

## SECOND DIVISION

[ G.R. Nos. 137790-91, April 16, 2001 ]

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

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the decision,<sup>[1]</sup> dated February 18, 1999, of the Regional Trial Court, Branch 273, Marikina City, finding accused-appellant Jaime Cadag Jimenez guilty of two counts of acts of lasciviousness committed against his daughter Joanna<sup>[2]</sup> as defined and punished in Art. III, §5(b) of R.A. No. 7610 and sentencing him on each count to *reclusion perpetua* and ordering him to pay the victim a fine in the total amount of P40,000.00 and the costs.

The informations against accused-appellant alleged:

Crim. Case No. 97-1551-MK:

That on or about the 12<sup>th</sup> day February 1997, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant Joanna Marie Jimenez y San Pedro, did then and there willfully, unlawfully, and feloniously commit lascivious conduct upon the person of Joanna Marie Jimenez y San Pedro, a girl of 12 years old, by then and there inserting his finger into the private part of said Joanna Marie Jimenez y San Pedro, against her will and consent.

CONTRARY TO LAW.

City of Marikina, Philippines

March 3, 1997.<sup>[3]</sup>

Crim. Case No. 97-1577-MK:

That on or about the 2<sup>nd</sup> week of November 1996, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate, degrade complainant Joanna Marie Jimenez y San Pedro, did then and there willfully, unlawfully and feloniously commit lascivious conduct upon the person of Joanna Marie Jimenez y San Pedro, a girl of 12 years old, by then and there inserting his finger into the private part of said Joanna Marie Jimenez y San Pedro, against her will

and consent.

CONTRARY TO LAW.

City of Marikina, Philippines

March 17, 1997.<sup>[4]</sup>

Upon arraignment, accused-appellant pleaded not guilty<sup>[5]</sup> to the charges, whereupon he was tried.

Three witnesses, namely, Joanna Marie Jimenez,<sup>[6]</sup> SPO1 Lucymay Robles,<sup>[7]</sup> and Rowena Villegas<sup>[8]</sup> were presented by the prosecution. Their testimonies established the following facts:

The victim Joanna Marie Jimenez is the eldest of five children of accused-appellant Jaime Cadag Jimenez, a construction worker, and Nimfa San Pedro Jimenez, housewife. She was born on January 25, 1985 (Exh. F).<sup>[9]</sup> Her family resided at Parang, Marikina in a one-bedroom house. At night, the family slept in the sala, which is about three meters wide, Nimfa and accused-appellant lying beside each other, the youngest child sleeping next to Nimfa, the second youngest next to the youngest, and so on. Joanna, being the eldest, was farthest from her parents.<sup>[10]</sup> Several times from August to October 1996, while his family was asleep at night, accused-appellant carried Joanna to the bedroom and there lay on top of her, kissed her, and fondled her breasts. Afterwards, he removed her shorts and panties and inserted his penis inside her vagina. On the sixth time, Joanna told accused-appellant that she had started menstruating on November 5, 1996.<sup>[11]</sup> These alleged six instances of abuse are subject of a separate criminal complaint filed by Joanna against accused-appellant.<sup>[12]</sup> Sometime in the second week of November 1996, while Joanna, then 11 years old, was asleep at night, she was awakened by accused-appellant who again lay on top of her, caressed her breasts and private parts, and then inserted his finger inside her vagina. She was so afraid of her father that all she could do was to close her eyes, occasionally opening them to see what he was doing to her. Accused-appellant was able to abuse Joanna while her siblings and her mother were asleep beside her.<sup>[13]</sup> Joanna related the incident to two friends, Roselle and Hazel, who urged her to tell her mother Nimfa, but Joanna was afraid she would not be believed and so did not tell her mother.<sup>[14]</sup> Shortly after her 12th birthday on January 25, 1997, at about 7 o'clock, accused-appellant again molested his daughter by inserting his finger inside her vagina.<sup>[15]</sup> This time Joanna told her classmate and best friend Eunice what her father had been doing to her. Eunice in turn told her aunt about the incident. The latter sought the assistance of the Bantay Bata ABS-CBN Foundation which reported the matter to the principal of the Valeriano Fugoso Memorial School where Joanna was studying. On February 27, 1997, a teacher of the school went to Joanna's house and told Joanna's mother Nimfa about accused-appellant's abuses. The next day, Nimfa reported the matter to the Marikina City police. Joanna was examined by Dr. Dennis Bellin, medico-legal officer of the NPC-PNP Crime Laboratory Group at Camp Crame, whose findings are set forth in a medical certificate he issued, dated February 28, 1997. The report (Exh. A) stated:

## 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.

. . . .

## CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.<sup>[16]</sup>

Accused-appellant denied the allegations against him. He contended that he could not have molested his daughter because he and his wife slept in the sala with all their children. According to accused-appellant, he used to leave the house for work at 4:30 every morning and come home at different times of the day, depending on the work at the construction site. But he claimed he was never left alone in the house with his daughter.<sup>[17]</sup> Accused-appellant's wife Nimfa, who tried to withdraw the case filed against her husband, testified in his favor. She said that she and accused-appellant had been married for 14 years and that he had been a good father to his children. She said that it was impossible for accused-appellant to have molested their daughter Joanna on February 12, 1997 because she (Nimfa) never left the house on that day. In fact, at no time did she ever leave the house without taking her children with her.<sup>[18]</sup> After trial, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1) in Crim. Case No. 97-1551-MK - the Court finds accused Jaime Cadag Jimenez GUILTY BEYOND REASONABLE DOUBT of Violation of Article III, Section 5, paragraph (b) of R. A. No. 7610, as amended, defined, and penalized under the same provision, in relation to Section 31, paragraph (c) of Article XII of the same Act, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and to pay a fine in the amount of P20,000.00 to be administered as a cash fund by the Department of

Social Welfare and Development, and disbursed for the rehabilitation of complainant Joanna Marie Jimenez, plus all the accessory penalties provided for by law, without subsidiary imprisonment in case of insolvency, and to pay the costs;

2) in Crim. Case No. 97-1577-MK - the Court finds accused Jaime Cadag Jimenez GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Article III, Section 5, paragraph (b) of R. A. No. 7610, as amended, defined, and penalized under the same provision, in relation to Section 31, paragraph (c) of Article XII of the same Act, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and to pay a fine in the amount of P20,000.00 to be administered as a cash fund by the Department of Social Welfare and Development, and disbursed for the rehabilitation of complainant Joanna Marie Jimenez, plus all the accessory penalties provided for by law, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.<sup>[19]</sup>

Hence, this appeal. Accused-appellant contends that —

I. THE TRIAL COURT ERRED IN NOT FINDING THAT THE TESTIMONY OF COMPLAINANT JOANNA MARIE JIMENEZ WAS PUNCTURED WITH MATERIAL INCONSISTENCY, IMPROBABILITY, AND UNRELIABILITY THEREBY CAUSING GRAVE DOUBT ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT.

II. GRANTING ARGUENDO THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED, THE TRIAL COURT GRAVELY ERRED IN INCREASING THE PENALTY IMPOSED ON HIM FROM RECLUSION TEMPORAL IN ITS MEDIUM PERIOD TO A MAXIMUM PERIOD OF RECLUSION PERPETUA IN RELATION TO SECTION 13, PARAGRAPH C, ARTICLE XII OF REPUBLIC ACT 7<sup>[6]</sup>10 DESPITE THE FACT THAT BOTH CRIMINAL INFORMATIONS FAILED TO ALLEGE THE SPECIAL CIRCUMSTANCE OF RELATIONSHIP OF THE VICTIM OF THE ACCUSED-APPELLANT.<sup>[20]</sup>

*First.* Accused-appellant points out the alleged inconsistencies between Joanna's testimony in court and her sworn statement, and in her testimony, which she claims cast doubt on Joanna's credibility, to wit:

1. In her testimony, Joanna claims that accused-appellant committed the alleged lascivious acts in the sala, while in her sworn statement, she stated that accused-appellant first carried her from the sala to the bedroom where he performed the alleged lascivious acts.

2. During direct examination, Joanna testified that the entire family sleep in the sala, while on cross-examination, she stated that accused-

appellant sleeps in the bedroom while the rest of the family sleep in the sala.

Accused-appellant's contention has no merit.

Joanna said in her sworn statement (Exh. C) that accused-appellant molested her in the bedroom of their house with reference to incidents which took place from August to October 1996, thus:

T: Paano ka ginapang ng papa mo?

S: Hinahalikan po niya ako sa pisngi ko, tapos hinihimas niya po ang suso ko tapos po hinahalikan din po niya ang pekpek ko. Tapos pagtulog na po sina mama at mga kapatid ko binubuhat po niya ako sa kuartero hindi po niya sinisindihan o binubuksan ang ilaw. Pagnakahiga na po kami sa sahig ng kuartero inaalis niya po isa-isa ang short ko tapos ang panty ko tapos po dinadagaganan na po niya ako na parang ginagawa ng mag-asawa.

T: Ano naman ang pakakaunawa mo sa sinasabi mo na ginagawa ng mag-asawa?

S: Pinapasok po ni papa ang titi niya sa pekpek ko.

T: Ano naman ang nararamdaman mo pagpinapasok ng papa mo ang titi niya sa pekpek mo?

S: Masakit po.

T: Ilang beses na ba ito ginawa ng papa mo sa pagpasok ng titi niya sa pekpek mo?

S: Simula po nuong August hanggang October 1996 mga lima o anim na beses po pinasok ni papa ang titi niya sa pekpek ko . . . . [21]

But she said that one night in November 1996, accused-appellant abused her in the sala of their house even as everyone, except accused-appellant and she, was asleep. Thus she testified:

FISCAL CONOS:

Now, miss witness, sometime on the second week of November 1996 do you remember of any unusual incident that took place inside your house?

WITNESS:

Yes, Ma'am.

FISCAL CONOS:

What was that unusual incident that took place inside your house?

COURT:

What date is this Fiscal, November 2?

FISCAL CONOS: