

## EN BANC

[ G.R. No. 142727, January 23, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANTONIO DULINDO ESUREÑA, ACCUSED- APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

Antonio Dulindo Esureña was charged with rape of his 13-year old daughter before the Regional Trial Court of Lucena City, Branch 58. The Information reads:

That on or about the 1<sup>st</sup> day of August 1994, at xxx, Province of Quezon, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 13 years of age, and a daughter of said accused, against her will.

Contrary to law.<sup>[1]</sup>

The victim, AAA, is the eldest of six daughters of BBB and accused-appellant, Antonio Dulindo Esureña (hereinafter Antonio).<sup>[2]</sup> On August 1, 1994, at 8:00 in the morning, Nena and three of her younger sisters, namely, CCC, DDD and EEE, went with their father Antonio to the woods in xxx to gather *anahaw* leaves to be used as roofing material for their house.<sup>[3]</sup>

While they were in the woods, Antonio lured AAA into a secluded area. He pushed her to the ground and removed her shorts, panties and blouse, while he took off his short pants and briefs. While AAA was lying on the ground, Antonio held her hands and forced her legs apart, then inserted his penis into her vagina. He made up and down movements while he was on top of AAA who struggled to free herself but she was pinned down by Antonio. AAA felt pain in her vagina and hips. After about fifteen minutes, Antonio stood up and told AAA not to tell anyone of what happened or else he will kill her.<sup>[4]</sup>

The rape was witnessed by AAA's sisters. Antonio threatened to kill AAA if they came nearer. The three of them could do nothing but watch and cry.<sup>[5]</sup>

AAA could not tell her mother what happened for fear of her father's threats. After two weeks, AAA's sister reported the rape to their mother, BBB. Consequently, BBB questioned AAA until the latter was forced to admit that her father had indeed sexually abused her. BBB relayed the incident to her brother and mother. BBB's brother went to Barangay Captain Gerson Pabria who, in turn, reported the matter to the police.<sup>[6]</sup>

On October 11, 1994, AAA was brought to the Provincial Health Office, xxx for examination. The Medical Officer, Dr. Ma. Amelia A. Tolentino, found deep healed lacerations at 4 and 7 o'clock positions and superficial lacerations at 3 and 11 o'clock positions on her hymen.<sup>[7]</sup>

Antonio admitted that in the morning of August 1, 1994, he went to the woods with his four daughters, AAA, CCC, DDD and EEE, to gather *anahaw* leaves. However, he denied the charge of rape. He alleged that his father-in-law, Gabriel Decano, made up the accusation because he was mad at him for being a drunkard. According to Antonio, he had a tendency to throw things around the house and hack the door with his bolo whenever he was drunk which scared his daughters and angered his father-in-law.<sup>[8]</sup>

On January 12, 2000, the trial court rendered judgment convicting Antonio of the crime of rape and sentenced him to death. The decretal portion of the decision reads:

WHEREFORE, finding the accused ANTONIO DULINDO ESUREÑA guilty beyond reasonable doubt of the crime of rape, having committed by the accused against his own daughter of 13 years of age and in full view of the other children, said accused is hereby sentenced to suffer the penalty of DEATH and he is ordered to pay the offended party, AAA, the amount of P100,000.00 as compensatory damages and P50,000.00 as moral and exemplary damages and also to pay the costs of the suit.

SO ORDERED.<sup>[9]</sup>

Hence, this automatic review pursuant to Article 47 of the Revised Penal Code as amended by Section 22 of R.A. No. 7659.

In his lone assignment of error, Antonio does not assail the trial court's Decision insofar as it concludes that the evidence proved beyond reasonable doubt that he raped his own daughter. However, he faults the trial court for imposing the supreme penalty of death contending that: (a) the minority of the victim was not proved clearly and convincingly; and (b) the other qualifying circumstance that rape was committed in the presence and in full view of the victim's relatives of the third degree of consanguinity was not alleged in the information.

A careful review of the evidence on record shows that AAA's testimony on the details of the rape was narrated in a straightforward, positive and convincing manner. She did not waver even during cross-examination, despite her tender age. It is an established rule that courts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice.<sup>[10]</sup>

More importantly, the fact of rape is corroborated by CCC, AAA's younger sister. There is nothing in the record which would indicate ill-motive on the part of Nelly to testify falsely against her father. Furthermore, the medical evidence, notably the finding of healed lacerations on the victim's private parts, supports the theory that