

## EN BANC

**[ G.R. No. 121906, September 17, 1998 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE DE LOS SANTOS Y CACHUELO, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

On automatic review is the decision of Branch 95 of the Regional Trial Court of the National Capital Region stationed in Quezon City, the Honorable Diosdado M. Peralta presiding, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused Felipe delos Santos guilty beyond reasonable doubt of the crime of Rape defined and penalized in Article 335 of the Revised Penal Code, as amended and sentences him to suffer the penalty of DEATH and to pay the costs. The accused is hereby ordered to indemnify the victim, Nhanette delos Santos the amount of P50,000.00 as moral damages.

SO ORDERED.

(p. 44, Rollo.)

The instant case was initiated by the complaint of the minor Nanette (also referred to in the record as "Nhanette") delos Santos, which states:

That on or about the 12th day of September 1994, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously brought the undersigned complainant NHANETTE DE LOS SANTOS Y RIVERA, a minor, 13 years of age, to a vacant apartment located at General Avenue, Project 8, of this City, then forced her to lie down, undressed her, removed her panty, mashed her private parts, after which accused put himself on top of her, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

(p. 5, Rollo.)

Accused-appellant entered a plea of not guilty. Thereafter, trial on the merits ensued, resulting in the judgment of conviction now under automatic review considering that the supreme penalty of death was imposed.

The inculpatory facts, based on the testimony of prosecution witnesses Nanette de los Santos, Dr. Owen Lebaquin, and Nelson Bartolay, are as follows:

Nanette de los Santos was born on November 15, 1980, in Iloilo. She has known

only her mother Cathy, because her father left the family when she was still very young (p. 3, tsn, Feb. 8, 1995). After the birth of Nanette, Cathy left for Manila to work as a seamstress, and entrusted to her mother the care and custody of Nanette and her other sisters and brother (p. 4, *ibid.*).

When Nanette was eight years old, she was brought by her mother to Manila where they resided in Tandang Sora. Nanette was then introduced to herein accused-appellant Felipe de los Santos who turned out to be her, as well as her siblings', real and natural father. Felipe, whom Nanette began to address as "Father", was then working as a jeepney driver plying the Project 8-Kalaw-Quiapo route (pp. 4-6, *ibid.*).

On September 12, 1994, Nanette rode with accused-appellant in plying the aforestated route. At 12 o'clock midnight, accused-appellant parked the jeepney in the garage and proceeded to eat with Nanette at a carinderia located at General Avenue, Project 8, Quezon City. Thereafter, accused-appellant told Nanette that they must be going home. However, instead of proceeding home, accused-appellant took Nanette to an isolated apartment likewise located at the above-stated address. Upon their arrival at said apartment, accused-appellant asked Nanette to buy cigarettes, soap, and coffee, which she did. After preparing accused-appellant's coffee, Nanette was asked to go to the room upstairs, to wait there, and to undress. At first, Nanette did not follow accused-appellant's order. When accused-appellant insisted, Nanette obeyed by removing her shirt. Afterwards, she was asked to remove her pants and she likewise obeyed, but then, she was also told to take off her panties. She refused, but as accused-appellant became angry, repeatedly telling her to remove her underwear, Nanette finally acceded for fear of maltreatment (pp. 7-9, tsn, Feb. 8, 1995).

Nanette further testified that she was then raped by accused-appellant. She was told not to tell anybody (p. 10, tsn, Feb. 8, 1995).

The next day, Nanette escaped from and fled their house and stayed with a friend whom she called "*Ate Evelyn*". On October 6, 1994, Evelyn, having been in the meantime told of the ravishment, accompanied Nanette and sought the assistance of Nelson Bartolay, a barangay tanod, who recorded in the barangay blotter Nanette's complaint of rape against her known father (tsn, p. 3, March 1, 1995). Nanette was interrogated at the PNP, Women's Desk Bureau (p. 5, *ibid.*) and was, upon request of said Bureau, medically examined by Dr. Owen Lebaquin who found that -

x x x Labia Majora are full, convex and coaptated with the pinkish labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3 and 6 o'clock. External vaginal orifice offers slight resistance to the introduction of the examining finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. x x x.

