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

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEJANDRE DE LOS SANTOS *Y* RENEGADO**, *accused-appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of incestuous rape for sexually abusing his twelve-year old granddaughter. He was sentenced to suffer the extreme penalty of death.

In affirming the conviction of appellant, the Supreme Court ruled that the willingness of the complainant to face police investigators and to submit to a physical examination is mute but eloquent testimony of the truth of her accusation against the accused. For, no young Filipina of decent repute will undergo the expense, trouble, inconvenience of a public trial, exposing herself to public shame and ridicule, suffer scandal, embarrassment and humiliation of a public trial and publicly admitting that she was criminally abused unless it is the truth. It is the victim's natural instinct to protect her honor.

The Court likewise ruled that in rape cases, the concurrence of the minority of the victim and her relationship with the offender is a special qualifying circumstance for which the law prescribes the penalty of death. In the present case, both the minority of the victim (who was twelve years old at the time of the commission of the crime as evidenced by her birth certificate) and her relationship with the appellant (who is her maternal grandfather), were sufficiently alleged in the information and duly established by evidence during the trial.

SYLLABUS

1. CRIMINAL LAW; RAPE; RAPE IS CONSUMMATED BY MERE TOUCHING OF MALE'S ORGAN OF THE LABIA OF THE PUDENDUM OF VICTIM'S PRIVATE PARTS.— [T]he mere touching by the male's organ of the labia of the

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pudendum of the victim's private parts is sufficient to consummate rape.

2. **ID.; ID.; REMEDIAL LAW; EVIDENCE; CORROBORATIVE EVIDENCE; MEDICAL FINDINGS OF PENETRATION.**— 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 the latter's vaginal opening caused Janeth some pain. The pain, according to the doctor, was a result of undue pressure and force applied on Janeth's private parts. It also meant there was partial penile penetration. When the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient ground to conclude the existence of the essential requisites of carnal knowledge

3. **REMEDIAL LAW; EVIDENCE; DENIAL; POSITIVE AND CATEGORICAL TESTIMONY OF RAPE VICTIM PREVAILS OVER ACCUSED'S BARE DENIAL; CASE AT BAR.**— While Janeth's testimony was candid and straightforward, accused-appellant's defense consisted of plain denial. It is a time-honored principle that, between the positive and categorical testimony of a rape victim on one hand and the accused-appellant's bare denial on the other, the former generally prevails.

4. **ID.; ID.; NO YOUNG FILIPINA OF DECENT REPUTE WILL UNDERGO PUBLIC TRIAL UNLESS SHE HAS IN FACT BEEN RAPED.**— It is a settled rule that the willingness of the complainant to face police investigators and to submit to a physical examination is mute but eloquent testimony of the truth of her accusation against the accused. For, no young Filipina of decent repute will undergo the expense, trouble, inconvenience of a public trial, exposing herself to public shame and ridicule, suffer scandal, embarrassment and humiliation of a public trial and publicly admitting that she was criminally abused unless it is the truth. It is the victim's natural instinct to protect her honor.

5. **CRIMINAL LAW; RAPE; DEATH PENALTY; PROPER WHEN THE MINORITY OF VICTIM AND HER RELATIONSHIP WITH OFFENDER ARE SUFFICIENTLY ALLEGED IN INFORMATION AND PROVEN DURING TRIAL; CASE**

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AT BAR.— In rape cases, the concurrence of the minority of the victim and her relationship with the offender is a special qualifying circumstance for which the law prescribes the penalty of death. In the present case, both the minority of the victim (who was twelve years old at the time of the commission of the crime as evidenced by her birth certificate) and her relationship with the appellant (who is her maternal grandfather), were sufficiently alleged in the information and duly established by evidence during the trial.

6. **CIVIL LAW; DAMAGES; MORAL DAMAGES; CIVIL INDEMNITY, MANDATORY UPON FINDING OF FACT OF RAPE.**— The Trial Court was correct in awarding moral damages of ₱50,000 to the victim without the need for pleading or proof of the basis thereof. In addition to moral damages, however, the trial court should have likewise ordered accused-appellant to indemnify the victim in the amount of ₱75,000. [I]f rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, civil indemnity for the victim shall be in the amount of not less than ₱75,000. Civil indemnity is mandatory upon the finding of the fact of rape.

7. **ID.; ID.; EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.**— The amount of P25,000 for exemplary damages is also imposed as a deterrent to people with perverse tendencies or aberrant sexual behavior from sexually abusing their own flesh and blood.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for 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.

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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, Alejandre 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]

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[1] Judge Antonio N. Gerona.

[2] TSN, September 25, 1998, p. 4.

[3] TSN, September 25, 1998, pp. 4-5.

[4] p. 7, *ibid.*

[5] pp. 7-8, *ibid.*

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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

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[6] p. 10, *ibid.*

[7] p. 11, *ibid.*

[8] p. 12, *ibid.*

[9] pp. 11-13, *ibid.*

[10] p.13, *ibid.*

[11] *Ibid.*

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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:

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[12] p. 18, *ibid.*

[13] *Ibid.*

[14] p. 4, Judgment.

[15] p. 20, *ibid.*

[16] TSN, September 25, 1998, pp. 26-28.

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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 Alejandre de los Santos *y* Renegado of the crime of rape of which he is presently charged committed against his own granddaughter Janeth Narito 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 (₱50,000.00) 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.

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[17] *Rollo*, p. 7.

[18] *Rollo*, pp. 23-24.

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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.

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[19] *Rollo*, pp. 100-101.

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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 the latter's vaginal opening caused Janeth some pain. The pain,

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[20] *Rollo*, pp. 50-51.

[21] TSN, September 25, 1998, p. 18.

[22] *People vs. Balgos*, 323 SCRA 372 (2000).

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according to the doctor, was a result of undue pressure and force applied on Janeth's private parts. It also meant there was partial penile penetration. When the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient ground to conclude the existence of the essential requisites of carnal knowledge.[23]

Regarding accused-appellant's second argument on the absence of fresh hymenal lacerations, suffice it to state that the mere touching by the male's organ of the labia of the pudendum of the victim's private parts is sufficient to consummate rape.[24] Accused-appellant has the temerity to point out the presence of healed lacerations in his granddaughter's hymen when he himself is being accused of causing them in a separate criminal case.

Q- By the way, is it not that there is another case for Rape filed against you by Janeth Narito now pending before Branch 25?

A- Yes, sir that is true.[25]

Accused-appellant's appeal fails to persuade us.

Concededly, accused-appellant may have had a difficult time in inserting his penis inside the victim's vagina but it was not impossible for him to consummate forcible carnal knowledge with his victim.

Janeth recounted the harrowing experience she went through when accused-appellant forcibly tried to insert his penis in her private part while she was sitting on his lap. Had the charge been merely concocted as accused-appellant suggests, Janeth would have made it more believable by inventing details. The fact that she did not suggests that she related the events as they really happened, without omission or embellishment, even if

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[23] *People vs. Brondial*, 343 SCRA 600 (2000)

[24] *People vs. Mahinay*, 302 SCRA 455 (1999).

[25] TSN, October 28, 1998, p. 34.

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they might appear to be improbable. It is not always impossible that something improbable may happen.[26]

While Janeth's testimony was candid and straightforward, accused-appellant's defense consisted of plain denial. It is a time-honored principle that, between the positive and categorical testimony of a rape victim on one hand and the accused-appellant's bare denial on the other, the former generally prevails.[27]

It is a settled rule that the willingness of the complainant to face police investigators and to submit to a physical examination is mute but eloquent testimony of the truth of her accusation against the accused.[28] For, no young Filipina of decent repute will undergo the expense, trouble, inconvenience of a public trial, exposing herself to public shame and ridicule, suffer scandal, embarrassment and humiliation of a public trial and publicly admitting that she was criminally abused unless it is the truth.[29] It is the victim's natural instinct to protect her honor.[30]

Thus, we find no reason to depart from the trial court's judgment of conviction. The weight and quantum of evidence needed to prove the guilt of accused-appellant beyond reasonable doubt were met and established by the prosecution. The affirmance of the trial court's verdict should follow.

The guilt of accused-appellant having been proved beyond reasonable doubt, we now discuss the propriety of the trial court's imposition of the death penalty.

Article 335 of the Revised Penal Code, as amended, reads:

> Art. 335. When and how rape is committed.— Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

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[26] *People vs. Sangil*, 276 SCRA 533 (1997).

[27] *People vs. Cambi*, 333 SCRA 305 (2000).

[28] *People vs. Baculi*, 246 SCRA 756 (1995).

[29] *People vs. Avero*, 165 SCRA 130 (1998).

[30] *People vs. Muñoz*, 163 SCRA 730 (1998).

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1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua.*

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following circumstances:

When the victim is under eighteen (18) years of age and the offender is a parent, *ascendant,* step-parent, guardian, relative by consanguinity or affinity *within the third civil degree*, or the common-law spouse of the parent of the victim xxx." (Italics supplied)

In rape cases, the concurrence of the minority of the victim and her relationship with the offender is a special qualifying circumstance for which the law prescribes the penalty of death. In the present case, both the minority of the victim (who was twelve years old at the time of the commission of the crime as evidenced by her birth certificate) and her relationship with the appellant (who is her maternal grandfather), were sufficiently alleged in the information and duly established by evidence during the trial.

The trial court was correct in awarding moral damages of ₱50,000 to the victim without the need for pleading or proof of the basis thereof.[31]

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[31] *People vs. Prades,* 293 SCRA 411(1998).

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In addition to moral damages, however, the trial court should have likewise ordered accused-appellant to indemnify his victim in the amount of ₱75,000. The prevailing jurisprudence is that, if rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, civil indemnity for the victim shall be in the amount of not less than ₱75,000. Civil indemnity is mandatory upon the finding of the fact of rape.[32] The amount of ₱25,000 for exemplary damages is also imposed as a deterrent to people with perverse tendencies or aberrant sexual behavior from sexually abusing their own flesh and blood.[33]

WHEREFORE, the appealed decision is *AFFIRMED* with modification. Accused-appellant Alfredo de los Santos *y* Renegado is ordered to pay the offended party Janeth D. Narito ₱75,000 as civil indemnity and ₱25,000 as exemplary damages in addition to the award of ₱50,000 as moral damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Sandoval-Gutierrez, Corona, Carpio-Morales, and *Callejo, Sr., JJ.,* concur.

Bellosillo, Mendoza, Ynares-Santiago, Carpio, and *Austria-Martinez, JJ.,* on official leave.

Quisumbing, J., on leave.

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[32] *People vs. Victor,* 292 SCRA 186 (1998).

[33] *People vs. Guiwan,* 331 SCRA 70(2000).