

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

G.R. Nos. 139626-27. June 26, 2001

Ponente: GONZAGA-REYES, J.

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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].

On 21 June 1999, the court a quo rendered judgment[38] finding accused-appellant Domingo dela Cruz guilty of

the two counts of rape. The dispositive portion of the decision is as follows:

“WHEREFORE, judgment is hereby rendered in the above charges as follows:

1. In Criminal Case No. SCC-2924, the court finds the accused Domingo dela Cruz guilty beyond reasonable doubt with the crime of RAPE as defined in and penalized by Article 266-A of the Revised Penal Code and (is) hereby ordered to serve the penalty of reclusion perpetua and to indemnify Diana Lamsen the sum of P50,000.00.
2. In Criminal Case No. SCC-2925, the court finds the accused Domingo dela Cruz guilty beyond reasonable doubt with the crime of RAPE as defined in and penalized by Article 266-A of the Revised Penal Code and (is) hereby ordered to serve the penalty of reclusion perpetua and to indemnify Diana Lamsen the sum of P50,000.00.”[39]

Hence, this appeal.

In his appeal brief, accused-appellant assails the credibility of the complaining witness and faults the trial court in not taking into account the evidence that he presented. Thus, he asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He likewise reiterates his defense that he and the complaining witness were lovers, and that their sexual congress was consensual.

In reviewing the evidence in rape cases, the Court is guided by three (3) settled principles, namely: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where two (2) persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[40]

The credibility then of the complaining witness is of paramount importance. On this score it is doctrinally settled that appellate courts will generally not disturb the findings of the trial court. Its evaluation of the testimony of the witness is accorded the highest respect because the trial court is in a better position to decide the question of credibility of witnesses having heard their testimony and observed their deportment and manner of testifying during trial.[41] The recognized exceptions to this doctrine are when such evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances which could have affected the results of the case.[42]

After a careful perusal of the testimony of the witnesses in this case and a review of the findings and conclusions of the trial court, there is no justification to depart from this doctrine and apply its exceptions. We find no reason to overturn the findings of the trial court regarding the credibility of Diana Lamsen, the rape victim.

In a straightforward and categorical manner, the complainant narrated her ordeal at the hands of accused-appellant without any serious or material contradiction. With respect to the first incident, she testified on how accused-appellant took advantage of her unconscious state in order to satisfy his lust. Thus:

“Q:

In April 1998, do you recall of any unusual incident that happened to you?

A:

Yes, sir.

Q:

What is that?

A:

On April 8, 1998 I was not feeling well and so I entered the chapel of kgd. Virginia dela Cruz alias “Mahal” so that she could treat me, sir.

Q:

And so what happened?

A:

And it was there that I collapsed already, sir.

Q:

When you regained consciousness after losing it, what happened or what did you notice, if any?

A:

When I woke up, I noticed something hard inside my private part and it was there when I saw Domingo dela Cruz already about to withdraw and that he was about to wear his brief, sir.

Q:

What is that hard object that was in your private part that you feel (sic)?

A:

His penis, sir.

Q:

You said, you saw him and thereafter, he was wearing his brief, what happened later on?

A:

I looked at myself and I noticed that I have no more panty, sir.

Q:

What did you feel in your private part?

A:

Very painful, sir.

Q:

Later on, what did you observe, if any, in your body?

A:

When he left already and when I wore my panty, when I woke up at dawn, my panty has blood, sir.

Q:

With that incident, what did you do?

A:

Because of my fear and out of my fear because of his warning that and he said ‘when you will report this, I will kill you’, so I was helpless, sir.”[43]

Regarding the second incident, she likewise narrated how accused-appellant again took advantage of her unconscious state and how he used force and intimidation to consummate his criminal intent.

“Q:

What happened on June 8, 1998?

A:

When I woke up, Domingo dela Cruz was on top of me and he was pumping, sir.

Q:

Before that, tell us, where did you sleep?

A:

On June 7, 1998, I was not feeling well at around 7:30 p.m. and I collapsed then, sir.

