

## EN BANC

[ G.R. Nos. 146786-88, September 23, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANDRES DAÑO Y TORETA, APPELLANT.**

### DECISION

**CORONA, J.:**

Before us on automatic review is the Omnibus Judgment,<sup>[1]</sup> dated November 23, 2000, of the Regional Trial Court of Butuan City, Branch 1, acquitting herein appellant Andres Daño y Toreta of rape in Criminal Case No. 7972, but convicting him of two counts of qualified rape in Criminal Case Nos. 7970 and 7971, and sentencing him to suffer the penalty of death in each case.

The separate informations charging appellant Andres Daño y Toreta of two counts of rape as defined and penalized under Articles 266-A and 266-B of the Revised Penal Code read:

Criminal Case No. 7970:

That on or about the 8th day of December, 1998, at 1:00 o'clock in the afternoon, more or less, in Barangay Concordia, Las Nieves, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his step-daughter, BABY JANE G. NALAM, a minor, below twelve (12) years old.

Contrary to law.

Criminal Case No. 7971:

That on or about the 15th day of December, 1998, at 9:00 o'clock in the morning, more or less, in Barangay Concordia, Las Nieves, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his step-daughter, BABY JANE G. NALAM a minor, below twelve (12) years old.

Contrary to law.

Arraigned on July 13, 1999, appellant, assisted by counsel, pleaded not guilty to both charges. Thereafter, joint trial on the merits ensued.

The prosecution evidence showed that, on January 8, 1999, Magdalena Barrido confronted her granddaughter, Baby Jane Nalam, about the latter's claim that she was sexually molested by the appellant who was allegedly her "step-father." After

confirming Baby Jane's story, Magdalena and her brother, Decisimo Limato, reported the matter to their sister, Avelina Amado, who was then the incumbent barangay chairwoman. Avelina accompanied Baby Jane, Magdalena and Decisimo to the police station in Las Nieves, Agusan del Norte where Baby Jane gave her sworn statement.

[2] Subsequently, Baby Jane was physically examined by Dr. Theresa R. Kho, Municipal Health Officer of Magallanes, Agusan del Norte. [3] The medical certificate, [4] whose existence and due execution were admitted by the defense, showed that Baby Jane had an "impacted hymen."

Baby Jane testified that sometime in December 1998, she was left alone with the appellant in their house in Dalagangan, Las Nieves, Agusan del Norte. Her mother, Jocelyn, had earlier brought Baby Jane's half-brother Aldrin (Jocelyn's son by the appellant) to his grandmother in Magallanes, Agusan del Norte for treatment, as said grandmother happened to be a *manghihilot*. On the said occasion, the appellant forcibly undressed Baby Jane and went on top of her. Thereafter, he tried to insert his penis into her vagina but failed to penetrate her since she felt extreme pain and bled in the process. She could not shout for help as the appellant pointed a knife at her and warned her to remain silent or he would kill her. [5]

The sexual assault was repeated in the same month in their house in Dalagangan, before Jocelyn and Aldrin returned from Magallanes, Agusan del Norte. Again, appellant forcibly undressed Baby Jane before mounting her. He then inserted his penis into her vagina and Baby Jane felt intense pain. She resisted and struggled but the appellant was too strong. Moreover, as in the first rape, the appellant was armed with a knife which he used to threaten Baby Jane into submission. [6]

Baby Jane confided her ordeal to her elder sister while she was at her grandmother's residence in Buhang, Magallanes, Agusan del Norte, on January 8, 1999. Her grandmother Magdalena overheard their conversation and summoned the sisters. Upon inquiry, Baby Jane confirmed that she was sexually molested by the appellant in their house in Dalagangan on two occasions in December 1998. [7] She also related the same story to her other relatives, including Avelina Amado, [8] before finally going to the police station to lodge a formal complaint [9] for rape against the appellant.

Baby Jane was committed to the care and custody of the Department of Social Welfare and Development (DSWD) while the joint trial of the instant cases was ongoing. However, Jocelyn later took her daughter Baby Jane from the DSWD and brought her back home to Dalagangan. Subsequently, Jocelyn and her children transferred residence to Libertad, Butuan City, near the provincial jail, so they could regularly visit the appellant who was detained there. [10]

During the presentation of evidence for the defense, Baby Jane retracted her accusation that she was sexually molested by the appellant on two occasions in December 1998. She also belied her grandmother's claim, that on January 8, 1999, she confided to her sister about the appellant's sexual molestations. According to her, she was coached by Decisimo Limato and two officers of the DSWD, named Golda and Nene, on what to say during the trial. [11]

Defense witness Jocelyn Daño, on the other hand, claimed that she was threatened

by a policeman into signing the complaints against the appellant. She likewise denied having brought her daughter to the health center for physical examination. Her statement during the preliminary investigation to the effect that appellant admitted having sexual intercourse with Baby Jane was allegedly prompted by her fear of Decisimo Limato who threatened to slash private complainant's abdomen if she got pregnant.<sup>[12]</sup>

Jocelyn blamed her aunt, Avelina Amado, for her husband's plight. She claimed that Avelina was angry at the appellant for constantly changing his family residence. She also alleged that Avelina was furious upon learning that the appellant was suspected of stealing a fishing boat (*barato*) within her territorial jurisdiction. Lastly, Jocelyn claimed that her mother and Avelina wanted her to live in Manila but the appellant objected since nobody would look after their children.<sup>[13]</sup>

Testifying in his defense, appellant insisted that it was Avelina and Decisimo who initiated the charges of rape against him. He claimed that both harbored a grudge against him for constantly transferring his family from one residence to another. Appellant narrated that he changed residence, with his family, at least 10 times in different localities before the charges of rape were filed against him.<sup>[14]</sup>

Anent the fishing boat, appellant disclosed that the same belonged to a certain Susan who managed a fishpond. Avelina was mad at him merely because he was the principal suspect in the theft of the fishing boat.<sup>[15]</sup>

The prosecution presented Segundina Dalauta, also known as "Nene," and Avelina Amado as rebuttal witnesses. Segundina testified that she was a social welfare officer of the DSWD whose duties consisted of observing the behavior of their wards, escorting them to court hearings and attending to their personal problems. She admitted knowing Baby Jane but denied that she personally attended to her. She stated that it was a certain Joy Palima and subsequently one Ruth Montederamos, both social workers at the Home for Girls of the DSWD in Butuan City, who were assigned to attend to Baby Jane.