(p. 27, Rollo.)

On the other hand, the defense presented accused-appellant himself, his wife, Cathy (also known as "*Catalina*"), and daughter, Rivera, as witnesses.

The story of accused-appellant is that he is in truth and in fact the natural father of

Nanette who was 14 years old when the complaint was filed; that he and Cathy were legally married and had seven children, two of whom died at a young age, leaving only Rivera, Pretzel, Nanette, Felipe, Jr., and Prince; that when Nanette was 7 years of age, she was brought to Manila by accused-appellant and Cathy where she attended school until July, 1994.

However, when Nanette reached sixth grade at Banlat Elementary School, she stopped schooling due to some problems with her studies, as reported to accused-appellant by her teacher and because she preferred to go with her friends or "*barkada*". Because of this, accused-appellant got mad and beat Nanette five times during the month of July, 1994, resulting in the strained relationship between them.

On August 4, 1994, Nanette was said to have left the family home without any apparent reason. Since he was concerned about Nanette's sudden disappearance, accused-appellant asked Cathy and his other children to help him locate Nanette. They later learned that Nanette was living with Evelyn, allegedly a prostitute, in Upper Banlat, Tandang Sora, Quezon City; and that Rivera, a sister of Nanette, having met Nanette one time and thereupon entreating her to come home, she was instead mauled by Nanette and her "*barkada*". Accused-appellant also exerted efforts to bring back Nanette to the family home but to no avail (pp. 5-6, Decision).

Since Nanette continued to stay away, accused-appellant, sought on September 30, 1994 the assistance of the barangay tanods at the barangay hall of Upper Banlat, Tandang Sora, Quezon City, to locate Nanette. On October 6, 1994, accused-appellant returned to the barangay hall to verify the status of the request. He was, however, thereupon apprehended by the barangay tanods based on a complaint for rape filed by Nanette against him (p. 6, Decision).

Accused-appellant denied the rape charge. He asserted that he could not have raped Nanette on several occasions since 1989 because he had been working as a stay-in driver/mechanic at a service center near the Philippine Village Hotel in Parañaque, Metro Manila, and that he was home only during weekends and at times even less oftener, that is, once or twice a month. On the date of the alleged rape, September 12, 1994, he did not go home from work. He maintained that the complaint filed by Nanette was purely motivated by the latter's anger which she nurtured against him because he had been maltreating her especially when he found out that Nanette had stopped schooling and preferred to go with her "*barkada*" (id.).

The trial court did not accord credence to the version of the defense. It found Nanette's testimony credible, categorical, logical, and straightforward, notwithstanding the rigorous and extensive cross-examination by the defense. The ocular inspection conducted by the trial court *motu proprio* bolstered Nanette's testimony of the place of the crime. The address furnished by accused-appellant in the blotter of the barangay, that is, No. 85 General Avenue, Project 8, Quezon City, was found to be the Office of the United Drivers Association of Project 8 (UNIDA), which also doubled as a canteen. Opposite the place was No. 84-A, a 2-storey, 2-door apartment where Nanette said she was sexually abused by accused-appellant at the second floor thereof. The description of the crime scene by Nanette was found to be consistent with the actual place that was seen by the trial court.

Further, defense witness Cathy de los Santos, accused-appellant's wife, contradicted accused-appellant's claim that he was a stay-in driver/mechanic at the Philippine

Village Hotel.

The trial court noted that it took accused-appellant almost 2 months before he sought help from the barangay tanods in allegedly trying to locate Nanette. It further opined that accused-appellant purposely made it appear that as early as August 4, 1994, Nanette unceremoniously left their house and that she and her friend Evelyn, who was allegedly a prostitute, orchestrated the filing of the complaint in retaliation for the alleged maltreatment Nanette received at the hands of accused-appellant.

