

THIRD DIVISION

[G.R. No. 139626-27, June 26, 2001]

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

D E C I S I O N

GONZAGA-REYES, J.:

Accused-appellant Domingo dela Cruz was charged in two separate informations filed before the Regional Trial Court of San Carlos City, Pangasinan, Branch 57^[1] for two (2) counts of rape punishable under Article 266-A of the Revised Penal Code.

In Criminal Case No. SCC-2924, accused-appellant was charged, as follows:

“That on or about the 8th day of April 1998, at Barangay Alacan East, municipality of Malasiqui, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and criminally (sic) have sexual intercourse with Diana Lamsen y Escat, a minor 17 years of age, while the latter was unconscious or otherwise deprived of reason and under the custody of the accused and his wife, to her damage and prejudice.”^[2]

In Criminal Case No. SCC-2925, the information against the accused reads:

“That on or about the 8th day of June 1998, at Barangay Alacan East, municipality of Malasiqui, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and criminally (sic) have sexual intercourse with Diana Lamsen y Escat, a minor 17 years of age and under the custody of the accused and his wife, by means of force, threat or intimidation, to the damage and prejudice of said Diana Lamsen y Escat.”^[3]

During the arraignment on both indictments, accused-appellant pleaded not guilty^[4] to the said charges and, after pre-trial was terminated, trial on the merits ensued.

The prosecution presented evidence that established the following facts and events:

The complainant Diana Lamsen, at the time of the two alleged incidents of rape, was a seventeen-year old girl living with her aunt and guardian, Rosalina Lamsen, in Barangay Lepa, Malasiqui, Pangasinan. She was then a fourth year high school

student at the Malasiqui National High School^[5].

On 18 February 1998, her aunt, Rosalina Lamsen, and her uncle, a certain SPO1 Juan Lamsen, took complainant to the house of Virginia dela Cruz, a known faith healer in the municipality and the wife of accused-appellant. Complainant was then suffering from fainting spells and she often lost consciousness. Because allegedly the complainant was being possessed by bad spirits, it was decided that she was to stay at the house of Virginia dela Cruz for observation and treatment of her illness.^[6] She eventually stayed at the house of the dela Cruz spouses until 22 June 1998. It was during this period that she was allegedly raped twice by accused-appellant.

The first sexual assault allegedly occurred on 8 April 1998. That day, private complainant was feeling sick and so she went inside the chapel of Virginia dela Cruz for treatment. While inside the chapel, she lost consciousness. When she woke up, she felt something hard inside her private part. She then opened her eyes and it was then that she saw accused-appellant about to withdraw from her and put on his briefs. She then looked at herself and noticed that she was no longer wearing her panties. Before accused-appellant left, he allegedly threatened that he would kill her if she would report the incident^[7].

The second incident allegedly happened in the early hours of 8 June 1998. The previous day, 7 June 1998, at around 7:30 p.m., complainant was not feeling well and she suffered from another fainting spell. When she regained consciousness, Virginia dela Cruz treated her by praying over her and making her drink two bottles of Red Horse beer. After her treatment, she felt well enough to play bingo until 11:30 p.m.^[8]

After playing bingo, she again felt dizzy and so she proceeded to her room in the 2nd floor of the house of accused-appellant. She then fell asleep. When she woke up, accused-appellant was already on top of her body and he was making a pumping movement. She tried to shout but accused-appellant covered her mouth with a towel with his right hand and held her shoulder with his left hand. Because of accused-appellant's weight, she was not able to free herself. Afterwards, accused-appellant again threatened her with death if she would report the incident to anyone^[9].

A few days after, accused-appellant approached the complainant while the latter was doing her assignment. He allegedly dictated to her and forced her to write a note to ensure that no one would believe her in case she reported the rape incidents. The contents of the note would make it seem that complainant and accused-appellant were having an illicit, but consensual, love affair. Because of her desire to go back home and due to her fear of accused-appellant, she did as she was told and wrote down what accused-appellant dictated to her^[10].

