

## EN BANC

[ G.R. Nos. 130409-10, November 27, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSUE B. Dumlao, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

Before this Court on automatic review is the Joint Decision of the Regional Trial Court of Cabanatuan City, Branch 27, dated April 29, 1997, in Criminal Case Nos. 7257-AF and 7258-AF sentencing accused-appellant Josue B. Dumlao to the supreme penalty of death for raping his two nieces.

On February 10, 1997, two separate complaints were filed before the Regional Trial Court of Cabanatuan City, charging accused-appellant with rape. The first was filed by Jennifer Dumlao Matutino, assisted by her father Fernando Matutino. The complaint stated:

Criminal Case No. 7257-AF

That on or about between the year 1991 and May 1996, at Barangays San Isidro and Sta. Lucia Old, respectively, Municipality of Zaragoza, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force and lewd designs, violence and intimidation, did then and there, willfully, unlawfully and feloniously abuse and had sexual intercourse on the person of the undersigned against her will, to the damage and prejudice of herein complainant, a minor.

CONTRARY TO LAW.

Cabanatuan City, Philippines, December 2, 1996.

(Sgd.) JENNIFER D. MATUTINO  
Complainant<sup>[1]</sup>

The second complaint was filed by Jennifer's older sister, Benita Dumlao Matutino, who was also assisted by her father Fernando Matutino. The complaint similarly charged accused-appellant as follows:

Criminal Case No. 7258-AF

That on or about between the year 1991 and May 1996, at Barangays San Isidro and Sta. Lucia Old, respectively, Municipality of Zaragoza, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force and

lewd designs, violence and intimidation, did then and there, willfully, unlawfully and feloniously abuse and had sexual intercourse on the person of the undersigned against her will, to the damage and prejudice of herein complainant, a minor.

CONTRARY TO LAW.

Cabanatuan City, Philippines, December 2, 1996.

(Sgd.) BENITA D. MATUTINO  
Complainant<sup>[2]</sup>

Upon arraignment, accused pleaded Not Guilty to both charges. Thereafter, as agreed upon by the parties, the two cases were tried jointly.

The prosecution, through its witnesses Dr. Raol Paculan, Benita Dumlao Matutino, Jennifer Dumlao Matutino, Dr. Agripina Reyes and Fernando Matutino established the following facts:

The victims, Benita Dumlao Matutino and Jennifer Dumlao Matutino are the daughters of spouses Fernando Matutino and Merlyn Dumlao. Both children were staying in the home of Virginia Baldonado, their maternal grandmother, since their parents became estranged in 1992.<sup>[3]</sup> Baldonado's house is located at Sta. Lucia Old, Zaragoza, Nueva Ecija. They lived in said house with their grandmother, the accused-appellant whom they called "Tito Judy", who was the brother of their mother, "Tito Nonong/Kuya Nonong", "Tatang Sonny" and "Ate Rowena". The house, which had two storeys, had one bedroom on each floor.<sup>[4]</sup> Benita and Jennifer together with their grandmother, Ate Rowena and Kuya Nonong slept in the room located upstairs, while the accused-appellant slept downstairs in the room beside the kitchen.<sup>[5]</sup>

Jennifer, one of the victims, testified that sometime in May, 1996, at around 10:00 p.m., she was roused from her sleep by accused-appellant.<sup>[6]</sup> The latter lifted her from the bed where she and her sister Benita were sleeping, covered her mouth, and brought her to the room downstairs.<sup>[7]</sup> She was able to recognize him since the room was illuminated by a gas lamp.<sup>[8]</sup> Accused-appellant removed her clothes and lay beside her, then went on to kiss her cheeks and embrace her. Jennifer slapped the accused-appellant. He parted her legs, placed himself on top of her, removed his shirt, and inserted his penis into her vagina<sup>[9]</sup> for about ten minutes.<sup>[10]</sup>

Jennifer further stated that her grandmother was not in the house when she was raped by accused-appellant that night. Her grandmother was then confined in a hospital in La Paz, Tarlac.<sup>[11]</sup> Only she, her sister Benita and accused-appellant were left in the house.<sup>[12]</sup>

Jennifer kept quiet about the incident because accused-appellant threatened her with physical harm should she ever report the incident to anyone.<sup>[13]</sup> However, she told her sister Benita about what accused-appellant had done to her two days after the incident, and Benita in turn told Jennifer that she (Benita) was also raped by the accused-appellant.<sup>[14]</sup>

