

EN BANC

[G.R. Nos. 138934-35, January 16, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTHONY ESCORDIAL, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

These cases are before this Court for review from the decision,^[1] dated February 26, 1999, of the Regional Trial Court, Branch 53, Bacolod City, finding accused-appellant Anthony Escordial guilty of robbery with rape and sentencing him to death and to pay private complainant Michelle Darunday the amounts of P3,650.00 representing the amount taken by him, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and the costs.

In Criminal Case No. 97-18117, the information against accused-appellant charged him with the crime of rape committed as follows:

That on or about the 27th day of December, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused armed with a deadly weapon, a knife, by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Michelle Darunday y Jintula, against the latter's will.

All contrary to law and with the aggravating circumstance that the said offense was committed in the dwelling of the said party during nighttime while [she] was asleep inside her room.

Act contrary to law.^[2]

In Criminal Case No. 97-18118, the information charged accused-appellant with robbery with rape as follows:

That on or about the 27th day of December, 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, a knife, with intent of gain and by means of violence and intimidation on the person, did, then and there willfully, unlawfully and feloniously take from Michelle Darunday y Jintula the sums of P3,650.00, belonging to said offended party and [on] the occasion thereof have carnal knowledge with the complainant Michelle Darunday y Jintula, against her will, and inside her room wherein she was temporarily residing as a boarder.

All contrary to law and with aggravating circumstance that the said

offense was committed inside the dwelling of the offended party and during nighttime the latter not having given provocation for the offense.

Act contrary to law.^[3]

When arraigned on February 25, 1997, accused-appellant pleaded not guilty to the charges, whereupon the two cases were jointly tried.

The prosecution presented eight witnesses, namely, Jason Joniega, Mark Esmeralda, Erma Blanca,^[4] Dr. Joy Ann Jocson, PO3 Nicolas Tancinco, Leo Asan, Ma. Teresa Gellaver, and Michelle Darunday. Their testimonies are as follows:

Jason Joniega and Mark Esmeralda testified that at around 8 o'clock in the evening of December 27, 1996, they and Mark Lucena were playing inside a jeepney parked in front of a boarding house owned by Pacita Aguillon^[5] at No. 17 Margarita Extension, Libertad St., Purok Amelia 2, Barangay 40, Bacolod City. As one of them hit his head on the rails of the jeepney, the boys were told by a man sitting inside the jeepney to go home lest they would meet an accident. The man was later identified by Jason Joniega and Mark Esmeralda as accused-appellant.^[6]

Living in a boarding house in front of which the jeepney was parked were Michelle Darunday, Erma Blanca, and Ma. Teresa Gellaver. They stayed in a bedroom on the ground floor. That same night, December 27, 1996, Teresa went to sleep at around 9:30 p.m., while Michelle and Erma watched television for a while before going to bed. They slept beside each other on two beds placed side by side, with Teresa nearest the wall, Michelle in the middle, and Erma on the other side.

While the three were asleep, Erma was awakened by the presence of a man. The man had his head covered with a t-shirt to prevent identification and carried a knife about four inches long. He warned Erma not to shout or he would kill her. He then asked Erma where her money was, and the latter pointed to the wall where she had hung the bag which contained her money. Michelle, who by then was already awake, told Erma to give the man her money so he would leave. Erma gave the man P300.00, but the latter said to give him all her money. He told Erma that he would look for more money and, if he found more, he would kill her. For this reason, Erma gave the rest of her money. Afterwards, she was told to lie on her side facing the wall. The man then turned to Michelle and Teresa. Michelle gave him her money, but Teresa said her money was in the other room. However, she was not allowed to leave the bedroom. The man was able to get P500.00 from Erma and P3,100.00 from Michelle.