She explained that Baby Jane was admitted to the Home for Girls in Butuan City on February 15, 1999, one month prior to her (Segundina's) transfer thereto in March 1999. As such, only Joy Palima and Ruth Montederamos could have known the complainant's case history, in accordance with the policy of confidentiality in the DSWD. The only instance when she attended to Baby Jane was when she substituted for Ruth Montederamos who had to attend another court hearing. Hence, she could not have coached Baby Jane on what to say during the trial, as she claimed.<sup>[16]</sup>

For her part, Avelina belied that she, together with her brother Decisimo, initiated the charges against the appellant. She stated that the constant transfers of residence by the appellant and his family were a private matter with which she never interfered. Regarding the stolen fishing boat, Avelina had no reason to blame appellant for its loss since no formal complaint against him was ever brought to her attention.<sup>[17]</sup>

On November 23, 2000, the trial court found the appellant guilty as charged. Accordingly, he was sentenced to death for each count of rape and ordered to pay

the private complainant P150,000 as civil indemnity and moral damages.

In his Brief,<sup>[18]</sup> the appellant raised the following assignments of error:

I

THE TRIAL COURT ERRED IN NOT DISREGARDING THE TESTIMONY OF PRIVATE COMPLAINANT BABY JANE NALAM IN CRIMINAL CASE NOS. 7970 AND 7971 DESPITE HER ADMISSION THAT SHE WAS COACHED INTO TESTIFYING AGAINST THE ACCUSED-APPELLANT BY HER GRANDFATHER AND THE DSWD.

II

THE TRIAL COURT ERRED IN NOT GIVING FULL FAITH AND CREDENCE TO THE SUBSEQUENT TESTIMONY OF PRIVATE COMPLAINANT IN CRIMINAL CASE NOS. 7970 AND 7971 DISOWNING HER EARLIER CLAIM OF RAPE.

III

THE TRIAL COURT ERRED IN NOT GIVING EVIDENTIARY WEIGHT TO THE DEFENSE INTERPOSED BY ACCUSED-APPELLANT TO THE EFFECT THAT THE RELATIVES OF PRIVATE COMPLAINANT WERE MOTIVATED BY ILL WILL IN TESTIFYING AGAINST HIM.

IV

THE TRIAL COURT ERRED IN RENDERING A VERDICT OF CONVICTION IN CRIMINAL CASE NOS. 7970 AND 7971 DESPITE THE FACT THAT THE GUILT OF ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

V

ON THE ASSUMPTION THAT ACCUSED-APPELLANT IS GUILTY, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE DEATH PENALTY IN CRIMINAL CASE NOS. 7970 AND 7971 DESPITE THE FAILURE OF THE PROSECUTION TO ALLEGE IN THE SUBJECT INFORMATIONS THAT ACCUSED-APPELLANT IS THE COMMON-LAW SPOUSE OF PRIVATE COMPLAINANT'S MOTHER.

In a nutshell, it is the position of the defense that appellant should be acquitted because Baby Jane retracted her testimony that she was raped by the appellant. In her recantation, she claimed that she was merely coached by Decisimo Limato and certain personnel of the DSWD. Consequently, the trial court erred in giving credence to Baby Jane's previous testimony and in rejecting appellant's claim, corroborated by his wife, that the instant charges were merely concocted by persons who harbored a grudge against him.

Appellant likewise pointed out that, assuming he was guilty as charged, the penalties imposed by the trial court were erroneous considering that no evidence

was adduced by the prosecution to prove he was legally married to the mother of Baby Jane. Hence, even on the assumption that he indeed committed two counts of rape, he could only be made to suffer the penalty of *reclusion perpetua* in each case and not death.

The appellant, in his first four assignments of error, assail the credibility of Baby Jane. The rule is well-settled that the appellate court will generally not disturb the assessment of the trial court on matters of credibility of witnesses, owing to its unique opportunity to observe firsthand their deportment and manner of testifying during the trial, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.<sup>[19]</sup>

After a careful review, we find that the trial court correctly adjudged the appellant liable for raping Baby Jane on two occasions in December 1998, in Dalagangan, Las Nieves, Agusan del Norte. The simplicity and candidness of her testimony describing the sexual assaults manifested truthfulness worthy of this Court's belief. Baby Jane testified on how she was raped by the appellant on December 8, 1998:

Q What if any is your complaint against Andres Daño?

A I want him to be imprisoned, ma'am.

Q Why?

A Because he molested me.

Q How did he molest you?

A He undressed me.

Q What did he undress?

A My skirt and my panty, ma'am.

Q What happened next after he undressed you?

A He lay (sic) himself on top of me.

Q What happened next?

A He inserted his penis into my vagina.

Q Who is this person who did this to you?

A My stepfather, ma'am.

Q What is the name of your stepfather?

A Andres Daño, ma'am.

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Pros. Dagani:

Q Can you identify this Andres Daño?

A Yes, ma'am.

Q Is he present here in this room?

A Yes, he is.

Q Will you point to him?