



COUNTY COURT NUMBER 1 AT BURGOS, SPAIN

CRIMINAL PROCEEDINGS 390/09

SUMMARY PROCEDURE 155 / 09

MAGISTRATES' COURT 4 AT BURGOS

JUGDMENT 201/10

Given at Burgos, on June the 7th 2010.

Her Honour, Mrs. LAURA SORIA VELASCO, SENIOR-JUDGE at the County Court number 1 from Burgos, having seen and heard the current SUMMARY TRIAL 390/09 in a verbal and public trial followed by a SEXUAL ASSAULT offence versus **FÉLIX DE LA CÁMARA GARCÍA**, born on October the 27th 1944 at PURAS DE VILLAFRANCA (BURGOS), address at CARDEÑUELA DE RIOPICO (BURGOS), parents EDUARDO and MARGARITA, ID card 13021907C, no previous criminal record, the decree of solvency has been put on the record, on pre-trial release as refers the current procedure (deprived from 19.05.09 until 01.06.09), legally assisted by the solicitor Mrs ÁNGELES SANTAMARÍA BLANCO and represented by the attorney Mr JOSÉ MARÍA CASTILLA MARAÑÓN, with the intervention of the Public Prosecution.

RECORD ON FACTS

FIRST. – The Public Prosecution's definitive conclusions considered the facts as an offence consisting on sexual abuse, from the article 181.1 from the Spanish Penal Code. There are no circumstances affecting criminal liability. Hence, the Public Prosecution asked for the following penalties to be imposed on the accused person: 18-month imprisonment, plus accessory ones.

The Prosecution also asked for the accused person to pay the court costs, together with an indemnity on behalf of Leena Marketta Horn to the value of 2,000 € as a compensation on suffering for moral damages.

SECOND. - The counsel for the defence's definitive conclusions disagreed with the Prosecution's and asked for the accused person's acquittal.

THIRD. - On October the 19th 2009 this County Court received the proceedings record file on a competence basis to issue a judgment. The hearing for the trial was set on April the 29th 2010 at 9.30 A.M. and it was held the said date.



PROVEN FACTS

UNIQUE. - If we weigh the evidence evaluated jointly as examined at the hearing for the trial, the following facts are considered as proven:

On May the 18th 2009 at around 9 A.M. the accused person Félix de la Cámara García invited the Finnish pilgrim on her way to Santiago de Compostela Leena Marketta Horn to have a coffee in his house at Cardeñuela de Riopico (Burgos.) She agreed to have a coffee, since the only bar at the village was closed.

Inside the house the pilgrim lady saw that the accused person had several recording systems to see outside his house, which she thought rather bizarre and became nervous.

Next, the accused person served coffee and sat by her side, at the common area used as sitting-room and kitchen.

With lewd intention, he touched her arm with a trembling hand, going upwards all along her arm, repeating the word “bed” in English, pointing at a door, touching her lips with his hand, trying to kiss her and touch her breasts.

When Leena Marketta was trying to leave the house, the accused person went after her. At the corridor to the front door opening towards the inside, he tried to kiss her again, touching her breasts on several occasions. In the end, she succeeded in opening the front door and went out of the house, extremely upset and scared, reporting the said facts the very same date at Burgos Police Station.

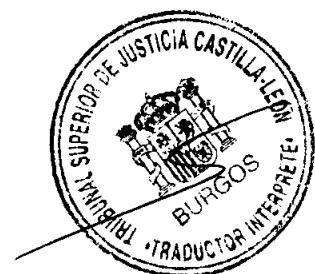
The same date the accused person had also met the pilgrim lady Roisin Marian at Villaval village. She was having a rest at a bench. He sat very close to her, brushing past her arm, offering her a lift in his car, which she rejected.

Halfway in between Villaval and Cardeñuela, the accused person passed by in his car and insisted on the lift, pointing at the rear sits, offering coffee, saying “pretty, pretty.”

Later on, at Cardeñuela, as the pilgrim lady went past his house, he insisted on inviting her for a coffee. When she was reaching the airport area, the accused person stopped his car in front of her, shouting “Hey, girl” offering her a lift once more. As he had been insisting so very much, she shouted at the pilgrims walking before her to wait for her.

On 2001 the accused person suffered a brain haemorrhage. As a result, he had a left hemiparesis, which restricts his movements, power and coordination on his top left limb. He also had a depressive trouble as a reaction to the said stroke, following a treatment consisting on antidepressants and tranquillizers, plus a functional impotence. On the date when the said facts happened, it has not been established if he was still taking antidepressant drugs.

He has been granted the invalidity allowance as refers work, with a 54% handicap. This does not prevent him from managing on his own, with no need for third party help. He also drives his own car, which has not been adapted.





