# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJANDRE DELOS SANTOS Y RENIGADO, ACCUSED-APPELLANT.

*G.R. No. 137968. November 06, 2001*

Ponente: DAVIDE, JR., C.J.

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**DAVIDE, JR., C.J.:**

Before us for automatic review[1] is the Judgment[2] dated 25 February 1999, promulgated on 1 March 1999, of the Regional Trial Court of Naga City, Branch 25, in Criminal Case No. 98-7202 finding accused-appellant Alejandre delos Santos y Renigado (hereafter ALEJANDRE) guilty beyond reasonable doubt of the crime of RAPE committed against his granddaughter Janeth Narito (hereafter JANETH).

On 27 August 1998, an information[3] for rape was filed in Criminal Case No. 98-7202 against ALEJANDRE before the court below. The information reads as follows:

> The undersigned Assistant Provincial Prosecutor of Camarines Sur upon a sworn complaint filed by the grandfather of the 12 year old private complaining witness accuses ALEJANDRE DELOS SANTOS Y RENIGADO, a resident of Barangay Cuco, Pasacao, Camarines Sur, of the crime of RAPE under RA 7610 in relation to Art. 335 as amended by RA 7659 of the Revised Penal Code, committed as follows:
> That on or about the 4[th] day of October 1997 on or about 5:00 o'clock in the afternoon at Barangay Cuco, Municipality of Pasacao, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, with the use of force and intimidation did, then and there willfully, unlawfully and feloniously have sexual intercourse with his 12 year old granddaughter, Janeth Narito, against the latter's will and without her consent to her damage and prejudice in such amount as may be determined by the Honorable Court, as evidenced by the attached Medical Certificate marked as Annex "A" hereof.
>
> CONTRARY TO LAW.

At his arraignment[4] on 22 September 1998, ALEJANDRE pleaded not guilty.

On 1 October 1998, the trial court conducted a pre-trial, and per the pre-trial order[5] the defense admitted: (1) the identity of the parties -- that the private complainant is JANETH and the accused, ALEJANDRE, is JANETH's grandfather; (2) the existence of the certification of the entry in the police blotter; and (3) the Certificate of Live Birth of JANETH showing that she was born on 4 December 1984.

The witnesses presented by the prosecution were Anacleto Narito, JANETH and Dr. Myla Nieves.

Anacleto Narito is JANETH's paternal grandfather. He testified that JANETH is his granddaughter being the daughter of his son Rolando Narito. ALEJANDRE is the father of Dominga delos Santos-Narito, Rolando's wife and JANETH's mother.

Anacleto stated that in October 1997, he was residing in Itolan, Pasacao, Camarines Sur, about 50 meters away from where JANETH was living in with her parents. ALEJANDRE resided at Barangay Cuco which is adjacent to

Itolan. Anacleto claimed that ALEJANDRE's house is about 150 meters away from JANETH's house.

Anacleto narrated that on 9 December 1997, at around 9:00 a.m., he went to the Naga City Police Station because the police had called him concerning the rape of JANETH. He saw JANETH at the station and filed the rape complaint against ALEJANDRE. JANETH's parents asked him to do so as they did not have the money to spend for the case and they were not around when the incident took place.[6] He also learned that she was raped at the Fiesta Hotel on 8 December 1997.[7]

JANETH testified that she is 13 years old, a student, and a resident of Itolan, Pasacao, Camarines Sur. She was born on 4 December 1984 as evidenced by her birth certificate.[8] ALEJANDRE is her grandfather, being the father of her mother Dominga.

In the afternoon of 4 October 1997, JANETH was passing by the street where ALEJANDRE's house was located when he saw and told her to go to his house later. As she had just finished her classes at Cuco Elementary School where she was a Grade VI pupil, she first went home to change clothes and then proceeded to ALEJANDRE's house. JANETH took her merienda at the porch. Afterwards, she entered the house followed by ALEJANDRE. He closed the door and made her lie down on the wooden bed. ALEJANDRE removed her clothes, including her panty, while he removed his shorts and brief. He kissed her face and neck, spread her legs, then lay on top of her. He inserted his penis in her vagina and made a push and pull movement. JANETH felt pain. Afterwards, she crawled under the bed because she could not leave the room as the door was closed. ALEJANDRE threatened to kill her if she reported the incident to anyone.