On 22 June 1998, Rosalina Lamsen and SPO1 Juan Lamsen fetched complainant from the house of accused-appellant in order to bring her home. Accused-appellant and his spouse, the healer Virginia dela Cruz, were reluctant to let her go as, allegedly, she was not yet fully healed of her ailment. Despite the reluctance of accused-appellant and his wife, the complainant was able to go home to Barangay Lepa, Malasiqui, Pangasinan that same day^[11]. Although she wanted to tell her

guardians that same night about the rape incidents, her fear of accused-appellant's threats to kill her prevented her from doing so.

She finally told her aunt, Rosalina Lamsen, about her horrific ordeal at the hands of accused-appellant the following night^[12]. She told them that the incidents of rape happened on 8 April 1998 and 8 June 1998. Rosalina Lamsen, at first, did not believe her and asked her whether she and accused-appellant had a consensual relationship. Complainant denied this and insisted that she was raped by accused-appellant. The following day, Rosalina Lamsen told her brother, SPO1 Juan Lamsen, about the accusations of complainant against accused-appellant^[13].

SPO1 Lamsen then proceeded to the house of accused-appellant to confront him about these accusations. Allegedly, when asked about the incidents, accused-appellant admitted that he committed the rapes but that he was only tempted by complainant. He allegedly further said that he would just serve the time in jail^[14].

Meanwhile, the complainant had the two incidents of rape blotted^[15] at the Malasiqui Police Station where she also executed an affidavit^[16] detailing her harrowing ordeal at the hands of accused-appellant. She also submitted herself to a physical examination at the hands of the medico-legal of the San Carlos General Hospital. The results of the medico-legal examination showed that there were old complete lacerations at the 3:00 and 8:00 positions of her sex organ^[17].

The defense presented a different version of what transpired. While accused-appellant admitted previously having sexual intercourse with the victim, he claims that these were consensual as they were having an illicit affair. He denies, however, having had sexual intercourse with the complainant on the two dates mentioned in the informations^[18]. In support of his claim that they were lovers, he recalled particular instances where he and complainant accused-appellant were intimate and he produced a letter allegedly written by complainant confirming their relationship.

The first incident allegedly occurred on 27 March 1998. On that date, at around 11:00 p.m., accused-appellant entered the bathroom of his house. When he was about to take a bath, the complainant Diana Lamsen suddenly entered the bathroom^[19]. Apparently, accused-appellant's older brother Tirso dela Cruz saw complainant enter the bathroom as Tirso loudly knocked on the bathroom door and shouted at them to get out of the bathroom as what they were doing was wrong.^[20] Because of this, accused-appellant and complainant went out of the bathroom and proceeded to go their separate ways.

On 4 April 1998, accused-appellant was sent by his wife to San Carlos City, Pangasinan in order to buy "embutido." Diana went with him to San Carlos City and rode with him on the back of his tricycle. They proceeded to the house of accused-appellant's father in Taloy, Pangasinan. In that house, Diana allegedly laid down her head on accused-appellant's lap and told him that they should rest first. At that time however, accused-appellant and complainant still did not commit any overt act of intimacy^[21].

On 17 April 1998, at around 5:00 p.m., while his wife and daughter were watching a procession, accused-appellant and complainant were alone in the house. Diana

approached him and started to embrace and kiss him. They were interrupted when accused-appellant's wife suddenly knocked at the door. Because of the interruption, Diana got angry and she slammed the door and kicked the chairs^[22].

The next incident occurred on 10 May 1998. On that day, he borrowed the motorcycle of his brother, Oscar dela Cruz as he wanted to go to San Carlos City. The complainant accompanied him and rode with him on the back of the motorcycle. When they reached San Carlos City, they saw accused-appellant's sister, Lydia, and accused-appellant told her not to mention to his wife that complainant accompanied him^[23].

On 20 May 1998, accused-appellant mislead his wife into thinking that he was going to buy spare parts for his tricycle. Instead of buying the parts, accused-appellant and complainant allegedly met in Dagupan City where they proceeded to Bonuan. In Bonuan, they stayed in a cottage along the seashore where they had consensual sex. They stayed in the cottage for around two hours after which, they went home^[24].

On 26 May 1998, the complainant allegedly called up accused-appellant on the phone and told him that they should repeat their visit to Bonuan six days earlier. Accused-appellant refused and told her that Bonuan was too far. Complainant then suggested that they go to a certain Inawa Hotel or Lodge in Calasiao which she had previously visited with her former boyfriend. Accused-appellant agreed and fetched the complainant from her school. They then checked-in at the Inawa Lodge where they made love for about two hours^[25].