Q:

After collapsing, what did you notice when you regained your consciousness?

A:

Kgd. Virginia dela Cruz treated me and gave me Red Horse beer, sir.

Q:

How many bottles of Red Horse beer?

A:

Two bottles, sir.

Q:

What did she do with the contents of the bottles?

A:

She placed it inside a glass and had me treated, sir.

Q:

What did you feel after that?

A:

I regained my feelings, sir.

Q:

Now, tell us, what event transpired next?

A:

We still played bingo until 11:30, sir.

Q:

After 11:30, what did you do or where did you go?

A:

I went upstairs, and I slept in the place where they used to allow me to sleep, sir.

Q:

Before going to sleep, what was your feeling?

A:

I was feeling dizzy then, sir.

Q:

After falling asleep and when you were awakened, what did you observe, if any?

A:

When I woke up, Domingo dela Cruz was already on top of my body and he was pumping on me, sir.

Q:

Now, what did you do?

A:

I was about to shout but he covered my mouth with a towel with his right hand while his left hand was on my shoulder, so that although I wanted to free myself, I could not because he was heavy, sir.

Q:

What happened afterwards?

A:

He told me again, not to make a report to anyone, or else he will kill me, sir.”[44]

As correctly found by the trial court, private complainant’s narration of the events is more credible and real because it is more in accord with human experience and with the evidence presented, unlike accused-appellant’s version.[45] For one thing, it is not disputed that complainant suffered from fainting spells as this was the very reason why she was left by her guardians at the house of accused-appellant. And it is because of such fainting spells that accused-appellant was able to consummate his sexual assault on complainant. Moreover, we have often repeated that under no circumstance would a young Filipina of decent repute publicly admit that she has been criminally abused and ravished unless that is the truth.[46] Her lack of sophistication, coupled with the direct and simple manner in which she described her ordeal are likewise indicia of truthfulness.[47]

In contrast, accused-appellant’s defense of denial and his invocation of the “sweetheart theory” fails to inspire belief. According to accused-appellant, he and complainant engaged in an illicit love affair from 27 March 1998 until her departure from his house on 22 June 1998. The affair allegedly happened because the complainant tempted accused-appellant by being sweet to him and embracing and kissing him. During the period of their affair, they allegedly made love or were sweet to each other in, among other places, the bathroom and sala in the house of accused-appellant, the living room in the house of accused-appellant’s father, various motels and lodges, and the bedroom of accused-appellant. Moreover, accused-appellant claims that during these instances, it was

almost always complainant who initiated their amorous acts.

This description and narration of accused-appellant of his alleged affair with complainant is quite hard to accept as true. It is difficult enough to give credence to his allegation that a seventeen (17) year-old barrio lass would consent to have an amorous affair with a married man almost twice her age. Appellant would want this Court to further believe that it was actually the complainant who was the aggressor and who initiated their romantic liaisons. Evidence to be believed must not only come from a credible source but must also be credible in itself such as one that the common experience and observation of mankind can approve as probable under the circumstances.[48] The Court has previously taken judicial cognizance of the fact that in rural areas in this country, young ladies by custom and tradition act with circumspection and prudence, and that great caution is observed so that their reputation remains untainted.[49] It is highly unbelievable that the complainant would have participated in, much less initiated these alleged romantic trysts. More so if you consider the fact that according to accused-appellant, there were instances when they made love under the very noses of their relatives and friends. Surely if there was indeed an illicit affair between the two, they could have been more circumspect and prudent in their choice of places for their sexual congress.

In support of his “sweetheart theory”, accused-appellant presented the testimonies of his wife and brother-in-law and a letter allegedly written by complainant.

With respect to the testimonial evidence of the defense, the trial court correctly ruled them out as they came from admittedly biased witnesses who did not want accused-appellant to go to jail. Moreover, the testimony of Tirso dela Cruz, accused-appellant’s brother, that he saw complainant follow accused-appellant into a bathroom together, even if true, did not confirm that there was indeed an amorous relationship between the two. The testimony of accused-appellant’s wife is even more suspect. According to her testimony, she had already seen signs that there was an illicit relationship between her husband and complainant and that, at one point, she was even directly asked by complainant if she was jealous of her.[50] If so, it is simply inconsistent with human nature that she merely ignored these signs and did not do anything to allay her suspicions. That the witness chose to keep quiet and confront neither accused-appellant nor complainant about her suspicions merely confirms the untrustworthiness of her testimony.