LEGAL GROUNDS

FIRST. – The above referenced facts have been established as proven at the evidence examined at the hearing, according to the oral and immediacy principles from the Spanish Code of Criminal Procedure, on the basis of the victim's statement, which fulfils the requirements in our base law, both from the Spanish Constitutional Right's Court (judgments 201/89, 160/90, and 229/919) as well as the Spanish Supreme Court of Justice (judgments from December the 5th 1994, February the 23rd 1995, October the 24th 1995, and December the 29th 1997.) In the framework of some offences committed clandestinely, especially those against sexual freedom, thus preventing the Courts from additional evidence, other than the victim's statement, for it to invalidate the presumption of innocence, the aforementioned case law requests the following:

1) The absence of subjective incredibility, from the relationship between the accused person and the victim, which could lead to deduce that there exists a motive (resentment, hostility, or other depriving the said statement of due capacity to cause certainty).

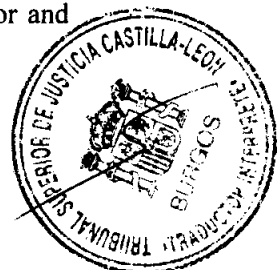
In the current case, it has been established that the accused person and the victim had never met before.

2) Likelihood on the charges brought, by means of the confirmation of the concurrence of peripheral objective corroborations, supporting what cannot be strictly called testimony (a knowledgeable statement by a person alien to the proceedings) but a statement from one of the parties, given that the victim can appear as private prosecution or civil damage party at the proceedings (articles 109 and 110 from the Spanish Code of Criminal Procedure [LEG 1882, 16].) Hence, it is essential to verify objectively the existence of the facts.

In the current case, the victim has appeared at the hearing for the trial, though travelling from Finland is burdensome, to sustain the same version on the facts, reported the very same date that they had happened. Thus, there is no reason to doubt on her statement, despite the accused person's denial, though he has admitted that the pilgrim lady was at his house, that he invited her for a coffee, even admitting that he touched her arm, but with no lewd intention. It has also been established that the victim complained before the police a few hours later.

4) Persistence when incriminating, which must be extended in time, plural, unambiguous, non-contradictory, because as the only evidence versus the accused person's denial, stating his innocence, it would become the only chance to avoid his lack of defence, allowing him to efficiently contesting the victim's statement, outlining the contradictions which might lead to its untruthfulness.

This is also fulfilled at the current case, despite some difficulties in expressing her statement, since the victim always had to be assisted by an interpreter, as she does not speak Spanish, she has declared the whole time the same version on the facts, that is, that the accused invited her to have a coffee in his house. Inside the house, the accused person sat by her side, and he touched her arm with his hand, going upwards all along her arm, touching her lips with his hand, repeating the word "bed" in English, pointing at a door, trying to kiss her and touch her breasts. While she was trying to leave the house, as she could not open the door at first, because the front door opened towards the inside, and in her country of origin towards the outside, the accused person was behind her, touching her breasts on several occasions, trying to kiss her once more, until she succeeded in opening the front door and went out of the house, extremely scared.



Her essential statement has been invariable, both as refers the essence of facts and their development; we cannot consider as contradictions her declaring at the Magistrates' Court that she thinks that he touched her with his right hand, whereas at the trial she could not remember which hand he used to molest her, or her declaring at the Magistrates' Court that he touched her breast at the sitting room, whereas at the trial she said that he had tried to touch her breast and succeeded at the corridor; in view of the time elapsed, and her need for an interpreter when declaring, the said changes do not affect to the essence of the reported facts.

Besides, we also count with the statement from the other pilgrim lady Roisin Marian, who declared the same date the accused person was especially insistent, offering her a lift in his car, and have a coffee, which she has stated at the hearing for the trial.

She has undoubtedly identified the accused person, describing how she met him at Villaval village. She was having a rest at a bench. He sat very close to her, brushing past her arm, offering her a lift in his car, which she rejected.

Halfway in between Villaval and Cardeñuela, the accused person passed by in his car and insisted on the lift, pointing at the rear sits, offering coffee, saying "pretty, pretty."

Later on, at Cardeñuela, she thinks that he was outside his front door, and he insisted on inviting her for a coffee. When she was reaching the airport area, the accused person stopped his car in front of her, shouting "Hey, girl!" pointing at the rear sits. As he had been insisting so very much, she got scared and shouted at the pilgrims walking before her to wait for her.

From all of this, we can deduce that the said date the accused person was insistently seeking for female company, as he was the one to invite pilgrim ladies for a coffee, thus corroborating the facts from Leena Marketta's version. And he also was the one inviting her to enter his house, and not his version stating that the victim asked him for a coffee and sneaked in his house without his permission.

If we add that it has not been established that on the date when the facts happened the accused person was deprived from sexual desire, as although documents have justified his suffering from impotence, this has not prevented him from having not fully satisfactory sexual intercourse on rare occasions, with a Viagra pill, as he told the Doctor appointed by the Court (medical report pages 58 and ff.)

It has not been established whether on the date when the facts happened the accused person was still taking antidepressants and tranquillizers, on the treatment prescribed by the Psychiatrist from the Divino Valles Hospital, because of the brain haemorrhage that he had (medical report from 2002, page 120.) His family Doctor, Mr Máximo Izquierdo Pérez, confirming his report page 119 at the trial, stated that the said antidepressants and tranquillizers, combined with tranqumazin, could suppress or reduce sexual appetite.

