

EN BANC

[G.R. No. 135109-13, December 18, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PAJO Y BAGTONG AND IMELDA LIQUIGAN Y KASIBAYAN, ACCUSED-APPELLANTS.

DECISION

PER CURIAM:

Jose Pajo y Bagtong was found guilty beyond reasonable doubt and convicted of three counts of rape and two counts of acts of lasciviousness in Criminal Cases Nos. 97-233, 97-664 to 97-667 while his co-accused, Imelda Liquigan y Kasibayan, was found guilty beyond reasonable doubt as an accomplice of the crime of rape in Criminal case No. 97-664 by the Regional Trial Court (RTC) of xxx. Due to the imposition of the death penalty in Criminal Cases Nos. 97-233, 97-664 and 97-665, the Decision^[1] of the RTC dated July 6, 1998 imposing the death penalty therein is now before us on automatic review.

On February 21, 1997, an Information^[2] for rape was filed against the accused Jose Pajo y Bagtong (PAJO) upon the complaint of his daughter, AAA^[3] committed as follows:

"The undersigned Assistant Prosecutor upon prior sworn statement of AAA, a minor, assisted by her Aunt CCC, a copy of which is hereto attached as Annex "A", accuses JOSE PAJO y BAGTONG of the crime of Rape (Art. 335, R.P.C., in relation to R.A. 7610), committed as follows:

That on or about the 31st day of January 1997, in the City of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of said AAA, a 13 year old minor, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the said AAA, without her consent and against her will, to her damage and prejudice."

The case was docketed as Criminal Case No. 97-233. Upon arraignment, the accused with the assistance of counsel entered a plea of not guilty.^[4] Thereafter, trial ensued.

During the pendency of the trial, four more informations were filed against PAJO upon the complaint of AAA and his other daughter, BBB, as follows:

In Criminal Case No. 97-664, PAJO together with his co-accused Imelda Liquigan y Kasibayan were charged, as principal and accomplice respectively, with the crime of rape committed against AAA as follows:

"The undersigned Assistant Prosecutor upon prior sworn statement of AAA, a minor, assisted by her Aunt CCC, a copy of which is hereto attached as Annex "A", accused JOSE PAJO Y BAGTONG as principal and IMELDA LIQUIGAN Y KASIBAYAN as accomplice, of the crime of Rape in relation to R.A. 7610, committed as follows:

That in or about during the month of August 1996, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE PAJO, being the father of said AAA, a 13 year old minor by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the said AAA, without her consent and against her will while accused Imelda Liquigan cooperated in the said act, by holding her legs open, to facilitate the commission thereof by accused Jose Pajo y Bagtong, to her damage and prejudice."

In Criminal Case No. 97-665, PAJO was charged with the crime of rape committed against AAA as follows:

"The undersigned Assistant Prosecutor upon prior sworn statement of AAA, a minor, assisted by her Aunt CCC, a copy of which is the crime of Rape (Art. 355, RPC in relation to R.A. 7610, committed as follows:

That on or about the 18th day of September 1996, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of said AAA, a 13 year old minor, by means of force, violence and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with the said AAA, without her consent and against her will, to her damage and prejudice."

In Criminal Case No. 97-666, PAJO was charged with the crime of acts of lasciviousness committed against AAA as follows:

"The undersigned Assistant Prosecutor on the basis of the sworn statement of AAA, 12 years old, assisted by her CCC, a copy of which is hereto attached as Annex "A", accuses JOSE PAJO y BAGTONG of the crime of Acts of Lasciviousness, in relation to Sec. 5 (b), Article III, R.A. 7610, committed as follows:

That in or about the month of August 1996, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously commits acts of

lasciviousness upon one AAA, a 12 year old minor, by then and there ordering her to hold and suck his sex organ against her will and consent, to her damage and prejudice."

In Criminal case No. 97-667, PAJO was charged with the crime of acts of lasciviousness committed against AAA as follows:

"The undersigned Assistant Prosecutor on the basis of the sworn statement of AAA, 13 years old, assisted by her Aunt CCC, a copy of which is hereto attached as Annex 'A", accuses JOSE PAJO y BAGTONG of the crime of Acts of Lasciviousness in relation to Sec. 5 (b), Article III, R.A. 7610, committed as follows:

That on or about the 15th day of November 1996, in the City of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon one AAA, a 13 year old minor, by then and there touching and holding her vagina, against her will and consent, to her damage and prejudice."

On June 4, 1997, both PAJO and his co-accused Imelda Liquigan y Kasibayan (LIQUIGAN) with the assistance of counsel pleaded not guilty to the crimes charged.

[5]

Subsequently, on June 23, 1997, Judge Roberto C. Diokno ordered the consolidation of Criminal Cases Nos. 97-664, 97-665, 97-666, 97-667 with Criminal Case No. 97-233.[6]

The trial court stated the facts of the case *viz*:

"Accused JOSE is an ex-convict. He served a prison term for the crime of theft. Accused IMELDA is his live-in partner.