After such threat, JANETH grabbed her panty and shorts from ALEJANDRE and put them back on. ALEJANDRE then opened the door. She left ALEJANDRE's house and arrived at her own home at around 7 p.m. Her parents were in Manila and they came back only on 14 October 1997. Her companions at home at that time were her 15-year-old brother, and her 10-year-old twin sisters. JANETH did not tell her brother about her ordeal or her parents when they arrived 10 days later because of ALEJANDRE's threats.[9]

On 8 December 1997, ALEJANDRE again raped JANETH in Naga City.[10] She reported the rape to the Naga City Police Station on 9 December 1997 and, for the first time, she also reported the rape committed by ALEJANDRE on 4 October 1997, which was entered in the police blotter.[11] She told her parents about the rape incidents, and they were very angry at her grandfather ALEJANDRE.[12]

Dr. Myla Nieves, a physician at the Naga City Hospital examined JANETH on 9 December 1997 and issued a medical certificate[13] with the following findings:

- Positive 3 o'clock laceration healed

- Positive 9 o'clock laceration, healed

- Negative bleeding

- Claims pain on pressure over vaginal opening

Absence of pubic hair."

Dr. Nieves opined that the lacerations could have been caused by anything exerted against the vaginal opening, such as an erect penis or the fingers.[14]

For its part, the defense presented Liberato Estrella, Jr., Mariano Belano, Gaudencio Vela, Lilia delos Santos, Joevert delos Santos and ALEJANDRE.

Liberato Estrella, Jr., the Barangay Captain of Barrera Sr., Lupi, Camarines Sur, testified that he personally knew


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ALEJANDRE as the latter formerly resided at Barrera Sr. At around 10:00 a.m. of 3 October 1997, he saw ALEJANDRE at the jeepney terminal at Sipocot, Camarines Sur. ALEJANDRE was on his way to attend the Barrera Sr. barangay fiesta where his wife is a Barangay Kagawad. Liberato later saw ALEJANDRE on board a jeepney going from Sipocot to Barrera Sr. However, Liberato no longer saw ALEJANDRE at Barrera Sr. because he (Liberato) was very busy attending to his visitors and the dance in the evening.[15]

Mariano Belano, a former Barangay Kagawad of Barrera Sr., declared that on 3 October 1997 at past 1:00 p.m. he was in the house of ALEJANDRE at Barrera Sr. to get the fiesta decorations for the hall. ALEJANDRE was in the house preparing to butcher a pig. However, he did not see ALEJANDRE on 4 October 1997.[16]

Gaudencio Vela, also a resident of Barrera Sr., stated that ALEJANDRE is his brother-in-law. Gaudencio was in his house the whole day of 4 October 1997 preparing for the fiesta. At around 10:00 a.m., on that day, ALEJANDRE went to his house and talked with him for about ten minutes. He then saw ALEJANDRE walk in the direction of his own house located about 100 meters away.[17] From that time on, he no longer saw ALEJANDRE.[18]

Lilia delos Santos, wife of ALEJANDRE, declared that she is a Barangay Kagawad of Barrera Sr., Lupi, Camarines Sur. ALEJANDRE arrived at their house in Barrera Sr. at around 11:00 a.m. of 3 October 1997 because the following day would be their fiesta. He spent most of the time butchering a pig. From the time he arrived in their house, ALEJANDRE never left Barrera Sr. until 3:00 p.m. of 4 October 1997, when he went to Barangay La Purisima to gather oranges.

Lilia claimed that the criminal case against her husband was filed because Anacleto Narito, the father of their son-in-law Rolando, was mad at them. Rolando is the husband of JANETH's mother, who is Lilia's daughter. Anacleto had a previous grudge against them. The disagreement stemmed from a boundary dispute involving their properties located at Barangay Cuco and Itolan, Pasacao, Camarines Sur. Although the dispute had already been settled, Anacleto still bore a grudge against them.

