

[G. R. Nos. 139217-24, June 27, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NELSON
ESPERANZA, APPELLANT.**

D E C I S I O N

DAVIDE JR., C.J.:

Before us for automatic review^[1] is the consolidated decision^[2] of 24 June 1999 of the Regional Trial Court, Branch 13, Ligao, Albay, in Criminal Cases Nos. 3680-3687, finding appellant Nelson Esperanza guilty beyond reasonable doubt of eight counts of rape committed against his 12-year-old niece AAA and sentencing him in each count to suffer the penalty of *death* and to pay the amount of P50,000 for the "civil aspect" of the case.

The information in Criminal Case No. 3680^[3] alleges that Nelson committed the crime of rape as follows:

That on June 16, 1997, at about 4:00 o'clock in the morning, at Brgy. ■■■■■, Municipality of ■■■■■, Province of ■■■■■, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, thru force and intimidation, and with lewd design, did then and there willfully, unlawfully and feloniously had sexual intercourse with his niece, AAA, who is of tender age, she being only 13-years old, against her will and consent, to her damage and prejudice.

ALL ACTS CONTRARY TO LAW.

The accusatory portions in the informations in Criminal Cases Nos. 3681,^[4] 3682,^[5] 3683,^[6] 3684,^[7] 3685,^[8] 3686,^[9] and 3687^[10] are similarly worded as that in Criminal Case No. 3680 except as to the dates of the commission of the rapes which are, respectively, (a) 17 June 1997; (b) 18 June 1997; (c) 19 June 1997; (d) 20 June 1997; (e) 21 June 1997; (f) 22 June 1997; and (g) 23 June 1997.

The informations were based on the complaint subscribed and sworn to by AAA and her father ■■■■■.^[11]

The cases were consolidated. After Nelson entered a plea of not guilty in each case during his arraignment,^[12] joint trial ensued.

The witnesses presented by the prosecution were AAA, Mary Jeynor Martinez, Teodora S. Salcedo, Ruben Brondial, Dr. Vivian Bustamante, and ■■■■■.

AAA testified that she was born on 29 November 1985 to spouses ■■■■■ and ■■■■■.^[13] When her parents separated, she was entrusted to appellant Nelson, ■■■■■'s full-blood brother, so that AAA could continue her studies at the

█████ Elementary School. AAA started living with appellant's family at *Barangay ██████████*, on 2 June 1997. She slept at the only bedroom of the house with ██████, Nelson's only child; while Nelson and his wife ██████ slept at the sala.^[14]

On 14 June 1997, ██████ left for Manila to attend to some business. After ██████ left, AAA observed that although Nelson slept in the sala when she and ██████ were about to sleep, she would later find him sleeping between her and ██████.^[15]

At about 4:00 a.m. of 16 June 1997, AAA was awakened by the feeling that her breasts were being mashed and that something was being inserted into her vagina. AAA recognized that it was Nelson who was inserting his finger into her vagina. AAA struggled, removed his hands, and turned her back against Nelson. Nelson, however, turned her back to her original position. He then laid on top of her, undressed her, and forcefully inserted his penis into her vagina. Blood oozed from her private part. Nelson warned her not to tell anybody; otherwise, he would kill her.^[16]

For seven successive days thereafter, or from 17 to 23 June 1997, at almost the same time, 4:00 a.m., AAA was awakened by Nelson's sexual advances, which culminated in sexual intercourse. In all those times, AAA could feel burning pain.^[17]

It was only on 24 June 1997, when ██████ arrived from Manila, that AAA found the courage to leave Nelson's house. ██████ asked AAA why she was leaving. With Nelson's threat etched on her mind, AAA feigned the reason that she no longer wanted to go to school. ██████ accompanied AAA to the house of AAA's father in San Agustin, Libon, Albay. AAA was unable to tell her father about Nelson's abuses. The next day, she left for ██████ at about 9:00 a.m. and stayed with her aunt Ester and continued her studies.^[18]

