

SECOND DIVISION

[G.R. No. 122095, September 13, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO DAWISAN, ACCUSED-APPELLANT.**

D E C I S I O N

BUENA, J.:

Convicted of rape, accused-appellant Domingo Dawisan now assails the decision^[1] of the Regional Trial Court of Calbayog City, Branch 31, dated 27 March 1995, in Criminal Case No. 1590 adjudging him guilty beyond reasonable doubt of raping a 17-year old lass, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the sum of P50,000.00 as indemnity, and costs.

In an information dated 13 January 1993, accused-appellant Domingo Dawisan was charged with the rape of minor Francisca Catalan as follows:

"That on or about the 12th day of December 1992, in the morning, at Brgy. Mag-ubay, Oquendo District, Calbayog City, Philippines and within the jurisdiction of this honorable court, the above-named accused, with lewd designs and by means of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge upon the undersigned without her consent and against her will.

"Contrary to law."

Upon being arraigned, accused-appellant pleaded not guilty to the charge.

As gleaned from the collective testimony of prosecution witnesses namely, Francisca Catalan, complainant; Maria Catalan, mother of Francisca; and Dr. Jose V. Ong, Officer-in-Charge of the Calbayog District Hospital, the facts of the case unfold.

Around 11:30 A.M. of 12 December 1992, Francisca Catalan was cooking rice at their home situated in Barangay Mag-ubay, Oquendo District, Calbayog City when she was asked by her mother, Maria Catalan, to get their bolo from accused-appellant's house which was just adjacent to the Catalan residence.^[2] Maria planned to use the bolo in husking a coconut. Upon arrival at Dawisan's house, Francisca greeted Domingo's eight-year-old sister, Vilma, and asked the latter about the bolo. Thereafter, Francisca proceeded to the kitchen, got the bolo and, on her way out, passed in front of a bedroom where accused-appellant Domingo stayed.

As Francisca was passing by the door of the bedroom, Domingo suddenly grabbed and dragged her towards the room,^[3] covering Francisca's mouth. As a result,

Francisca lost grip of the bolo.^[4] Inside the bedroom, Domingo pinned Francisca down the floor, put away the hammock, and with his right hand undressed himself by lowering his short pants and brief.^[5] Accused-appellant then pulled down Francisca's skirt and panty to just above her knees, touched Francisca's private parts and forcefully separated her thighs to facilitate the penile invasion.^[6]

Accused-appellant then had carnal knowledge of her by inserting his penis inside Francisca's vagina.^[7] Francisca tried to resist the sexual attack but "one of her hands cannot do anything because (she) had polio";^[8] she felt weak and trembled.

In the midst of the coerced coitus, Maria, worried that her daughter was not back yet despite the short distance between their house and the Dawisan's — proceeded to the Dawisan household and surprised Domingo who was naked from waist down and perched on top of her daughter.^[9] Stunned, accused-appellant "immediately separate(d) from Francisca" by rolling over to the left side of the young lass. Seething with motherly indignation, Maria scouted for something to strike her daughter's ravisher and upon seeing a piece of wood in the sala, picked it up and swung it against Domingo hitting his knee.^[10] Accused-appellant then stood and fled.

During trial, the court noted that Francisca's right forearm was shorter than her left and the fingers of her right hand could hardly be opened.^[11] In fact as a result of her condition, Francisca had to drag her right foot when she walks.^[12]

At the stand, Francisca narrated that accused-appellant ravaged her for the first time on 06 December 1992 inside a room of the Dawisan's residence where she and three of her young nieces - Marjory, Sinang and Margie - slept. Francisca testified that accused-appellant threatened to snuff out her life if she were to divulge the carnal ordeal. According to Francisca, prior to the 06 December incident, she and a few of her child relatives were allowed to sleep in the Dawisan's residence for twelve (12) nights already,^[13] as their house was demolished^[14] by his father and uncles. At the time of the twin sexual assaults, Francisca's vagina bled.^[15]

Moreover, as part of its documentary evidence, the prosecution submitted a Physical Injuries Report,^[16] dated 15 December 1992, prepared by Dr. Ema Cheryl Rosalado of the Calbayog District Hospital, the physician who conducted the medical examination on Francisca. However, as Dr. Rosalado was then attending a six-month Radiology service training in Manila, the prosecution presented instead the testimony of Dr. Jose V. Ong, Officer-in Charge of the said hospital.

In opposition, the defense presented the testimonies of four (4) witnesses to lend basis to its theory of denial: accused-appellant Domingo Dawisan, 21-year-old-farmer; Eufrecina Dawisan, mother of Domingo; Vilma Dawisan, eight-year-old-sister of Domingo; and Gregoria Romano, neighbor of the Dawisans.