The physical examination conducted by Dr. Raol Paculan disclosed that Jennifer had multiple healed lacerations on her hymen at 2, 3, 5, 7 and 9 o'clock positions,<sup>[15]</sup> and that her hymen was no longer intact, indicating that she had lost her virginity.<sup>[16]</sup>

At the time she was raped in May, 1996, Jennifer was only eleven (11) years old, having been born on July 12, 1984,<sup>[17]</sup> as indicated in her birth certificate.<sup>[18]</sup>

Benita Matutino testified that sometime in May, 1996, at around 1:00 a.m., while she was sleeping in the room located on the second floor of her grandmother's house, she was awakened from her sleep by the accused-appellant, whom she found lying beside her and kissing her.<sup>[19]</sup> Benita recognized accused-appellant since the room where she was sleeping was lighted.<sup>[20]</sup> Accused-appellant later succeeded in undressing her despite her resistance by kicking and pushing him away from her, because he was much stronger than she was. Accused-appellant held her hands tightly, and threatened to kill her and her sister Jennifer if she resisted.<sup>[21]</sup> He then inserted his penis into her vagina.<sup>[22]</sup> Benita recounted that on the day she was raped by accused-appellant, only she, Jennifer and accused-appellant were in the house of her grandmother, because the latter and their other companions in the house were in the hospital.<sup>[23]</sup>

Benita did not tell her grandmother about what happened because she was afraid that the accused-appellant would kill her and her sister.<sup>[24]</sup> It was only sometime after the accused-appellant left their grandmother's house in September, 1996 to reside elsewhere that Benita wrote an undated letter to their father informing him that she and Jennifer were raped by accused-appellant in May, 1996, and that he had repeatedly raped them since 1991.<sup>[25]</sup> Benita sent said letter through her friend Girlie Soliman.<sup>[26]</sup> The letter reads:

Tatay,

Bago ang lahat binabati ko kayo ng magandang araw. Sana ay lagi kayong nasa mabuting kalagayan na malayo sa anumang sakit lalo na at si Kuyang kaya nga pala ako sumulat ay dahil sa ipagtatapat ko sa inyo pasensiya na kayo kung idinaaan ko pa sa sulat dahil nahihya ako sa inyong sabihin ito ng harap harapan eto ay dahil sa nangyayaring hindi maganda sa aming dalawa ni Jenny. Matagal na naming gusto itong sabihin at dahil rin natatakot ako na sabihin ito at nagkaroon ako ng lakas ng loob. Ito ay dahil kay Tito Jude na hinahalay niya kami binababoy pinagsasamantalahan ng hayop na yoon huwag ka sanang mabibigla sa sinabi kong ito dahil yaan ay matagal na sa aming ginagawa ni Judy nodon pang buo pa ang ating bahay noong buo pa ang ating pamilya naawa ako kay Jenny bata pa siya ginanoon na siya debaling ako nalan huwag na siya dahil masyado pa siyang bata tay sana ay wag mo sila Divinang pabayaan dahil ayokong mangyari (ang nangyari) sa kanila ang nangyari sa amin ngayon nagpapasalamat ako at nagawa konang isumbong sa inyo at ngayon nandito ako kanila Merlinda dito ako nakatira marami sa aking umaampon isa lang ang nagustuhan ko kanila Ate Wennie mababait sila. Mayaman hindi ako magiging alila sa kanila

dahil kung sa pagluluto paglilinis ay madali lang. humihingi ako sa inyo ng patawad sa ginawa kong paglalayas at pakisabi narin ang nangyari sa akin kina nanay tanda tay mahal ko kayo kaya inilihim ko ito sa inyo dahil ayong mabahiran ng dungis ang pangalan ng Matutino dahil sa akin. Madalas kong naiisip na kaya siguro sa akin ito ginawa ay dahil galit sila sa ating pamilya wag sana kayong magagalit kung wala ang address namin dito dahil ayoko ng umuwi sa atin sa asiyenda ayoko na tay sawang sawa na ako daig pa namin ni Jenny may asawa tay mahal na mahal kita si Nanay at ang aking mga kapatid.

hanggang dito na lang ang aking sulat

Ang iyong anak

(Sgd.) Benita Matutino

I love you  
my  
Family<sup>[27]</sup>

Subsequently, her father fetched Benita in Panganiban, San Antonio, Nueva Ecija where she was staying and verified from her whether what she said in her letter was true. Her father then asked his sister to fetch Jennifer from their grandmother's house.