Lilia further declared that they have a house in Barangay Cuco, Pasacao, Camarines Sur built on a land, part of which is riceland. To her knowledge, when her husband went to Barrera Sr. on October 3 and 4, the people who were left behind in the Cuco house were her sons Noel and Joevert who were staying in that property to help their father cultivate the land. However, on 4 October 1997, Noel and his wife Marites were in Pasacao to sell oranges.[19]

Joevert delos Santos, son of ALEJANDRE, testified that as of 16 October 1997, he became a resident of Barrera Sr., Lupi, Camarines Sur, after his marriage to Virginia Buhai. On 4 October 1997, he resided in Cuco with his brother Noel and his wife. On that day, their father was in Barrera Sr. to attend the fiesta and returned to Cuco only on 5 October 1997.

Joevert further testified that he did not see JANETH, his niece, in their house in Cuco on 4 October 1997 as it was also the barangay fiesta of Itolan. He only came to know of the rape case against his father when the latter was already in jail.[20]

ALEJANDRE testified that he was born on 8 February 1930. However, a record of his birth is no longer available in the Office of the Local Civil Registrar of Lupi, Camarines Sur, because, as certified by said office,[21] all records of birth from 1930 to 1948 were already destroyed.

On 3 October 1997 at 6:30 a.m., ALEJANDRE claimed that he took a "padjak" from Cuco to Pasacao then took a jeepney to Sipocot, where he again rode another jeepney to Barrera Sr. at 11:00 a.m.[22] From the time he arrived at Barrera Sr., the only time he left the place was to gather oranges in La Purisima.[23] ALEJANDRE returned to

and arrived at Cuco on 5 October 1997 at around 6:30 p.m.

ALEJANDRE asserted that he did not rape JANETH on 4 October 1997, as claimed by her, because he was in Barrera Sr., not in Cuco. He believed that the reason he was charged with the crime was his misunderstanding with Anacleto, JANETH's paternal grandfather. The misunderstanding started when his son-in-law, Rolando, borrowed from him the sum of P1,500. As guarantee for the payment thereof, Rolando delivered to him an iron plow. However, while he was away, Rolando tried to forcibly take the plow. When one of his sons refused to give it to Rolando, the latter chased his son with a bolo. As a consequence, ALEJANDRE filed a complaint with the Barangay Captain, and although he had already forgiven Rolando, his relations with Anacleto deteriorated. Anacleto even challenged him to a fight and threatened to have him killed by the New People's Army (NPA).[24]

ALEJANDRE further declared that before JANETH testified on 23 October 1998, he overheard Anacleto tell JANETH "sabihon mong nakalaog" (tell the court it entered). This happened after Anacleto had just testified in the courtroom. Anacleto went to JANETH and sat beside her. Both of them were seated at ALEJANDRE's back.[25]

ALEJANDRE likewise disclosed that he did not talk to JANETH about this case, although he tried to talk to Anacleto during the trial of the other rape case in Branch 28; but Anacleto refused to talk to him. He was able to talk to Rolando and his daughter Dominga when they visited him in jail and they told him that it was Anacleto who was desirous of proceeding with the case. During the entire proceedings in both rape cases, he saw JANETH's parents only on one occasion, and that was during one hearing in the rape case before Branch 23.[26]

On cross-examination, ALEJANDRE admitted that he would occasionally invite JANETH over to his house for merienda when she passed by his house coming from the school.[27]

Testifying on rebuttal, JANETH denied that Joevert and his wife were in ALEJANDRE's house in Cuco, Pasacao, Camarines Sur on 4 October 1997 at 5:00 p.m. She stated that ALEJANDRE was alone in the house when she went there. JANETH also denied that Anacleto had told her to "sabihon mong nakalaog" (tell the court that it entered) as he had never advised her on what to say in court.[28]

The trial court gave full faith and credit to JANETH's testimony and rejected ALEJANDRE's defense of alibi. Accordingly, it rendered its Judgment[29] on 25 February 1999, and decreed as follows:

> WHEREFORE, premises considered, this Court finds the accused Alejandre delos Santos y Renigado GUILTY beyond reasonable doubt of the crime of RAPE, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 and hereby sentences the said accused to suffer the penalty of DEATH and to pay the victim the sum of P50,000.00 by way of moral damages and to pay the costs.
>
> SO ORDERED.