After getting their money, the man gave a t-shirt to Erma to blindfold Teresa and another to Michelle to blindfold Erma. He blindfolded Michelle himself and then began touching her in different parts of her body. He ordered her to take off her t-shirt, threatening to kill her if she did not do as he commanded. He then went on top of Michelle and tried to insert his penis into her vagina. As he had difficulty doing so, he instead inserted his two fingers. He tried once more to insert his penis, but again failed. The man then rose from the bed and took some soapy water, which he proceeded to insert into Michelle's vagina. He finally succeeded in inserting his penis into Michelle's vagina. Michelle felt great pain and pleaded with the man to stop, but the man paid no heed, and only stopped after satisfying his

lust.

Michelle said that although she was blindfolded and could not see, she could feel that the man had no cover on his face when he was raping her. She felt that his chest was rough and had some scars. When he placed her hands on his nape, she felt that it was also rough.

On the other hand, Erma claimed she was able to see through her blindfold and that she saw the man's face because of the light coming from the lamp post outside the boarding house. Their bedroom window had panes through which the light filtered in.

After he had finished raping Michelle, the man sat on the bed and talked to the three women. He told Michelle that he used to make catcalls at her and called her a beautiful girl whenever she passed by his place but Michelle had ignored him. He told them that he was from Hinigaran, but later took back his statement when Teresa told him that she was from Binalbagan, which was near Hinigaran. Michelle then told him that she worked at the City Engineer's Office and graduated from the Central Mindanao University. The man cussed when he learned that Michelle was from Mindanao. As he spoke to Michelle, he leaned over the bed and mashed the breasts of Erma and Teresa.

After a while, the man told Michelle he wanted to have sex with her again. Michelle pleaded with him, but the man threatened to call his companions and said it would be worse for her if his companions would be the ones to rape her. He ordered Michelle to lie on her stomach and then inserted his penis into her anus. When he was through, he gave Michelle a blanket to cover herself and returned to her a pair of earrings which he had taken from her. He then left, but not before warning the women not to report the matter to anyone or he would kill them.^[7]

Mark Esmeralda testified that he was in his bedroom on the second floor of their house, toying with a flashlight, when he saw from his bedroom window a man wearing denim shorts coming out of the boarding house. It was around 12:30 in the morning then. The man was nibbling something. Mark saw the man jump over the fence. After 30 minutes, Mark went down from his room and told his parents what he had seen. His parents then went out to check what had happened. Mark identified accused-appellant as the man he saw that night.^[8]

Michelle, Erma, and Teresa were so frightened that they were not able to ask for help until 30 minutes after the man had left. They told their neighbor, Tiyo Anong, that a man had come to the house and robbed them. They also called up Allan Aguillon, the son of the owner of the boarding house, who in turn reported the incident to the police. When the policemen arrived, they asked Michelle to describe the assailant, but she told them that she could only identify his voice and his eyes. Accompanied by the police, the three women looked for the man around the Libertad area, but they did not find him. Michelle, Erma, and Teresa were taken to the police station at Bac-Up 6 for investigation. But, at Michelle's request, Erma and Teresa did not tell the others that Michelle had been raped by their attacker.

Upon returning home, Michelle found her aunt and uncle. She embraced her aunt and told her about her ordeal. Michelle was again taken to the police headquarters,

where she was referred to the Women's Desk to report the rape. They were able to go home to the house of Michelle's aunt at around 5 to 6 o'clock in the evening.^[9]

PO3 Nicolas Tancinco, one of the policemen who responded to the report shortly after the commission of the crime, also testified for the prosecution. He said that the assailant was described to him as wearing long hair and having a rough projection on the back of his neck, small eyes, a slim body, and a brown complexion. Later on, Michelle Darunday, accompanied by Allan Aguillon, returned to the police station to report the rape committed against her. Tancinco entered her complaint in the police blotter and referred Michelle to the Women's Desk.

In the morning of December 28, 1996, Tancinco returned to the boarding house. He found that the intruder was able to gain entry to the house through the window of the bathroom. He noticed that the room beside those of the three women had been ransacked, with the cabinets opened and the clothes in disarray.