In his testimony, Domingo, although admitting his presence in the bedroom with the complainant, denied having sexually assaulted Francisca. Thus, according to accused-appellant, he was hired by one Banny Flor to plow the field on 12 December 1992 from 7 A.M. to 10 A.M. after which he went home to eat and rest. Upon

reaching their house, Domingo lay on a hammock and slept inside the bedroom as he was exhausted from work in the field. He was only doused from slumber when someone sat beside him on the hammock--Francisca Catalan. Thereafter without any warning, Maria Catalan barged into the room and upon seeing Domingo and Francisca beside each other, immediately struck accused-appellant with a piece of wood which caused him injuries. Domingo underwent a medical examination conducted by Dr. Jean Manaza of the Calbayog District Hospital upon which a corresponding Physical Injuries Report^[17] was issued. Records show that Domingo was physically examined six (6) days after the infliction of the injury.^[18]

On the stand, accused-appellant averred that the rape case was filed against him inasmuch as Maria Catalan sensed that he was pressing charges as a result of the physical injuries she inflicted on him (Domingo) by her. Further, accused-appellant saw nothing wrong in the act of Francisca sitting beside him on the hammock.

In the course of trial, Eufrecina Dawisan corroborated the narration of her son Domingo. Eufrecina testified that at the time of the commission of the crime, she was feeding the hogs at their backyard when Francisca arrived and upon her permission - entered the kitchen and got the bolo.^[19] Thereafter, Francisca went inside the room where Domingo was lying on a hammock.

According to Eufrecina, she eventually saw Maria Catalan enter the room. Then from the stairway,^[20] Eufrecina heard a commotion occurring inside the room; she "learned that (her) son was struck by Maria."^[21]

On cross-examination, Eufrecina thought of no reason why her son would be charged with so grave an offense; she alleged that prior to the 12 December incident, she and Maria Catalan treated each other as sisters and good friends.

The respective testimonies of Domingo and Eufrecina were further corroborated by the recollection of eight-year-old Vilma Dawisan who testified that she saw Francisca go "to the kitchen to get the bolo", enter the room and sit on the hammock where Domingo was resting.^[22]

On 27 March 1995, the trial court rendered its judgment of conviction, the decretal part of which reads:

"WHEREFORE, as sustained by the evidence, the Court finds the accused GUILTY beyond reasonable doubt of the crime of rape as charged in the complaint and as punished under Article 335 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties under the law, and to pay the costs. The accused is further ordered to indemnify the offended party the sum of P50,000.00.

"SO ORDERED."

In this appeal, the defense ascribed to the trial court the following errors:

- "I. The lower court erred in finding that the accused-appellant had carnal knowledge of the offended party.
- "II. The lower court erred in convicting the accused-appellant as the testimonial and documentary evidence presented are insufficient to prove that the accused-appellant was guilty beyond reasonable doubt."

The appeal is without merit; the verdict of conviction necessarily stands. Through the collective testimony of its witnesses, the prosecution indubitably established - with moral certainty - not only the commission of the felony but also the precise culpability and identity of the perpetrator thereof -- accused-appellant Domingo Dawisan.

In the course of trial, victim Francisca Catalan narrated the rueful ordeal that transpired on 12 December 1992 where accused-appellant dragged her inside the bedroom and succeeded in having carnal knowledge of her under circumstances of force.

Jurisprudence is crystalline that penile invasion entails contact with the labia and even the briefest of the contact under circumstances of force, intimidation or unconsciousness, even without rapture of the hymen, consummates the crime of rape.^[23] To be sure, the gravamen of the offense of rape is sexual intercourse without consent.^[24]

Thus, Francisca on the witness stand recounted the rape:^[25]

- "A: X X X He pressed my thighs forcefully with his hands so that he will be able to insert his organ successfully and he was already in the act of sexual intercourse moving up and down.
"X X X
- "Q: And he was able to do a sexual intercourse with you holding your mouth (with) his hand and the other one is holding your thighs?
- "A: Yes.
"X X X
- "Q: But of course you were resisting?
- "A: Yes.
- "Q: Why did you not bite his hand?
- "A: I did but he was strong.
"X X X
- "Q: The accused [was] succeeded in inserting his organ into your organ?
- "A: Yes his genital organ was inside my vagina.
- "Q: All the entire penis was inserted in your organ?
- "A: Yes and he did not make any excretion.
"X X X
- "Q: While he (was) doing the act of having sexual intercourse with you, your mother arrived, is that correct?
- "A: Yes, he was caught and his body was on top of me.