Thereafter, he brought Jennifer and Benita to the police station in Zaragoza, Nueva Ecija to report the crimes.<sup>[28]</sup> Benita executed a sworn statement before the police, stating that sometime in May, 1996, at around 1:00 a.m., accused-appellant undressed and forcibly inserted his penis into her vagina. She said that the accused-appellant had been raping her since she was nine years old. She also explained that she did not report the said incidents earlier because accused-appellant threatened to kill her if she told anyone regarding the same.<sup>[29]</sup>

Benita also testified that on October 2, 1996, her father and a policeman brought her and her sister to the Dr. Paulino J. Garcia Memorial Research and Medical Center for physical examination.<sup>[30]</sup>

The physical examination conducted on Benita by Dr. Agripina Reyes revealed that the victim had multiple healed lacerations on her hymen at 3, 4, 5, 6, 8, 9, 11 and 12 o'clock positions.<sup>[31]</sup> Dr. Reyes also stated that Benita's hymen was no longer intact, indicating that she had lost her virginity.<sup>[32]</sup>

Benita was only 13 years old when she was raped by accused-appellant in May, 1996.<sup>[33]</sup> Her birth certificate which she presented in court indicates that she was born on August 14, 1982.<sup>[34]</sup>

The victims' father, Fernando Matutino, corroborated his daughters' statements. He told the court that on September 13, 1996, he received a letter from Benita informing him that she and Jennifer had been raped by accused-appellant.<sup>[35]</sup> Thereafter, he looked for his two daughters. When he found Benita, he asked her

again whether what she said in her letter was true. She answered him in the affirmative. Subsequently, he brought his daughters to the police station in Zaragoza, Nueva Ecija to report the crimes.<sup>[36]</sup> He executed a statement<sup>[37]</sup> which was used as basis for the filing of the criminal complaints against accused-appellant.

The defense presented three witnesses, namely Virginia Baldonado, the accused-appellant himself and Roel Dumlao.

Virginia testified that sometime in May 28, 1996, when the alleged rapes were committed, she was confined in a hospital in La Paz, Tarlac where she stayed for three days.<sup>[38]</sup> Benita and Jennifer were left at her house. She said that accused-appellant stayed with her in the hospital on May 29, 1996 and he, together with her children Samuel, Roel and Rowena were with her when she was released therefrom.<sup>[39]</sup> Upon her return, her grandchildren made no report whatsoever about having been raped by the accused-appellant.<sup>[40]</sup> She further stated that accused-appellant seldom slept in her house since he was often out in the fields, located about two kilometers away from her house, pasturing ducks (*itik*), and that Benita and Jennifer only stayed with her in her house when they had classes.<sup>[41]</sup> Baldonado added that accused-appellant did not sleep in her house from May 1 to 31, 1996, and that Benita and Jennifer stayed in the house of her son Roel while she was confined in the hospital.<sup>[42]</sup>

Accused-appellant denied the charges against him<sup>[43]</sup> and claimed that the filing thereof were probably instigated by the victims' father, stating that maybe because when he [Fernando Matutino] took another wife he charged us so that his relationship with us may be severed.<sup>[44]</sup> He claimed that since 1990 or 1991, he spent most of his time pasturing ducks.<sup>[45]</sup> From 1991 to May, 1996, his pasture area was in a field in Sta. Lucia Old, Zaragoza, Nueva Ecija, which, according to him, was a two-hour walk from Baldonado's house.<sup>[46]</sup> His working hours were from 5:00 a.m. to 6:00 p.m. everyday.<sup>[47]</sup> He said that he seldom went home to his mother's house because he would usually sleep in the fields and his food and other needs were brought to him by his brothers.<sup>[48]</sup>

Roel Dumlao, a younger brother of the accused-appellant, testified that sometime in 1996, before the schoolyear started, he engaged the services of accused-appellant to pasture some 600 ducks owned by him.<sup>[49]</sup> He said that accused-appellant was at all times attending to the ducks in a pasture area in Sta. Lucia Old, Zaragoza, Nueva Ecija, which was located about two kilometers away from Baldonado's house.<sup>[50]</sup> Roel added that the distance between the pasture area and Baldonado's house can be negotiated by walking for less than one hour.<sup>[51]</sup> He stated further that sometime in May, 1996, his niece Jennifer stayed with him for about a month. Jennifer did not tell him anything about being raped by accused-appellant.<sup>[52]</sup>

On April 25, 1997, the trial court promulgated its Joint Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the Court finds and so holds the accused JOSUE DUMLAO guilty beyond reasonable doubt of the crime of