Mary Jeynor Martinez, 12 years old, testified that she is AAA's friend and former classmate. Sometime in February 1998, AAA revealed to her that Nelson fondled her breast, touched and fingered her vagina, and raped her. She advised AAA to seek the assistance of their teacher Mrs. Teodora Salcedo.^[19]

Teodora Sarcia Salcedo, AAA's teacher, testified that on 10 March 1998 she called AAA's attention regarding her failure to pay her graduation fees. On that occasion, AAA told her that she was no longer staying with Nelson, but with her aunt Ester, because Nelson had been holding her private parts and kissing her lips. Mrs. Salcedo got shocked. As it was almost lunchtime, Mrs. Salcedo put temporarily the matter aside and dismissed her class. After lunch, AAA narrated to Mrs. Salcedo, in the presence of her other teachers and classmates, her horrifying experience at the hands of Nelson. Mrs. Salcedo referred the matter to their Barangay Captain, Ruben Brondial.^[20]

Ruben Brondial testified that he came to know of the case of AAA when the latter, accompanied by Mrs. Salcedo, came to his office to report the abuses committed by Nelson against her. In the course of his investigation, he learned that AAA had been sexually abused by Nelson eight times. He then left for San Agustin, Libon, Albay, to inform AAA's father, ██████, of what Nelson did to her. He and ██████ forthwith

went to the Department of Social Welfare and Development and then to the police station.^[21]

██████, father of AAA, testified that Nelson is his brother. He had entrusted the custody of AAA to Nelson. When he came to know of his brother's bestial acts through AAA's teacher, he filed a complaint for rape. He felt deeply hurt and humiliated by Nelson's odious deed.^[22]

Dr. Vivian Bustamante, the Municipal Health Officer of ██████, who examined AAA on 16 March 1998, testified that she found in AAA's hymen old healed lacerations at 7 and 8 o'clock positions.^[23] She opined that those lacerations could have been caused by the insertion of a male organ.^[24]

The first witness for the defense was Emeteria Esperanza, Nelson's mother. The announced purpose of her testimony was to establish that contrary to AAA's claim, it was ██████ who raped AAA. However, Emeteria had to be withdrawn from the witness stand during her open court testimony, as she could hardly speak and breathe. Emeteria was not recalled anymore to the witness stand.

For his part, Nelson denied the accusations against him, but admitted that sometime in the month of May 1997, AAA was entrusted to him by his brother ██████. He accepted AAA because he thought that she could be a good companion of ██████, his only child. On 10 June 1997, he went to Barangay Bay, Ligao, Albay, to tend to his ducks. Barangay Bay could be reached from Barangay Banilad by a 45-minute bicycle ride. AAA was left to the care of either his wife ██████ or his mother Emeteria. Whenever ██████ would left for Manila, Nelson would fetch Emeteria to watch over ██████ and AAA. Nelson pointed to the ongoing rift between his wife ██████ and his sister Ester as the motive for the filing of the instant cases.^[25]

Testifying on rebuttal, AAA branded as a lie Nelson's claim that he was at Barangay Bay, Ligao, Albay, from 16 to 23 June 1997 tending his ducks. His ducks were raised at a nearby ricefield in ██████ about twelve meters away from his house. She likewise refuted his claim that he never molested her and that Emeteria stayed with them at his house.^[26]

The trial court gave full faith and credence to AAA's testimony. It declared that AAA's inability to prevent the appellant from committing the crime by shouting or forcibly resisting could not be taken against her. Nelson, being her uncle, definitely exercised moral and physical ascendancy over her, which could be sufficient to cow her into submission to his bestial desire. It disregarded Nelson's defense of denial and alibi not only for being self-serving, but also for lack of proof of physical impossibility for him to be at the *locus criminis* at the time of its commission. It then convicted Nelson of eight counts of rape and imposed upon him the death penalty for each count, considering the relationship of Nelson as uncle within the third civil degree of consanguinity and the fact that AAA was only 12 years old at the time the rapes were committed.