The following day, or on 27 May 1998, accused-appellant, his wife and daughter, his brother Tirso, and the complainant, together with a few others, went to Bataan. Apparently, accused-appellant's wife had a "medical" mission there and they were supposed to stay in Bataan for three days. While his wife was treating patients, accused-appellant went to the river by himself. Complainant followed him and she told him that she loved him and that he should separate with his wife. Complainant apparently wanted to live-in together with the accused. Accused-appellant refused and told complainant that he was not yet prepared to leave his wife^[26].

On 1 June 1998, the accused-appellant and the complainant had another opportunity to pursue their illicit love affair as the wife of accused-appellant had to go to Manila for a few days leaving their daughter behind. After his wife had left for Manila, accused-appellant and complainant proceeded to the master's bedroom of the house where again they had sexual intercourse^[27].

The last sexual encounter allegedly occurred on 22 June 1998. On that day, Rosalina Lamsen and Juan Lamsen arrived at their house, as they wanted to bring complainant back to their home. While accused-appellant's wife was talking with the two visitors, accused-appellant was in the kitchen fixing dinner. The complainant then entered the kitchen and told him that she was already going home and that he should give her a kiss. Accused-appellant did not answer and instead went to the bathroom. The complainant followed him inside the bathroom and proceeded to kiss and embrace accused-appellant and fondle his private parts^[28].

Two days after the complainant had gone home, or on 23 June 1998, the complainant allegedly called-up accused-appellant. She told accused-appellant that she had inserted a letter for him inside her math book which she had left behind. Accused-appellant asked complainant why she left a note and she answered that he should read it and decide as her mommy was starting to get suspicious^[29]. Accused-appellant was eventually able to find the letter^[30] inserted between the pages of a math book^[31] with the name of complainant written on one of the pages. The said letter was purportedly the third letter written by complainant to accused-appellant. Accused-appellant tore-up the other two for fear that his wife might read them^[32].

On 25 June 1998, accused-appellant was surprised when SPO1 Juan Lamsen and other policemen came to his house. Juan Lamsen allegedly told him that it would have been better if he and the complainant had just eloped. Accused-appellant replied that it was not necessary for the two of them to elope as he was just tempted by the complainant. He denied ever saying that he was willing to go to jail for his crimes^[33].

Accused-appellant's version of the events was corroborated by the testimonies of his brother, Tirso dela Cruz, and his wife, Virginia dela Cruz.

Tirso de la Cruz corroborated the account of the accused-appellant regarding the events which happened on 28 March 1998 where he allegedly caught accused-appellant and complainant inside the bathroom at the same time^[34]. He likewise narrated the incidents in Bataan on 27 May 1998. He recalled that at the house of his brother-in-law in Bataan, the complainant always called accused-appellant "dear" whenever the wife of accused-appellant was not around. However, whenever Virginia dela Cruz was around, she always called accused-appellant "Tiyo Boy."^[35]

For her part, Virginia dela Cruz testified on several incidents which, at first, seemed harmless and innocuous, but on hindsight confirmed the illicit affair between complainant and accused-appellant. She recalled incidents where complainant often threw tantrums whenever she and her husband became sweet to each other. She likewise claimed that she sometimes heard the complainant call her husband "dear" or "mahal."

She likewise testified on the events which occurred after the complainant had left their place on 22 June 1998. The following day, she claimed that the complainant called her up at home and told her that she has seriously offended her. However, when she asked complainant what her offense was, the complainant did not answer and instead, put down the phone^[36]. In the morning of 25 June 1998, the police went to their house and brought the accused to the police headquarters. That afternoon, the complainant, her guardian, Rosalina Lamsen, and her uncle, SPO1 Juan Lamsen went to their house to get the belongings of the complainant. The complainant allegedly approached her and asked for her forgiveness as the accused-appellant had not raped her. Complainant further told her that she was pursuing the case only because her guardian, Rosalina Lamsen, forced her to or else she would abandon her. The complainant further admitted to her that she loves accused-appellant and that she wanted to live with him^[37].