The trial court held that if that were the case, the rape charge could have been filed as early as August, 1994 when Nanette left home, and not belatedly on October 6, 1994, since the gap of two months was too long a time for Nanette and Evelyn to concoct a story of sexual molestation which could easily be fabricated. Further, if accused-appellant's position were to be given credit, this would lead to the question why Nanette would file a serious charge of rape against her own father just for the purpose of retaliation when she could have easily fabricated a lesser charge.

Lastly, as regards the issue of whether or not carnal knowledge was against the will of Nanette and was attended by force or intimidation, the trial court stressed that such circumstances were fully established considering that accused-appellant exerted moral ascendancy and influence over Nanette.

Accused-appellant assigns two errors -

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE, UNCONVINCING AND UNRELIABLE TESTIMONY OF PRIVATE COMPLAINANT NANETTE DE LOS SANTOS.

THE TRIAL COURT COMMITTED GRAVE ERROR IN CONVICTING THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

(pp. 75-76, Rollo.)

which he jointly discussed, raising the following points :

1. If one were to believe that Nanette was previously ravished twice by accused-appellant, one would also have to assume that such traumatic experience would cause Nanette to be fearful of her father. It is thus improbable or preposterous for Nanette to still go for a joyride with accused-appellant in the latter's passenger jeepney plying the route of Project, 8, Kalaw, and Quiapo, and back, until midnight. Nanette's conduct is said to be against human experience and "against the dictates of human instinct on self-preservation."

2. Nanette had all the chances to run and create a commotion when she was asked to go inside the uninhabited apartment. She could also have fled when accused-appellant asked her to buy soap, cigarettes, and coffee. Nanette should have suspected what accused-appellant was up to considering that she had been previously sexually abused by accused-appellant.

3. Nanette's hostility toward accused-appellant, bolstered by the support of her

"barkada" and friend Evelyn, could have motivated Nanette to retaliate. The fact that Evelyn was not called to the witness stand militates against the prosecution since this casts some doubt in regard to its evidence.

We are not persuaded. A close and detailed examination of the entire record of the case at bar impels us to affirm.

Let us start by saying that the crime of rape is not a simple physical violation. It actually debases a woman's dignity, leaving a stigma on her honor and scarring her psyche for life (*People vs. Vargas*, 257 SCRA 603 [1996]).

Clearly, the prosecution's case hinges on the credibility of the testimony of the victim, Nanette de los Santos, quoted in relevant part by the trial court as follows:

**PROSECUTION:** (to the witness)

- Q -** Alright, Madam witness, on September 12, 1994, do you remember where were you?
- A -** Yes, sir.
- Q -** Could you kindly tell this Court where were you at that time?
- A -** I was with my father riding in the passenger jeepney.
- Q -** What time was that, Madam Witness?
- A -** When I go with my father, it was in the noon time.
- Q -** And when you said your father, whom are you referring to, Madam witness?
- A -** The accused Felipe delos Santos.
- x x x x x x x x x x x x x x
- Q -** Let us go back to September 12. Do you know what route did the accused Felipe delos Santos plying on September 12, 1994?
- A -** Project 8, Kalaw, Quiapo, sir.
- Q -** And how long did the accused ply that route on September 12, 1994?
- A -** Around one hour, sir.
- Q -** Were you always with him while he was plying that route on September 12, 1994?
- A -** Yes, sir.
- Q -** Up to what time were you with the accused in plying said route by his jeepney?
- A -** Up to the time that he finish plying his route.
- Q -** And do you know, Madam witness, what time did he finish plying his route on September 12, 1994?
- A -** Yes, 12:00 midnight, sir.
- Q -** After plying his route on said date, Madam witness, what happened next after that?
- A -** After the jeepney was parked in the garage, we proceeded to the Carinderia of Manang and