With respect to the letter, the existence of the same was sufficiently explained by complainant in her direct and rebuttal testimonies. The complainant does not deny writing the letter but she insists that she was forced by accused-appellant to write the same a few days before she left the house of accused-appellant. According to her, she obeyed the directions of accused-appellant because she was afraid of him and because of her desire to go home to her guardians. The explanation of accused-appellant is in full accord with her assertion that she was afraid of accused-appellant because of his threats to kill her. Moreover, if, as appellant insists, the letter is only one of three letters allegedly written by complainant, we are puzzled as to why accused-appellant kept this letter and chose to tear apart the other two[51].

We affirm the trial court’s finding that accused-appellant failed to substantiate his “sweetheart theory.” Aside from the letter, the existence of which was successfully explained, there are no other letters or notes, photographs or mementos to evidence the alleged love relationship. It is apparent that the alleged affair was merely concocted by accused-appellant to exculpate him from any criminal liability.[52]

Aside from his reliance on his “sweetheart theory,” accused-appellant likewise points out certain circumstances which, he argues, renders the charges of complainant unbelievable. Specifically, accused-appellant points to the circumstance that during the whole duration of the complainant’s stay at his house, complainant did not report or talk about the rape incidents to her guardian or to the authorities despite the numerous opportunities for her to do

so and considering that her uncle was a member of the police force.

Again we are not persuaded. The failure of complainant to immediately report the rape to her guardians or to the police authorities does not in this jurisdiction detract from her credibility, her hesitation and silence being attributable to her age, and the moral ascendancy and threats of accused-appellant.[53] It must be borne in mind that in the case at bench, the complainant was entrusted into the care of accused-appellant and his wife. As such, the threat made by accused-appellant that he would kill her if she reported the incidents to anyone was immediate and real for as long as she was in their custody. In fact, once she was no longer in the custody of accused-appellant, she immediately told her guardian about the incidents and reported the same to the police authorities. Her act of immediately reporting the crimes once the threat against her life had been lifted certainly adds to her credibility.

In view of the foregoing, accused-appellant's denial that he did not rape the complainant on the two dates mentioned in the informations must fail. It is axiomatic that denial is an extrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[54] In the absence of such strong evidence, the defense of denial cannot outweigh the positive and unequivocal narration of the complainant of her ordeal at the hands of accused-appellant[55]. In the case at bar, the complainant categorically pointed to accused-appellant as the author of the two crimes of rape perpetrated on her person on 8 April 1998 and 8 June 1998 in the house of accused-appellant. For his part, accused-appellant does not even deny that he was at home at the time two incidents occurred[56]. He merely denies having committed the same and, as a seeming afterthought, declares that he and complainant were lovers. As shown above, however, accused-appellant failed to discharge the burden of proving his "sweetheart theory." The Court is thus morally convinced that accused-appellant is guilty of the two crimes of rape imputed to him by complainant.

Under Article 266-A of the Revised Penal Code, the crime of rape is committed, among others, by a man who shall have carnal knowledge of a woman when the offended party is deprived of reason or is otherwise unconscious or through force, threat or intimidation. In the case at bar, it was successfully proven that in both instances, accused-appellant took advantage of complainant's state of unconsciousness in raping her. Additionally, in the rape which occurred on 8 June 1998, accused-appellant likewise threatened complainant with death and used force on her in consummating his crime. The trial court thus correctly convicted accused-appellant of two counts of rape and sentencing him to serve the penalty of reclusion perpetua for each count[57].