But as Mr Amador Martínez Tejedor, the Doctor appointed by the Court both on his medical report from May the 26th 2009 and stating at the trial did not reflect that he was still following the said treatment. When questioned about it, the Doctor said that the accused person had declared having left antidepressant treatment on his own initiative, as he thought that he was feeling better.



From the evidence examined, as refers his left hand handicap, the victim did realize about it, as she declared that he touched her with a hand deprived of any colour and rather bizarre, which corroborates her stating that he touched her arm with his hand, going upwards all along her arm; the said handicap does not prevent him from touching, as he has stated that he can drive his own car, which has not been adapted. Hence, we can deduce that his top left limb preserves part of its functionality. He could have touched her with either his left or his right hand, as the victim stated at the Magistrates' Court, although she did not remember which specific hand it was at the hearing for the trial.

Thus we must conclude that irrespective of the statement from the Mayoress of the village where the accused person lives, remarking his being a model neighbour, at the current proceedings, and from the evidence examined, the accused person's presumption of innocence has been invalidated.

SECOND. – In accordance with the indictment by the Prosecution, the proven facts as found have been established as an offence consisting on sexual abuse, from the article 181.1 from the Spanish Penal Code.

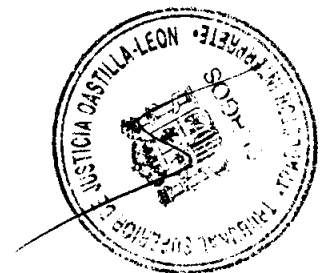
In that respect, the Spanish Supreme Court of Justice case law (judgment 1216/2006 from December the 11th and judgment 2343/2001 from December the 11th) the characteristics to be fulfilled when defining sexual abuse offences are as follows:

- a) An objective requirement consisting on a lewd action towards somebody else's body;
- b) A wilful psychological element in a lewd aim;
- c) An element consisting on damaging the victim's sexual freedom or indemnity, not using violence or coercion, but without the victim's consent.

When applying the aforesaid case law to the current procedure, we must conclude that the record on proven facts can be perfectly subsumed in the typified offence. Hence, Félix de la Cámara invited the pilgrim Leena Marketta to have a coffee in his house. Then he tried to kiss her mouth on several occasions, repeating the word "bed" in English, attempting to touch her breasts, which he succeeded in the end, as she was trying to leave the house, taking advantage of her difficulties when doing so, because the front door opened towards the inside and the corridor was quite narrow. He did the said molestation without her consent. This behaviour is clearly sexual in nature from the lewd accused person's intention obviously affecting sexual indemnity.

THIRD. – According to the article number 27 from the Spanish Penal Code, criminal liability for offences and misdemeanours correspond to their authors and accessories. Thus, in the current procedure, the accused person Félix de la Cámara García is the author, criminally liable to an offence, due to his being a direct, material and wilful participant in committing the facts.

FOURTH. – There are no circumstances affecting criminal liability.



FIFTH. – The article 181.1 from the Spanish Penal Code, 11/1999 Act from April the 30th, foresees imprisonment penalties from 1 to 3 years or fines ranging from 18 to 24 months.

In view of the aforementioned proven facts, especially the nature of lustful facts and the victim's age, it is hence pertinent to condemn the accused person to a 16-month economic penalty. According to the article number 50 from the Spanish Penal Code, the fine daily-quota is established on a 10 euro amount, considering the accused person's economic capacity, a retired person receiving the invalidity allowance.

SIXTH. – Concerning civil liability in the current proceedings, the Prosecution has asked for the accused person to pay an indemnity on behalf of Leena Marketta Horn to the value of 2,000 € as a compensation on suffering for moral damages.

Given that every person criminally liable for an offence or misdemeanour is also civilly liable on damages resulting from it against a third person (article 116 from the Spanish Penal Code)

In view that any indemnity for compensation includes not only material but also moral damages derived from the criminal offence. In principle, the said damages do not require to be proven when their existence can be unequivocally deduced from the facts, as in the current case, where it is obvious that the victim's dignity feeling has been hurt or harassed

In the framework of such a difficult task as it always becomes when quantifying moral damages caused (article 113 from the Spanish Penal Code)

According to the article 115 from the Spanish Penal Code we establish as a basis for assessment the following: the characteristics of the facts, the victim's age, both social reproach and relevance (Judgment from the Spanish Supreme Court from 24.03.97)

We discretionarily evaluate the sum for the convict to indemnify Leena Marketta to the value of 800 euro on moral damages. We consider that the said sum is more reasonable than the one applied for by the Public Prosecution, in view of the elements as evaluated altogether, in application of legal interests from the article 921 from the Spanish Code of Civil Procedure.

SEVENTH. – The costs must be imposed to the accused person, according to the article number 123 from the Spanish Penal Code.

