him back to Paoay, Ilocos Norte. They were not able to talk to Jessie further because it was time for him to fetch the other children from school. The Dumaoal spouses went back to school where they found Messeah crying. When Messeah saw them, she asked them why they did not stay with her so they could have protected her. Apparently, Jessie had tried to bring her out of the school but was prevented from doing so by the school guard. The Dumaoals asked the principal's permission to bring her home. But before going home, they went to church and again asked her what happened, and reminded her that no one was supposed to tell a lie in church. Messeah insisted that she was telling the truth, and even offered to draw Jessie's penis for them. She also told them to talk to Metheor, who had witnessed the incidents, and insisted that they confront Jessie before a policeman.

Since they did not know what to do, the Dumaoal spouses consulted a lawyer, as well as Jose's uncle, Anastacio Dumaoal. The latter suggested that they talk to Jessie in the presence of Jessie's father, Benjamin Collado. Since they did not know Benjamin's exact address in Valenzuela, Bulacan, they left a message with his employer. Benjamin came on 22 October, and in the presence of Benjamin, Anastacio, and Julie Dumaoal's father Geronimo Martin, the Dumaoal spouses reached an agreement with Jessie whereby they would not press charges provided that he kept away from the Dumaoal family, and not threaten, coerce or do harm to any of them. The agreement was reduced to writing, and after signing the document, Jessie boarded a bus for Paoay.

Because of Jessie's threats, the Dumaoals were forced to transfer residence even though they did not have money to spend for the purpose. Before All Saint's Day, Jose went to the province to visit his parents' grave. While in Paoay, he learned from his cousin Josephine Collado, Jessie's aunt, that Jessie only stayed in Paoay for four (4) days after which he returned to Manila. Jose hurriedly returned to Manila and went to their former residence and learned from bystanders that Jessie had been seen drinking in front of the house. When Messeah learned about this, she got angry and told her father that he should have reported Jessie to the police since she had seen him lurking outside her school. Since Jessie violated his undertaking, they decided to file complaints against him for one (1) count of consummated rape and three (3) counts of acts of lasciviousness.

Jessie denied all the allegations against him and attacked instead the credibility of Messeah and Metheor. But the trial court found accused-appellant Jessie Ventura Collado guilty of statutory rape and sentenced him to suffer the penalty of *reclusion*

*perpetua*. Likewise, it found him guilty of three (3) counts of acts of lasciviousness and sentenced him to suffer imprisonment of six (6) years of *prision correccional* in its maximum period for each count. It also ordered him to indemnify the private complainant in the amount of P50,000.00, and P100,000.00 for moral damages.<sup>[10]</sup>

In his appeal, the accused Jessie Ventura Collado, aside from attacking the credibility of Messeah and Metheor, insisted that Messeah clearly testified that there was no penetration whatsoever in her vagina. But assuming *arguendo* that he was found guilty of acts of lasciviousness, the trial court erred nonetheless in imposing a penalty that did not take into account the *Indeterminate Sentence Law*.

The trial court in its assailed Decision ruled that it found "Messeah's testimony of her harrowing experience, although not absolutely consistent in all their details, to be still credible and thus entitled to full faith and credit."<sup>[11]</sup> And we agree with the trial court in this regard. In *People v. Dado*<sup>[12]</sup> the Court held that "assessing the credibility of witnesses is an area within the almost exclusive province of a trial judge whose findings and conclusions are normally accorded great weight and respect. In determining the credulity of testimony, significant focus is held to lie on the deportment of, as well as the peculiar manner in which the declaration is made by the witness in open court. Hardly can an appellate court come close to a trial court in making, from a mere reading of the transcript of stenographic notes, that kind of evaluation."<sup>[13]</sup>

The trial court was correct in finding accused-appellant guilty of three (3) counts of acts of lasciviousness. We take exception however to its finding that statutory rape was committed by him on 5 June 1993. A thorough evaluation of the records will show that accused-appellant Jessie Ventura Collado should only be convicted for acts of lasciviousness and not for consummated rape.

It is clear from Messeah's testimony that when Jessie carried out his lecherous intent on 5 June 1993, he did not commit rape, consummated nor attempted, despite the victim's testimony that he succeeded in touching her genitalia with his private parts -

Q: And what happened when he brought you to your room?

A: He told me to take off my shorts as well as my panty.

Q: Then what happened after that?

A: And while my legs were apart, he pressed them apart.

Q: Now, you said that Jessie pressed your legs apart, with what part of his body did he press your legs apart?

A: With his two legs, sir.

Q: And after he pressed your legs apart, what did he do?

A: He rubbed his penis between my thighs.

Q: Near your private part?

A: Yes, sir, near my private part x x x x

Q: You said that "kinukuskos," or he was rubbing his penis near your vagina, what happened when he was rubbing his