

SECOND DIVISION

[G.R. No. 137564, March 30, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR DOMENDED Y VELASCO, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

DOMINADOR DOMENDED Y VELASCO was charged with rape before the court *a quo*, specifically, that on 30 July 1997, by means of force, intimidation, with lewd design or abuse, he had carnal knowledge of Lina Casupang against her will and consent.^[1]

On 4 January 1999 he was convicted as charged and sentenced to *reclusion perpetua*. He was also ordered to pay his victim P50,000.00 as indemnity.^[2]

Forced by abject poverty and the lack of employment opportunities, rural folks troop to urban areas to speculate on what better fate may bring; regretfully, oft with tragic results. The story of Lina Casupang, a 15-year old Pangasinense, typifies this recurring theme of betrayal and abuse in the big city.

On 24 July 1997 accused Dominador Domended fetched Lina from her house in Pangasinan to work as a helper in his *carinderia* in Marikina City. Every day from 6:00 o'clock in the morning to 7:00 o'clock in the evening, Lina worked as a dishwasher in Domended's *carinderia*, and on Saturdays she would do household chores in his house at the Empress Subdivision, Marikina City. Lina Casupang narrated that at around 12:00 o'clock midnight of 30 July 1997 she and Dominador were preparing to leave the *carinderia* after a day's work. They closed later than usual because the accused was busy with his sideline as a plumber. On their way home they boarded a tricycle. They were still on board the tricycle when the accused, reeking with alcohol, held Lina's shoulder and started kissing her on the lips. She pushed him back.

When they reached Empress subdivision, they alighted from the tricycle near a waiting shed. The dark and deserted street was wet after a drizzle. Dominador pulled Lina across the street without warning and brought her to a vacant lot. She tried to shout but her cry for help was drowned by the pattering of the rain. An opportunity for help came when a car passed by, but the accused covered her mouth. Dominador then dragged Lina down the ground but she managed to stand up. Nonetheless, with his superior strength, the accused succeeded in pinning her down. He forcibly removed her shorts and panty, raised her t-shirt and bra, and rammed his organ into her genitalia. According to Lina, "he inserted his penis into my vagina"^[3] while lustily kissing the sensitive portions of her anatomy. Lina bit the lips of her attacker to retaliate. She was cowed into submission only when he tried to strangle her.

Displaying an awkward and unconventional style, he repeatedly inserted his finger into her vagina. Not satisfied with finger poking, he insisted on inserting his penis into her vagina, but his organ refused to cooperate with a full erection. In the utter helplessness of the moment, Lina could only whimper in vain defiance.

When cross examined, Lina revealed that she was not exactly telling the truth when she stated in her affidavit dated 10 August 1997 that the accused unsuccessfully tried to penetrate her, in contrast to her direct testimony that accused "was about to insert his penis into your (referring to private respondent) vagina for thirty (30) minutes."^[4] She explained that she was in fear at the time she executed her affidavit because of the moral ascendancy of the accused over her. She was categorical however in saying that her version during the trial was more reflective of what actually transpired that night of 30 July 1997.

Criselda Alano, sister-in-law of the accused and a member of the Domended household, testified that at around 1:30 o'clock in the early morning of 31 July she was awakened when somebody knocked at their door. When she opened, she saw Lina together with the accused. She observed that Lina's appearance was disheveled and her clothes were dirty. Her unkempt appearance aroused Criselda's suspicion prompting her to ask if something was wrong. Her importuning paid off when Lina finally revealed to her that she had been raped by the accused. Lina then narrated how he dragged her to a vacant lot, kissed her repeatedly, *and tried to insert his organ into her vagina but could not get a penetration as his penis was soft.*^[5] Criselda and Lina went to the police station the following morning to report the matter as they did, which led to the arrest of the accused.

Dr. Emmanuel Reyes, medico-legal officer of the PNP crime laboratory, conducted a genital and extra-genital examination on Lina Casupang. His medico-legal report showed the following: (a) moderate growth of pubic hair; (b) *labia majora* full, convex and slightly gaping with pinkish brown *labia minora* presenting in between; (c) an elastic, fleshy type hymen with deep fresh healing laceration at 3:00 o'clock position and shallow fresh healing laceration at 9:00 o'clock position; (d) the external vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum; (e) vaginal canal narrow with prominent rugenities; and, (f) cervix normal size, color and consistency with menstrual blood coming from the external.^[6]

But the accused dismissed as a blatant and an unmitigated lie the story of private complainant and insisted that his version was the truth. According to him, on 24 July 1997 he went to Pangasinan to fetch Lina Casupang whom he was hiring as extra help in his canteen as his wife was in Hongkong. A week later, that was 30 July 1997 at around 11:00 o'clock in the evening, he went to his *carinderia* to close for the day. There he found Lina all by herself.

