

Vindicated, but Still Not Freed From Court's Injustice

By MICHAEL POWELL MARCH 24, 2009



Amine Baba-Ali, convicted of raping and molesting his 4-year-old daughter, was awarded more than \$2 million in his lawsuit. Credit Katie Orlinsky for The New York Times

He has lived in the shadow of this monster for 21 years, serving time in a maximum security prison, and — even after his conviction was overturned and he was released in 1992 — carrying the taint that comes with being accused of child abuse.

This week, the State Court of Claims recognized his decades of suffering and awarded him a large settlement.

But he still has not seen his daughter, and so he has not fully regained his former life.

Amine Baba-Ali, a father wrongly convicted of raping and molesting his 4-year-old daughter, is the first person ever held by a state court to have satisfied every facet of the unjust-conviction law that he sued New York State under, according to the court's decision. His lawyers proved that the Queens district attorney's office fraudulently prosecuted him for a crime he did not commit. The court awarded him \$2,093,428.

But Mr. Baba-Ali, 52, cannot shake the sense that this case will haunt him for a lifetime, not least because his daughter, now 26, was forever removed from him once he was convicted. He has not seen her for two decades, and has no idea where she is living.

“Though I am thankful, the fact of the matter is that I’ve lost my daughter,” Mr. Baba-Ali said in an telephone interview from his Manhattan apartment on Tuesday. “I’ve lost the most important part of my life.”

The state attorney general’s office, which represented the state in Mr. Baba-Ali’s lawsuit, said it was examining the judgment closely and could appeal it.

Mr. Baba-Ali and his lawyer, Peter Wessel, fought his conviction for 20 years, beginning when Mr. Baba-Ali was in an 8-by-10-foot prison cell in the Catskills.

In the late 1980s, in the midst of a nasty divorce, Mr. Baba-Ali’s wife had accused him of raping their daughter during a custody visit at his Queens apartment. At nearly every turn, Mr. Baba-Ali’s case became a study in the miscarriage of justice, according to the Court of Claims. Under District Attorney John J. Santucci, Queens prosecutors obtained an indictment of Mr. Baba-Ali in 1988 on charges of rape, molestation and incest, and he was convicted in November 1989. But prosecutors ignored medical evidence that appeared to prove his innocence, then failed to disclose it to the defense until a few days before the trial, the courts have said.

The conviction of Mr. Baba-Ali, Judge Melvin L. Schweitzer of the Court of Claims wrote in his decision, released on Monday, “was procured by prosecutorial misconduct that was tantamount to fraud.”

The assistant district attorney who tried the case, Elizabeth Loconsolo, is now a deputy attorney for the Nassau County comptroller. She said on Tuesday that she has no second thoughts about her actions in the case.

Dr. Nadine Sabbagh, then a city health department employee, was the chief medical witness against Mr. Baba-Ali during his trial. She claimed to have found evidence that Mr. Baba-Ali had raped his daughter multiple times, breaking her hymen. Her testimony was essential in gaining a conviction and a prison term of 8 1/3 to 25 years.

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Mr. Baba-Ali also suffered from poor representation by a court-appointed public defender, who failed to subpoena two doctors who would have testified that their earlier examinations of the girl found no evidence of sexual abuse, according to a state appeals court, which overturned his conviction in 1992, and ordered a retrial. That lawyer was later barred from the public defender’s program.

Before deciding whether to retry Mr. Baba-Ali, Queens prosecutors asked a doctor at a New York hospital to conduct a second examination. That doctor found that the child’s hymen was intact and saw no evidence of abuse, the Court of Claims said in its decision. Prosecutors quickly dropped the case.

Judge Schweitzer was scathing about Dr. Sabbagh's testimony: "The only witness who provided evidence of such abuse had lied, and in fact there was no credible evidence his daughter had ever been molested."

Dr. Sabbagh is now in private practice in Queens; a call placed to her office Tuesday afternoon was not returned.

Mr. Baba-Ali said his time in a maximum security state prison continues to haunt him: He stayed in his apartment for many weeks after his release from prison. A book editor and a translator before his conviction, he now works as a supervisor for a car parking concession.

Mr. Baba-Ali, who has remarried, lives with the knowledge of something else: no matter how many judges declare him flatly and unequivocally innocent, he will remain shadowed by child abuse charges for the rest of his life. As the Court of Claims noted in its decision, the Census Bureau turned him down for a job because of the conviction.

And despite a ruling in his favor in Family Court, he never succeeded in seeing his daughter again. Her court-appointed law guardian reported back, after all those years and accusations, that his daughter no longer wanted to see him.

Judge Schweitzer's decision is nearly poetic in its description of loss.

"For claimant's mental anguish and degradation occasioned by being labeled a child molester of his 4-year-old daughter; for the irretrievable loss of his relationship with his daughter promixately caused by his conviction; for his loss of liberty into the most fearsome maximum security prison environment that an innocent man may be thrust," the judge said, he was awarding him \$2 million.

"I read that decision and I began to cry," Mr. Baba-Ali said. "I don't think the loss is ever going to fade away."

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