In addition to the trial court's award of civil indemnity of P50,000.00 for each count, we award to the victim, Diana Lamsen, moral damages in the amount of P50,000.00 for each count, without need for pleading or proof of the basis thereof. The fact that the complainant in rape has suffered the trauma of mental, physical, and psychological sufferings which constitute the basis for moral damages are too obvious to still require recital thereof at the trial by the victim since we assume and acknowledge such agony on her part as a gauge of her credibility.[58]

WHEREFORE, accused-appellant Domingo dela Cruz is hereby found guilty beyond reasonable doubt of two (2) counts of rape and is sentenced to suffer the penalty of reclusion perpetua for each count. Accused-appellant is also ordered to pay the victim, Diana Lamsen, civil indemnity in the total amount of P100,000.00 or P50,000.00 for each count and moral damages in the total amount of P100,000.00 or P50,000.00 for each count.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Presided over by Judge Bienvenido R. Estrada.

[2] Rollo, p. 6.

[3] Rollo, p. 8.

[4] Records, p. 18.

[5] T.S.N. 3 February 1999, p. 3.

[6] T.S.N. 21 December 1998, p. 7.

[7] T.S.N. 3 February 1999, pp. 4-5.

[8] Ibid, pp. 5-6.

[9] Ibid, p. 6.

[10] Ibid, pp. 8-9.

[11] Ibid, pp. 6-7.

[12] Ibid, p. 7.

[13] Ibid, pp. 7-8.

[14] T.S.N. 28 January 1999, p. 7.

[15] T.S.N., 21 January 1999, pp. 5-6.

[16] Exhibit "B"; Records, pp. 4-5.

[17] Exhibit "C"; Records, p. 82.

[18] T.S.N. 13 April 1999, pp. 3-4.

[19] Ibid., p. 4.

[20] T.S.N., 10 February 1999, pp. 4-5.

[21] T.S.N., 13 April 1999, pp. 5-6.

[22] Ibid, pp. 7-9.

[23] T.S.N. pp. 9-11.

[24] Ibid, pp. 11-13.

[25] Ibid, pp. 13-15.

[26] Ibid, pp. 15-16.

[27] Ibid, pp. 17-18.

[28] Ibid, pp. 18-19.

[29] Ibid, pp. 19-20.

[30] Exhibit "2".

[31] Exhibits "5" and "5-A".

- [32] TS.N., 13 April 1999, p. 21.
- [33] Ibid, pp. 22-23.
- [34] T.S.N., 10 February 1999, pp. 4-5.
- [35] Ibid, p. 7.
- [36] T.S.N., 2 March 1999, p. 8.
- [37] Ibid, p. 9.
- [38] Rollo, pp. 29-41.
- [39] Rollo, pp. 40-41.
- [40] People vs. Traverero, 276 SCRA 301.
- [41] People vs. Bayani, 262 SCRA 660.
- [42] People vs. Caballes, 274 SCRA 83; People vs. Delovino, 247 SCRA 637.
- [43] TSN, 4 February 1999, pp. 4-5.
- [44] Ibid, pp. 5-6.
- [45] Decision, p. 11; Rollo, p. 39.
- [46] People vs. Pagupat, 293 SCRA 513.
- [47] People vs. Alib, 222 SCRA 51.
- [48] People vs. Caratay, 316 SCRA 251; Cosep vs. People, 290 SCRA 378.
- [49] People vs. Caratay, supra; People vs. Traverero, 276 SCRA 301.
- [50] T.S.N. 2 March 1999, p. 7.
- [51] T.S.N. 13 April 1999, p. 21.
- [52] People vs. Gumahob, 265 SCRA 84; People vs. Acabo, 259 SCRA 75.
- [53] People vs. Julian, 270 SCRA 733; People vs. Abad, 268 SCRA 246.
- [54] People vs. Burce, 269 SCRA 293.
- [55] People vs. Managaytay, 305 SCRA 316.
- [56] T.S.N., 15 April 1999, p. 16.
- [57] Article 266-B, Revised Penal Code.
- [58] People vs. Banihit, supra; People vs. Magdato, 324 SCRA 785, 2000; People vs. Prades, 293 SCRA 411.

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