On their way home, they boarded a tricycle and alighted near a waiting shed outside the Empress subdivision where Dominador's house was located. At the waiting shed, he requested Lina for some moment because he wanted to know why the latter was reluctant to go home. According to him, Lina said that she was afraid of Criselda who was badgering her about their supposed relationship. When he noticed that Lina was crying, he placed his arm around her. Lina for her part embraced him and leaned on his chest. He suggested that it would be prudent for them to transfer to a

vacant lot at the back of the nearby store because somebody might see them. There, they kissed and caressed each other. At the height of their passion, he touched her private part but he lost interest when he sensed that she was wearing a sanitary napkin ("*tapa*"). They then decided to go home. When they opened the gate of the house, Criselda peeped through the jalousie window and opened the door for them. As Dominador entered the house, he observed that Criselda was staring at him. From his room he heard Criselda and Lina talking to each other in the sala. When he woke up the following morning, he found two (2) policemen already in their house inviting him to the police station since there was a complaint against him.^[7]

Yolanda Alano, another sister-in-law of the accused, doubted the veracity of Lina's accusations because in all appearances Dominador and Lina were maintaining an illicit relationship. She testified that when she went to Dominador's house to visit her mother who was staying with him, she caught the two (2) lovers kissing when she peeped through the window. Despite this shocking revelation, she decided to keep it to herself; neither did she confront her brother-in-law.^[8]

Josephine Domended narrated that she was in Hongkong when her sister Criselda informed her through a telex message that her husband was being detained for attempting to rape their maid. Through Criselda, she was able to talk with a certain *Mang Romy*, father of the complainant, who threatened to pursue the case against him if she would not produce P150,000.00. She rejected the demand since she was barely in her second week as an overseas worker in Hongkong. She likewise dismissed the demand for a smaller amount of P70,000.00 contained in a letter written by private complainant.^[9] Josephine also observed that Criselda and Dominador were not in good terms because her sister vehemently objected to her marriage with the accused.

In convicting the accused, the trial court sustained the credibility of the complaining witness and expressed its downright rejection of the vigorous remonstrations of the accused. The court *a quo* opined that private complainant's trustworthiness was amply demonstrated by her unequivocal act of immediately reporting her sexual ordeal to the police authorities; the testimony of Criselda Alano that she noticed the clothes and the body of the complainant were wet and dirty when complainant arrived together with the accused in the early morning of 31 July 1997; and the fact that private complainant's testimony was confirmed by the medico-legal report that a deep fresh healing laceration at 3:00 o'clock position and a shallow fresh healing laceration at 9:00 o'clock position were found at the fleshy hymen of the complainant. It also dismissed as unworthy of belief the defense that the charge was motivated by financial considerations on the part of the private complainant and her father on the ground that the letter showed that the offer in fact came from the wife of the accused. Further the talk of monetary settlement was done much later after the commission of the crime.^[10]

In this appeal, accused-appellant assails his conviction by the trial court despite the clear showing, according to him, that the testimony of Lina Casupang was severely perforated with material inconsistencies; worse, she even admitted to lying in open court. He also raises the issue that Lina's family not only attempted to extort money from his wife in exchange for his freedom but in truth the case was filed only at the instigation of Criselda who harbored ill-feelings against him. He asserts that,

contrary to her claims, Lina Casupang had consented to his advances.^[11]

First. The alleged victim's contrary asseverations in her sworn statement, where she claimed that he never inserted his soft penis into her vagina but only used his finger, are material inconsistencies that cast serious doubt on whether he indeed committed rape.^[12] According to him, the following exchanges clearly show private complainant's lack of candor which, in his view, irreparably taints her credibility -

Q: Now, in your sworn statement, you said that the penis of the accused was so soft that it cannot (sic) enter (in) your vagina and now you claim that he was able to insert his penis to your vagina for half an hour, which is now true? x x x your answer that you have given in your sworn statement or your answer in your direct (testimony) that he was able to insert his penis into your vagina for thirty (30) minutes?

A: What I said today, ma'am, because when my statement was taken, I was so afraid so I lied, but now I am no longer afraid.^[13]

And then again -

Q: And it (male organ of the accused) did not become hard?

A: No, ma'am.

Q: That is why he was not able to insert it into your vagina because it was soft?

A: Yes, ma'am.^[14]

There is no question that private complainant's court testimony contradicts what she previously stated in her affidavit. But, it is a matter of judicial experience that affidavits, being *ex parte*, are generally inferior to the testimony given in open court.^[15] Unlike testimony given in judicial proceedings where a party litigant is afforded the opportunity to probe the truthfulness of the statements by the other party and the judicious and imposing presence of the magistrate checks any attempt at introduction of statements contrived to dissemble and mislead, affidavits are executed under circumstances not in any way conducive to accuracy. Besides, when confronted with her first inaccurate statement, Lina Casupang satisfactorily explained why she gave a false statement. She said: "*x x x because when my statement was taken, I was so afraid so I lied, but now I am no longer afraid.*"^[16] Thus it was proper for the trial court to give more probative weight to private complainant's court testimony. We do not intend to rule otherwise.

Accused-appellant now magnifies out of proportion the fact that private complainant answered in the affirmative when asked whether he (accused-appellant) was not able to insert his penis into her organ because it was so soft.^[17] A spirited but futile attempt by accused-appellant to escape the scalding heat of Lina's testimony indeed. In raising this argument, he conveniently overlooked numerous statements by private complainant showing that she in fact had been raped -

Pros. De la Pena: After that what happened?