The following day, on December 29, 1996, Tancinco went around Margarita Extension and learned about the children playing on the street around the time the intruder entered the boarding house. He was told by Mark Esmeralda and Jason Joniega that they saw a man inside the jeepney where they were playing at the time of the incident. Tancinco was likewise informed by Esmeralda that the person he saw inside the jeepney was the same person he saw coming out of the boarding house later that night. According to Tancinco, the children said that they could identify the man if he was shown to them. At around 8 o'clock that evening, Tancinco questioned a certain Tiyo Anong and Ramie about the identity of the suspect. Ramie said that the description of the suspect fitted that of a worker at a café called Coffee Break Corner, about two houses away from the boarding house.

Thus, on January 2, 1997, Tancinco and some companions proceeded to the Coffee Break Corner and interviewed the security guard, who told them that a certain Fidel Hinolan owned the café. When interviewed by Tancinco and his companions, Fidel Hinolan told them that accused-appellant was his helper and that the latter had gone home on December 27, 1996 to Barangay Miranda, Pontevedra, Negros Occidental.

Based on the information furnished by Hinolan, Tancinco and his fellow police officers, Michelle Darunday, Allan Aguillon, and Pacita Aguillon went to Barangay Miranda, Pontevedra, Negros Occidental at around 10 o'clock in the morning of January 3, 1997 and asked the assistance of the police there to locate accused-appellant. PO2 Rodolfo Gemarino asked one of his colleagues at the Pontevedra police to accompany Tancinco and his companions. They found accused-appellant at the basketball court and "invited" him to go to the police station for questioning.^[10]

Michelle Darunday remained at the Pontevedra police station. When accused-appellant was brought there, he saw Michelle and blushed. Michelle looked at him and recognized him as the man who had robbed and raped her on December 27, 1996. Accused-appellant was asked to take off his t-shirt. Michelle said that she just kept quiet while accused-appellant tried to talk to her. However, according to Tancinco, Michelle confirmed to him that accused-appellant was the man who had attacked her, identifying him through a rough projection, or a keloid, on the back of his neck and his voice. At the time of his arrest, accused-appellant had a short

haircut. He was transferred to the Bacolod police station for further investigation. [11] Allan Aguillon took a picture of accused-appellant (Exh. F) at the Pontevedra police station. [12]

At the Bacolod police station, Erma Blanca, Ma. Teresa Gellaver, Jason Joniega, and Mark Esmeralda were asked whether accused-appellant was the same person they saw on the night of the incident. They were taken one by one to the jail cell and asked to point to the person that they had seen that night. They picked accused-appellant out of four people who were inside the jail cell. [13]

Michelle Darunday executed an affidavit, dated January 4, 1997, identifying accused-appellant as the person who had robbed and raped her. [14] She testified that she and her friends had gone to the Coffee Break Corner sometime in September or October 1996. On the way home, she was approached by accused-appellant. He asked Michelle what her name was, and she gave it to him, albeit reluctantly. She usually passed by the said caf? when going home and accused-appellant would often whistle at her and call her a beautiful girl. Michelle had simply ignored him and gone on her way. [15]

Dr. Joy Ann C. Jocson, Medical Officer IV of the Bacolod City Health Department, examined Michelle Darunday and made the following findings and remarks:

1. Abrasions noted on the right and left Labia Minora and on the posterior fourchette.
2. New Lacerations noted on the hymenal ring on the following location 1 o'clock position, 3 o'clock position, and 9 o'clock position.
3. Vaginal introitus admits 2 fingers but with pain.
4. Presently, patient with menstruation.

In my opinion, the patient would need a urinalysis (since she complains of pain upon urination) and possible Medical treatment if necessary, for about 7 to 10 days. And if necessary, psychiatric evaluation & management is also recommended. [16]

Testifying in court, Dr. Jocson said there was penetration of the victim's vagina as shown by the fact that the hymenal rim had lacerations at the 1, 3, and 9 o'clock positions. Since the edges of the lacerations were sharp, she concluded that these lacerations were less than a week old at the time of the examination. According to Dr. Jocson, these were caused by abrasions due to force or pressure applied on the vaginal area. When asked during cross-examination whether the victim had abrasions or contusions on her body at the time of her examination, