

## FIRST DIVISION

**[ G.R. No. 146423, November 12, 2002 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
TEODORO DIVINA Y DURO, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Marikina City, Branch 272, in Criminal Case No. 2000-3147-MK, convicting accused-appellant Teodoro Divina y Duro of the crime of rape; sentencing him to suffer the penalty of reclusion perpetua; and ordering him to pay the private complainant Rosalie Divina the amount of P50,000.00 as actual or compensatory damages and P30,000.00 as moral damages.

The prosecution sought to establish that on the night of January 11, 2000, twenty-two year old Rosalie Divina was left alone in her house because her husband was working overtime and her children were with her in-laws in Montalban. At 9:00 p.m., while Rosalie was in her bedroom fixing her things, accused-appellant, her husband's cousin, suddenly entered. He appeared drunk and under the influence of drugs, and was carrying a fan knife. He quickly approached Rosalie and kissed her on the neck. She could not shout because accused-appellant pointed the knife at her.<sup>[2]</sup>

Accused-appellant began to slowly undress complainant, but she fought back by repeatedly slapping him. He threatened to kill her, so she kept silent. Accused-appellant removed her underwear and ordered her to lie down on the floor. He then inserted his two fingers into her vagina. After that, he inserted his penis into her vagina, causing her pain. She begged him to stop and told him that her husband might see them in a situation that neither of them can explain. This caused accused-appellant to stop and leave the room. <sup>[3]</sup>

When complainant's husband arrived, she immediately told him to call a tricycle because his cousin was running after them. Thereafter, they proceeded to Montalban. Later, she told her husband everything that transpired and he was furious upon hearing her story. His instant reaction was to suspect that she was having an affair with accused-appellant. However, complainant assured him that there was nothing between them.

Complainant went to the Marikina Police Station with her husband and father-in-law in the afternoon of January 12, 2000 to report the incident to SPO4 Nenita Abanes of the Women's and Children's Concern Unit.<sup>[4]</sup> Accused-appellant was invited to the police station for questioning regarding the report of complainant. He was temporarily detained at the CIS detention cell.<sup>[5]</sup>

On the other hand, accused-appellant denied the accusations against him and claimed that complainant Rosalie Divina was his mistress since September 1999. He alleged that on the night of January 11, 2000, while he was at home, his wife informed him that complainant told her about her affair with him.<sup>[6]</sup> Upon learning this, accused-appellant went to see complainant to confront her. Several people saw him shouting at complainant in front of her house, "*Walanghiya ka, inamin mo kahit hindi tinatanong sa iyo at sinabi mo kahit anong mangyari, walang aamin!*"<sup>[7]</sup>

One of the defense witnesses, Crystalline Arcilla, testified that she often saw accused-appellant and complainant in the house of another neighbor named Madonna. Complainant told her that she and accused-appellant were lovers. Since then, complainant would always ask her to accompany them on their dates at the River Park and at the Quezon City Memorial Circle. On these occasions, Crystalline witnessed the intimacy between accused-appellant and complainant, as they frequently embraced each other.

Crystalline also corroborated accused-appellant's claim that he confronted complainant on the night of January 11, 2000 at around 8:30 p.m. She testified that she saw him shouting in front of complainant's house. According to her, complainant was not alone in her room on the night of the incident because she saw her with her mother-in-law, her two children and a cousin.<sup>[8]</sup>

When arraigned, accused-appellant pleaded not guilty. Trial thereafter ensued, and on September 11, 2000, the trial court rendered judgment as follows:

WHEREFORE, premises considered, the court finds the accused TEODORO DIVINA y DURO GUILTY beyond reasonable doubt of the crime of RAPE penalized under Article 266-A par. (1) of the Revised Penal Code as charged against him and is sentenced to suffer the penalty of RECLUSION PERPETUA there being no aggravating/qualifying circumstances in the commission thereof. The accused is further ordered to pay the private complainant Rosalie Divina the amount of FIFTY THOUSAND (P50,000.00) PESOS as actual or compensatory damages and the amount of THIRTY THOUSAND (P30,000.00) PESOS as moral damages.

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

Hence, the instant appeal based on the following assignment of errors:

#### I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND INCONSISTENT STATEMENTS OF THE PROSECUTION WITNESSES.

#### II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.<sup>[10]</sup>

We are again confronted with two conflicting but equally plausible versions of the same event. Complainant alleges that accused-appellant, her husband's cousin,