In his Appellant's Brief, ALEJANDRE claims that:

> WITHOUT FIRST DEALING ON THE INNOCENCE OR GUILT OF THE ACCUSED, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY IN VIEW OF THE AGE OF THE ACCUSED.
>
> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED AS THE EVIDENCE OF THE PROSECUTION WAS VERY INSUFFICIENT TO CONVICT THE ACCUSED.

In support of the first ground ALEJANDRE states that during the proceedings in the trial court, he identified and presented Exhibit 2, a certification issued by the Local Civil Registrar of Lupi, Camarines Sur, the place where he was born. It shows that as of 1998, he was already 68 years old, having been born on 8 February 1930. Therefore,

he is now 70 years old, a mitigating circumstance which the trial court should have taken into consideration in imposing the penalty. Under Articles 47 and 83 of the Revised Penal Code, his age has the effect of automatically commuting the death penalty to reclusion perpetua.

ALEJANDRE next alleges that the trial court erred in convicting him on the basis of very insufficient evidence. He asserts that JANETH complained of the 8 December 1997 rape to the Naga Police Station but did not mention the rape of 4 October 1997. In her Clinical Records, Dr. Myla Nieves wrote that she examined JANETH due to the incident that occurred on 8 December 1997 at the Fiesta Hotel in Naga City and not for any other incident. This shows that her claim of rape committed on 4 October 1997 was merely an afterthought as the findings of Dr. Nieves negate any signs of penetration on 8 December 1997.

In the Appellee's Brief the Office of the Solicitor General (OSG) agrees with the trial court's findings of fact and determination of the culpability of ALEJANDRE; however, considering that he is now more than seventy (70) years old, the penalty of death should be commuted to the penalty of reclusion perpetua conformably with Article 83 of the Revised Penal Code.

We find no cogent reason to overturn the findings of the trial court on the culpability of ALEJANDRE.

We have said that at the heart of almost all rape cases is the issue of credibility of the witnesses, to be resolved primarily by the trial court which is in a better position to decide the same, having heard the witnesses and observed their deportment and manner of testifying. Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case.[30] The exception is nowhere perceivable in the present case. Our own evaluation of the evidence proves beyond reasonable doubt that ALEJANDRE raped his granddaughter JANETH, then twelve (12) years old, in his house on 4 October 1997. Thus, as with the trial court, we likewise afford full faith and credence to the testimony of JANETH. As the charge was against her maternal grandfather, we agree with the trial court's observation that JANETH has no malicious motive to file such a charge, moreso to falsely testify against him. It is beyond the capacity of a girl of such tender age and innocence to concoct and fabricate a story of defloration against her very own grandfather.

ALEJANDRE's defense of alibi is, therefore, without merit. At any rate, for that defense to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must also demonstrate that it was physically impossible for him to be at the scene of the crime.[31] The evidence for the defense in this case failed to prove both requisites.

The alleged ulterior motive of Anacleto in the filing of this case is equally unconvincing. At the most it is based on an alleged grudge which is too flimsy. Besides, there is at all no indication that JANETH had allowed herself to be unduly influenced or pressured by her paternal grandfather Anacleto to conjure a tale of incestuous rape merely to execute his vendetta. That she came out openly to expose the evil deed that was done to her and underwent the ordeal of a public trial were eloquent proof of the truth of her testimony and of her desire to get justice.

In this light, we take note of the following observation of the trial court:

> It is the observation of the court, however, that every time this case was called for trial, only Anacleto and Janeth appeared, not a single instance did the parents of Janeth, Rolando and Dominga Narito show themselves in court. Alejandro, however, testified that at one instance during the trial of the case before Branch 28 of this court, he approached his daughter Dominga and son-in-law, Rolando for the purpose of possibly withdrawing this case, but said parents of Janeth never heeded the request of the accused. Even more, other members of the


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> family of the accused interceded but no favorable action towards the withdrawal of the case was realized. To the mind of the court, it is a wonder, that even by nature there always existed strong family ties among Filipino families, and considering the effect of this case will create a permanent stigma that will take generations to eradicate, human nature and the natural course of events will dictate that if the crime charged did not really happen, the parents of the victim will not leave any stone unturned to do all acts possible within their capacity to cause the withdrawal of this case.[32]

Additionally, JANETH's delay in reporting the 4 October rape cannot be taken against her. Jurisprudence has established that delay in revealing the commission of rape is not an indication of a fabricated charge. It must be remembered that JANETH was threatened by ALEJANDRE not to tell anyone about the rape.

Such intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It is enough that the intimidation produces a fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment, or even thereafter, as when she is threatened with death if she would report the incident.[33]

As to ALEJANDRE's claim that there is no medical evidence to support the rape case, as the examination by Dr. Nieves was conducted pursuant to the alleged 8 December 1997 rape, nothing can be farther from the truth. Dr. Nieves' examination on JANETH on 9 December 1997 revealed healed lacerations in JANETH's vagina, which could have been caused by an erect penis. This is clear evidence of an earlier sexual contact and corroborates the complaint for rape on 4 October 1997.

The Solicitor General has recommended that the death penalty imposed by the trial court be commuted to reclusion perpetua in view of the present age of ALEJANDRE, which is over 70 years. We agree. Under Article 83 of the Revised Penal Code, as amended, the death sentence shall not be inflicted upon any person over seventy years of age. In such case, the death penalty shall be commuted to the penalty of reclusion perpetua with the accessory penalties provided in Article 40 of the Revised Penal Code.

Accordingly, we commute the death penalty, which would have been imposable on ALEJANDRE, to reclusion perpetua.[34]

As to the civil aspect of the case, the trial court erred in awarding only moral damages in the amount of P50,000. In line with prevailing jurisprudence, JANETH should also be awarded the amount of P50,000 as indemnity,[35] as well as exemplary damages in the amount of P25,000.

WHEREFORE, the decision of the Regional Trial Court of Naga City, Branch 25 in Criminal Case No. 98-7202 finding accused-appellant ALEJANDRE DELOS SANTOS y RENIGADO guilty beyond reasonable doubt of the crime of rape is AFFIRMED, with the MODIFICATION that the penalty is reduced from DEATH to reclusion perpetua, and in addition to the award of P50,000 as moral damages, accused-appellant is further ordered to pay to the victim, Janeth Narito, the sums of P50,000 as indemnity and P25,000 as exemplary damages.

Costs de oficio.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Vitug, J., on official leave.

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[1] Pursuant to Article 47 of the Revised Penal Code, as amended by R.A. No. 7659.


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[2] Per Judge Jose T. Atienza. Rollo, 45-55; Original Record (OR), 84-94.

[3] Original Record (OR), 1. The crime charged was committed a few days before the effectivity of R.A. No. 8353, the Anti-Rape Law of 1997 which reclassifies rape as a crime against persons.

**[4] OR, 22.**

[5] Id., 27.

**[6] OR, 14.**

[7] TSN, 27 October 1998, 4-7.

[8] Exhibit "C" to "C-4."

[9] TSN, 24 October 1998, 18-29.

[10] This incident is the subject of another case.

[11] Exhibit "B."

[12] TSN, Id., 30-32.

[13] Exhibit "A" to "A-2."

[14] TSN, 5 December 1998, 10-16.

[15] TSN, 24 November 1998, 13-18.

[16] Id., 21-24.

[17] Id., 26-28.

[18] Id., 29.

[19] TSN, 24 November 1998, 32-39.

[20] TSN, 7 January 1999, 22-28.

[21] Exhibit 2.

[22] TSN, 25 January 1999, 3-7.

[23] Id., 8-10.

[24] Id., 12-14.

[25] TSN, 25 January 1999, 15.

[26] TSN, 25 January 1999, 16-18.

[27] TSN, 16 February 1999, 8-9.

[28] Id., 13.

[29] Supra note 1.

[30] People v. Manahan, 315 SCRA 476, 481 [1999].

[31] People v. Rabang, 315 SCRA 451, 459 [1999].


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[32] Rollo, 24.

[33] People v. Geromo, 321 SCRA 355, 364 [1999].

[34] People v. del Mundo, 114 SCRA 719, 724 [1982].

[35] People v. Melendres, G.R. Nos. 133999-4001, 31 August 2000.


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