

[**G.R. No. 137047, October 15, 2002**]

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

D E C I S I O N

PER CURIAM:

Of all the crimes deserving the imposition of the supreme penalty of death, nothing perhaps provokes a greater feeling of outrage, detestation and disgust than incestuous rape.

Before us for automatic review is the Decision^[1] of Branch 28 of the Regional Trial Court of Naga City in Criminal Case No. RTC-97-6857 convicting accused-appellant, Alejandro de los Santos y Renegado, of the crime of incestuous rape against his own granddaughter, Janeth Narito, and sentencing him to suffer the supreme penalty of death.

Briefly, the facts, as presented by the prosecution and as given credence by the lower court, are as follows:

The 68-year old accused-appellant is the grandfather of private complainant Janeth Narito.^[2]

On December 8, 1997, at about 8:00 in the morning, then 12-year old Janeth was about to leave their house located at Itolan, Posacao, Camarines Sur to go to school when accused-appellant arrived and invited her to go with him to Naga City to look for the spare parts needed for the repair of her brother's bicycle. As it was Janeth's fault that the bicycle was damaged, accused-appellant told Janeth that, if they could have it repaired immediately, she would not be scolded by her mother.^[3]

Janeth's parents were in Manila at that time. So she told accused-appellant that she would have to ask permission from her elder brother, Jonathan. However, accused-appellant insisted that he would be the one to ask for the latter's permission. Immediately, accused-appellant left and when he returned, he informed Janeth that Jonathan had allegedly given his permission.^[4]

Janeth then dressed up and eagerly went with her grandfather, excited to see Naga City for the first time. When they reached Naga City, the two went to the house of accused-appellant's friend where they had lunch.^[5]

Later, the two proceeded to the Calabanga Terminal to see another friend named Jose. Accused-appellant told his granddaughter that they needed to see Jose because the latter would lend him money and give him some medicines.^[6]

After waiting for about an hour, Jose arrived and gave accused-appellant some money and the medicines he needed. Immediately thereafter, accused-appellant and

Janeth left Calabanga and returned to Naga City.^[7]

It was already about 5 o'clock in the afternoon when the two reached Naga City. Accused-appellant then took Janeth to a theater to watch a movie. Thereafter, they went to the Fiesta Hotel where Janeth saw her grandfather give money to a certain woman. Shortly thereafter, they were shown to their room. After checking in at room 23, the two left the hotel and accused-appellant took his granddaughter to the Philippine National Railways (PNR) station where they stayed for an hour and had their snacks of bread and soft drinks.^[8]

Later, they went back to their room at Fiesta Hotel.^[9] Janeth was standing near the window and was watching the passing trimobiles when accused-appellant removed his pants and shorts.^[10]

Suddenly, with only his underpants on, accused-appellant forcibly pulled Janeth towards the bed. Janeth started crying. Accused-appellant then put powder on her back, removed her shorts and afterwards took off his own briefs.^[11]

Unmoved and undeterred by his granddaughter's tears and sobs, accused-appellant forced Janeth to sit on his lap, facing him, with her legs spread apart. He then started pressing his penis against his granddaughter's private parts. Using his left hand to open Janeth's vagina with his right hand holding his penis, accused-appellant succeeded in partially penetrating Janeth.^[12]

Shortly thereafter, the two got dressed. Then, accused-appellant told Janeth they were going home. However, for some unknown reason, accused-appellant told Janeth that he would leave her behind and would hit her with a chair.^[13]

Meanwhile, SPO2 Armando Ayo, who was on duty at the time, was walking in the vicinity of Fiesta Hotel and saw a group of men acting apprehensively. He approached them and asked them if something was wrong. Somebody answered that a child was being abused inside the Fiesta Hotel. Immediately, SPO2 Ayo went to the Fiesta Hotel and was about to enter the door of the hotel when he met accused-appellant followed by Janeth.^[14]

