

## EN BANC

[ G.R. Nos. 144972-73, September 12, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO JUNAS,  
APPELLANT.**

### DECISION

#### PER CURIAM:

On automatic review<sup>[1]</sup> is the Joint Decision<sup>[2]</sup> of Branch 8 of the Regional Trial Court of Aparri, Cagayan, in Criminal Cases Nos. 08-1074 and 08-1075 promulgated on 28 July 2000. In both cases, the trial court convicted appellant Rodolfo Junas ("appellant") of incestuous rape and sentenced him to suffer the death penalty in each case.

On 16 January 1998, the Office of the Provincial Prosecutor<sup>[3]</sup> of Cagayan filed two (2) separate Informations charging appellant with rape,<sup>[4]</sup> committed as follows:

#### Criminal Case No. 08-1074

That on or about March 26, 1997, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the herein offended party, his daughter, a woman under twelve (12) years of age, all against her will and consent.

Contrary to law.<sup>[5]</sup>

#### Criminal Case No. 08-1075

That on or about March 28, 1997, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the herein offended party, his daughter, a woman under twelve years of age, all against her will and consent.

Contrary to law.<sup>[6]</sup>

When arraigned, appellant, assisted by counsel, pleaded not guilty to both charges.<sup>[7]</sup> Trial on the merits ensued.

Rhoda Junas ("Rhoda") was then less than 11 years old and a grade 5 pupil at the Aparri Central School in Aparri, Cagayan. Rhoda lived in the house of her grandmother Herminia Ibañez, in Maura, Aparri, Cagayan, together with her father

the appellant and her mother Estrella Ibañez, and her two brothers, Roland and Junjun. Rhoda was 2 years old when Estrella left for Qatar to work as a babysitter. In 1996, Estrella bought a house situated at the back of the Aparri School of Trade in Maura. Since then, appellant resided in that house with his brother, Romy Junas. As for Rhoda and her siblings, they continued to stay in their grandmother's house.  
[8]

In the evening of 26 March 1997, Rhoda, together with her aunt, Alma Ibañez, Uncle Joey, Roland, and Junjun, went to appellant's house to get mourning clothes for her grandmother. While Alma was looking for the clothes, Rhoda fell asleep. As soon as Alma found the clothes, she tried to awaken Rhoda but appellant told Alma just to leave his daughter with him. Alma thus left appellant's house with Joey, Roland, and Junjun. Appellant then closed the door and the windows and positioned himself on top of Rhoda. This stirred Rhoda from her slumber. She managed to get up and run towards the door but her father pulled her back and dragged her to the folding bed located in the living room. While Rhoda was lying on the bed face up, appellant removed her duster. Then appellant took off his shorts. He pulled down Rhoda's underwear, raised her two legs, then mounted on top of her, face down. She begged him to stop but her cry went unheeded. He warned her to keep the incident to herself or he would kill her. He then rammed his penis into her vagina and made pumping motions, which caused severe pain in her genitalia. He kissed her face and lips and mashed her breasts. After appellant had his fill, he again warned Rhoda not to reveal to anyone what he had done to her. As Rhoda had an intense bleeding that night, appellant had to rush her to her grandmother's house the next morning. Upon learning of her granddaughter's condition, Herminia Ibañez told appellant that she would bring Rhoda to a doctor. Appellant answered that there was no need to consult a doctor because "coconut juice" could cure his child's ailment. When asked why Rhoda was bleeding and her urine was yellowish, appellant gave a reply which Rhoda could not comprehend.  
[9]

Rhoda did not tell anyone about her ordeal for fear that her father would make good his threat.  
[10]

The same incident took place on 28 March 1997. Appellant went to Herminia's house and fetched Rhoda. He said his daughter had to watch their house because he would go fishing. Rhoda slept in one bedroom of appellant's house. She locked the door of the room but appellant knocked on the door and demanded that she open it. After opening the door, Rhoda went back to bed and lied on her side. Appellant then laid down beside her, unzipped her short pants, and pulled it off together with her underwear. She resisted her father's lecherous attack but he aimed his hand to box her. Appellant succeeded again in ravishing her.  
[11]

Rhoda returned to her grandmother's house the next morning but did not report her misfortune to her grandmother because of fear. Appellant's threats deterred her from divulging the rapes.  
[12]

Rhoda finally mustered enough courage to disclose the sexual assaults on 23 June 1997 when her aunt, Gloria Dabbay, arrived from Pangasinan. She confided to her how appellant had ravaged her. She revealed to her aunt what her father had done to her because she could not bear it anymore. She wanted to leave Aparri and go with her aunt to Pangasinan.  
[13]

Together with Gloria, Rhoda went to barangay tanod Jose Bautista who then accompanied them to the Aparri Police Headquarters. The police advised them to go to the hospital in Toran, Aparri and submit Rhoda to a medical examination. Rhoda and Gloria proceeded to the hospital where Dr. Robert H. Ogalino examined Rhoda. [14] Upon physical examination, Dr. Ogalino concluded that Rhoda had been sexually abused. [15] The medico-legal examination conducted on Rhoda yielded the following results:

1. Hymen not intact.
2. Positive healed lacerations at 7 & 11 o'clock position.
3. Vagina admits 1 finger with ease. [16]

Appellant set up the defense of denial and alibi. He claimed he was in another place at the time of the commission of the rapes. Appellant recalled that on the night of 26 March 1997, he was in his house with his brother, Romy Junas. His three children were then in the house of their grandmother, Herminia Ibañez. Appellant declared that it was not true that he and Rhoda were alone in his house on the night in question. [17]