Complainants AAA and BBB are the minor children of JOSE with EEE. AAA is now 14 years old while BBB is 12. (Exhibits "I" and "J"). their natural mother left them when they were still very young.

Upon being released from prison, JOSE moved in with IMELDA at their present residence at xxx.

Subsequently, JOSE took back AAA and BBB from his brother who took care of them while he was in prison.

The family occupied the room at the 2nd floor of their house. The ground floor is rented out to some boarders. At night, JOSE and IMELDA, together with their two-year old baby would sleep together in bed while AAA and BBB would sleep on the floor. At times, only a curtain would separate the bed from the floor where the sisters would be sleeping.

JOSE drinks a lot and is frequently drunk. He would usually drink two bottles of beer before going to bed.

On February 18, 1997, CCC had a chance to talk to BBB, her niece. BBB then confided to CCC how their father had been molesting her and her sister (AAA).

The following day, CCC and FFF, their youngest brother brought BBB and AAA to the barangay center. There, they related the ordeal of the two sisters. The Complaint Center, in turn, notified the Office of the Department of Social Welfare and Development (DSWD).

With DSWD Social Workers, the group of CCC proceeded to Police Precinct No.7 at xxx city and sought police assistance for the arrest of JOSE and IMELDA. The two suspects were arrested and their case referred to the Station Investigation Division of the xxx Police.

SPO1 Lilia Hogar and Police Inspector Angelita Alvarico of the Women's Desk Section, investigated the complaint. The written statements of AAA and BBB were taken (Exhibits "A" and "B"). thereafter, AAA was referred to the National Bureau of Investigation and PNP Crime Laboratory for examination (TSN, March 17, 1997).

On February 20, 1997, the Final Investigation Report was issued by SPOI Lilia Hogar with the recommendation that the complaint of AAA and BBB be referred to the City Prosecutor for proper disposition (Exhibit "C").

After inquest, the preliminary investigation, the xxx Prosecution Office filed with the Court three informations for Rape against JOSE (Criminal Case Nos. 97-233, 97-664 and 97-665) and 2 counts of Acts of Lasciviousness (Criminal Case Nos. 97-666 and 97-667). IMELDA was indicted as an accomplice in the charge for rape in Criminal Case No.97-664.

AAA narrated in court how she and her younger sister BBB have been molested by their father on different occasions between August 1996 to January 1997. She testified that the first incident occurred in the night of August 18, 1996. They were all inside their common sleeping area. She was already fearful as her father was them again drunk.

JOSE and IMELDA were already without clothes and in bed when her father called her. She was ordered to undress and to climb in bed.

BBB has been ordered by JOSE to stand guard at their door.

Once in bed, JOSE told IMELDA to spread open AAA's legs. JOSE then called BBB to come near and to suck his penis so he could have an erection.

BBB obeyed her father's command. Thereupon, JOSE laid on top of AAA while IMELDA was holding her legs apart. AAA felt her lower abdomen moving up and down. She told her father that she was hurting already. But still, he did not withdraw his penis.

After a while, JOSE told IMELDA to lie down. JOSE then withdrew from AAA and went on top of IMELDA.

While JOSE and IMELDA were copulating, JOSE told AAA to suck IMELDA's breast.

The abominable scene finally stopped when they heard some noises outside.

AAA further testified that this incident was repeated on September 18, 1996. She was then watching a VHS tape at their uncle's place when her father told her to go upstairs to their room.

Inside their room, JOSE and IMELDA started to take off their clothes. JOSE ordered AAA to take off hers too. Her father was again drunk. He laid on top of her while IMELDA held her legs apart.

JOSE would even slap IMELDA whenever she fails to hold AAA's legs apart.

Again, the detestable incident ended with JOSE and IMELDA having sexual intercourse.

The father again molested AAA in November 1996. AAA though could not remember the exact date.

She testified that she woke up one night when she felt someone touching her most private part. She discovered her father beside her on the floor . She became upset. Her father withdrew her hand. Fortunately for AAA, her father desisted from pursuing his woeful intentions. JOSE climbed back to his bed and slept beside IMELDA.

According to AAA, the last incident happened on January 31, 1997 at about 12:00 o'clock in the evening. She was awoken (sic) by someone tapping her feet.

It was her father again. She was told to go the bathroom downstairs. She thought she would just be asked to fetch water. When she entered the bathroom, her father was already there and naked. She was told to remove her shorts and underwear. Her father was drunk again.

AAA was told to lean back on the wall and open her legs. Thereupon, JOSE proceeded to penetrate AAA. Then she felt pain, and deep inside her she wished her father would die so that her ordeal would stop.

Her father stopped when he heard their dog barking. He then instructed her daughter to bring a pail of water upstairs.

JOSE then woke up IMELDA and told her to prepare coffee. Thereafter, IMELDA told AAA to go back to sleep. AAA went to sleep with IMELDA massaging JOSE. (TSN, April 28, 1997, pp. 18-39; April 30, 1997, pp. 2-22; August 11, 1997, pp. 11-34; August 15, 1997, pp. 3- 15).