SPO2 Ayo apprehended accused-appellant. Janeth and accused-appellant were brought to the Naga City Police Station where they spent the night and underwent investigation. In the morning of December 9, 1997, Janeth was brought to the Naga City Hospital for examination.^[15]

The medical examination conducted by Dr. Myla Nieves on Janeth revealed the following:

(1) Positive, 3 o'clock, laceration healed; (2) Positive 9 o'clock, laceration healed; (3) negative, bleeding; and (4) claims, pain on pressure over vaginal opening (Exhibits B and B-1).^[16]

On December 10, 1997, accused-appellant was charged with rape in an information pertinently reading as follows:

The undersigned Assistant City Prosecutor, upon complaint under oath filed by private complainant JANETH D. NARITO, hereby accuses ALEJANDRE DE LOS SANTOS y RENEGADO of the felony of RAPE, defined

and penalized under Article 335 of the Revised Penal Code, committed as follows:

That on or about December 8, 1997, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, above-named accused, with lewd design and intent to lie, by means of threats and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with private complainant, twelve (12) years of age, against her will and without her consent, accused being a maternal grandfather of private complainant, to the latter's damage and prejudice.

CONTRARY TO LAW.^[17]

Upon arraignment, accused-appellant assisted by counsel, pleaded not guilty.

On November 17, 1998, the trial court promulgated its decision:

WHEREFORE, in view of the foregoing finding that the guilt of accused Alejandro de los Santos y Renegado of the crime of rape of which he is presently charged committed against his own granddaughter Janeth Narita was proven beyond reasonable doubt, judgment is hereby rendered whereby the accused, according to the aforecited law, is sentenced to suffer the penalty of death; to pay the private complainant moral damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS; and for the accused to pay the costs.

SO ORDERED.^[18]

Accused-appellant now assails said judgment and ventilates his appeal on the general and catch-all argument that the court *a quo* erred in convicting him despite the absence of evidence required to prove his guilt beyond reasonable doubt.

Accused-appellant impugns the credibility of the complaining witness and insists that the latter's testimony must be rejected for the following reasons:

1. It would be impossible to consummate forcible carnal knowledge in the given situation especially when the accused's hands were too busy doing something which are usually being done to consensual sexual intercourse.
2. The unsuccessful penile insertion was corroborated by the findings of the medico legal officer that while the victim was positive for hymenal laceration, the same however was already healed and that the pain experienced by Janeth may be because of the pressure of appellant's hands.^[19]

In his brief, accused-appellant reproduces an excerpt of the victim's testimony, in support of his arguments:

Q- And what did you observe from your lolo as you said without his brief?

A- He got nearer me.

Q- What happened next?

A- He was pressing his penis against my private organ.

xxx xxx xxx

Q- What was (sic) the hands doing at that time?

A- He was using it to open.

xxx xxx xxx

Q- How about his left hand?

A- He was using it to open my vagina.

Q- While your grandfather was accordingly handling his penis with his right hand and his left had (sic) was opening your vagina, what were you doing at that time?

A- I kept on crying, sir.

Q- What else did your grandfather do after doing this handling his penis and he was trying to open your private part, what else did the accused do?

A- He was trying to insert his penis into my vagina.

Q- And what did you feel when he was trying to insert his penis to your vagina?

A- I felt pain, sir.

Q- So what did you do?

A- I kept on crying, sir.

Q- Was (sic) your grandfather successfully insert his penis to your vagina?

A- No sir.

Q- Why?

A- Because I moved, sir.^[20]

The Court notices, however, that accused-appellant deliberately omitted a material portion of the cited testimony which can lead to his conviction:

COURT:

Q Was there partial penetration?

A Yes, sir.^[21]

At any rate, accused-appellant's argument deserves scant consideration because the Court has repeatedly ruled that the mere introduction of the penis into the aperture of the female organ, touching the labia of the pudendum, already consummates the crime of rape.^[22]

Then too, the corroborating testimony of Dr. Nieves, the doctor who conducted the medico-legal examination on Janeth, is very convincing. The doctor testified that, when she conducted her examination on Janeth, the mere pressure of her finger on