In his Appellant's Brief, Nelson attributes to the trial court the following errors:

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE OBVIOUSLY REHEARSED AND EQUALLY INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT ANENT THE CRIMES CHARGED.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF EIGHT (8) COUNTS OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN NOT FINDING HIM LIABLE FOR THE LESSER OFFENSE OF ACTS OF LASCIVIOUSNESS.

IV

ON THE ASSUMPTION FURTHER THAT THE ACCUSED-APPELLANT IS GUILTY AS CHARGED, THE TRIAL COURT ERRED IN NOT IMPOSING UPON HIM THE PENALTY OF RECLUSION PERPETUA IN CRIMINAL CASE NOS. 3680 TO 3687.^[27]

In support thereof, Nelson argues that AAA's testimony should not be given weight for being obviously rehearsed, as shown by her identical answers as to the time, place, and manner the rapes were committed. He also asserts that AAA's testimony bore several inconsistencies. AAA flip-flopped as to (a) when she left his house; (b) whether he raped her on 17 June 1997; and (c) whether he did insert his penis into her, considering her admission that the room was dimly lit and he had previously inserted his finger into her private part.

Finally, Nelson asserts that granting without admitting that he did commit the alleged rapes, the trial court erred in imposing the supreme penalty of death. While the informations alleged that AAA was 13 years old at the time the rapes were committed, they did not allege that Nelson is a relative of AAA within the third civil degree of consanguinity. With this infirmity, Nelson should have been meted the penalty of *reclusion perpetua*.

The Office of the Solicitor General (OSG) maintains that the trial court did not err in giving credence to the testimony of AAA. Her testimony established beyond reasonable doubt that from 16 to 23 June 1997, Nelson, her paternal uncle, had carnal knowledge of her. As for the identical manner of the commission of the eight counts of rape, the OSG argues that a series of rapes committed in almost the same manner is nothing extraordinary and does not necessarily render the complainant's testimony incredible. The OSG further argues that the lapses in the testimony of AAA were inconsequential and do not affect her credibility.

The OSG adds that the alibi posed by Nelson cannot prevail over the positive and credible testimony of AAA, who had no ill-motive against him. Moreover, Nelson did not prove that it was physically impossible for him to be at the scene of the crime at the time of its commission.

As to the penalty, the OSG maintains that the trial court correctly imposed the death penalty. All the eight informations contain the description that Nelson is AAA's paternal uncle. However, the OSG prays that the indemnity be increased from P50,000 to P75,000 in line with prevailing jurisprudence and that Nelson be ordered to pay for each count of rape moral damages of P50,000 and exemplary damages of P25,000.

We affirm Nelson's conviction.

Time and again we have held that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal.^[28] This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts.^[29]

In the cases at bar, we give full weight to the trial court's finding that AAA was sexually ravished by Nelson. This Court, however, finds that the prosecution was able to prove only seven counts of rape:

1. The rape on 16 June 1997:

Q Now, when was the first time your uncle raped you?
A June 16, 1997.

Q At about what time on June 16, 1997 were you raped?
A Early morning at 4:00 o'clock.

Q Where were you raped?
A In the house.

Q Where particularly, where in the house?
A In the bedroom.

Q What were you doing on June 16, 1997 at about 4:00 o'clock in the morning?
A During that time I was sleeping.

Q While sleeping what happened?
A I was awakened because he was mashing my breasts, my vagina and then inserted his finger inside my vagina, laid on top of me, undressed me and then **inserted his penis inside my vagina.**

Q Who was this person who mashed your breasts, inserted his finger and penis into your vagina?
A Uncle Nelson.

Q Now, after your Uncle Nelson inserted his male organ into your female organ, what else did he do to you, if any?
A He kissed my lips.