On the second accusation of rape, appellant proffered another alibi. He claimed that at around nine o'clock in the morning of 28 March 1997, he visited his children at the house of Herminia Ibañez. He had a drinking spree with his in-laws and left the place at past twelve noon. In the evening, he had another drinking session with Martin Castro at the latter's house. On that same night, he was arrested by a barangay tanod because he quarreled with a neighbor. He could not remember where he slept that evening, as he was dead drunk. When he woke up the next morning, he was at the terrace of his house. Only he and his brother were there. [18]

Appellant avowed that he had been a good father to Rhoda. He could not think of any reason why his daughter would charge him of molesting her. [19]

After trial on the merits, the trial court found that appellant had sexually abused his daughter Rhoda. The trial court held that Rhoda's "testimony in court shows that it was given in a straightforward and convincing manner, and not rehearsed or coached." The trial court added that the victim "narrated in detail how she was ravished by her own father on those two (2) fateful nights and lost her innocence." [20] The trial court found appellant guilty of two (2) counts of qualified rape. The dispositive portion [21] of the trial court's decision reads:

WHEREFORE, the court hereby renders judgment finding the accused Rodolfo Junas GUILTY beyond reasonable doubt of the crime of rape in both cases for sexually abusing his own daughter Rhoda Junas, who was below twelve (12) years of age at the time of the incidents, on two (2) separate occasions, and sentencing him to...

1 - suffer the supreme penalty of death in each case, or two (2) death penalties;

2 - indemnify the victim Rhoda Junas in the amounts of:

2.1 - P75,000.00 - as civil indemnity in each case, or a total of P150,000.00;

2.2 - 50,000.00 - as moral damages in each case, or a total of P100,000.00;

2.3 - 25,000.00 - as exemplary damages in each case, or a total of P50,000.00.

3 - pay the costs of litigation.

SO ORDERED.

Hence, this automatic review.

Appellant raises the following assignment of errors:

#### I

THE TRIAL COURT ERRED IN PARTICIPATING DIRECTLY AND ACTIVELY IN THE PRESENTATION AND RECEPTION OF THE PROSECUTION'S EVIDENCE THEREBY FAILING TO UPHOLD THE 'COLD NEUTRALITY OF AN IMPARTIAL JUDGE'.

#### II

THE TRIAL COURT ERRED IN RELYING HEAVILY ON THE TESTIMONY OF PRIVATE COMPLAINANT AND IN DECLARING THE LATTER'S NARRATION OF THE SUBJECT INCIDENTS IN QUESTION AS FIRM, CATEGORICAL, STRAIGHTFORWARD AND CONVINCING.

#### III

THE TRIAL COURT ERRED IN NOT RENDERING A VERDICT OF ACQUITTAL IN AS MUCH AS THE TESTIMONY OF PRIVATE COMPLAINANT WAS, INSTEAD, HIGHLY INCREDIBLE, NAY IN COMPLETE VARIANCE WITH HER OTHER STATEMENTS ANENT THE CRIMES CHARGED.<sup>[22]</sup>

Appellant contends that the trial judge showed manifest bias against him by acting as a virtual prosecutor. He points to the trial judge's alleged leading questions propounded to Rhoda during her direct examination as an indication of the judge's partiality for the prosecution.

To prop up his theory of bias, appellant brings us to Rhoda's testimony on cross-examination where the judge allegedly assumed the role of a prosecutor by objecting to the question of appellant's counsel on two occasions.

Q - Miss witness, you said that your mother went abroad when you were still 2 years old, did I get you right?

A - Yes, sir.

Q - And from that time you have your two brothers as well as

your father xxx staying at the house of your grandmother in Maura, Aparri, Cagayan?

COURT:

That is misleading. The witness testified from thereon she stayed in her grandmother's house while her father and two brothers stayed in their house.

x x x

Q - Do you remember when xxx your mother went abroad in August, 1996?

A - No, sir.

Q - Was there any occasion for you to drop by your mother at the airport in Manila?

COURT:

That is immaterial.

ATTY. BRAVO:

Because he is the father.

PROSECUTOR CORTES:

Well, we do not see any materiality.

COURT:

You mean to say on that occasion she was also with the father and the father did not rape her at the time.

ATTY. BRAVO:

We will be able to show the ....

COURT:

Yes. As far as we were concerned this is immaterial.<sup>[23]</sup>

The judge did not have to wait for an objection from opposing counsel to bar immaterial questions. If the opposing counsel does not object to such questions, the judge cannot stand idly by and allow the examining counsel to propound endless questions that are clearly irrelevant, immaterial, improper, or tend to be repetitious. A judge may examine or cross-examine a witness. He may propound clarificatory questions to test the credibility of the witness and to extract the truth. It will be a distorted concept of due process if in pursuing such a valid objective, the trial judge is stigmatized as a biased judge.<sup>[24]</sup>

After an exhaustive examination of the transcript of stenographic notes, we find that the trial judge was more than equitable in presiding over the hearings of this case. There is no showing that the judge had an interest, personal or otherwise, in the prosecution of the case. In **Ventura v. Judge Yatco**,<sup>[25]</sup> we declared:

About the active part that the judge took in the trial, the court finds that said active part was for the purpose of expediting the trial and directing the course thereof in accordance with the issues. While judges should as