

## EN BANC

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

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

### DECISION

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

Before us for automatic review<sup>[1]</sup> is the Judgment<sup>[2]</sup> 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 Alejandro 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<sup>[3]</sup> 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<sup>th</sup> 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<sup>[4]</sup> 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<sup>[5]</sup> 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.<sup>[6]</sup> He also learned that she was raped at the Fiesta Hotel on 8 December 1997.<sup>[7]</sup>

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.<sup>[8]</sup> 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.<sup>[9]</sup>

On 8 December 1997, ALEJANDRE again raped JANETH in Naga City.<sup>[10]</sup> 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.<sup>[11]</sup> She told her parents about the rape

incidents, and they were very angry at her grandfather ALEJANDRE.<sup>[12]</sup>

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

1. Positive 3 o'clock laceration healed
2. Positive 9 o'clock laceration, healed
3. Negative bleeding
4. 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.<sup>[14]</sup>

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 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.<sup>[15]</sup>

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.<sup>[16]</sup>

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.<sup>[17]</sup> From that time on, he no longer saw ALEJANDRE.<sup>[18]</sup>

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.<sup>[19]</sup>

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.<sup>[20]</sup>

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,<sup>[21]</sup> 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.<sup>[22]</sup> From the time he arrived at Barrera Sr., the only time he left the place was to gather oranges in La Purisima.<sup>[23]</sup> 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).<sup>[24]</sup>

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.<sup>[25]</sup>

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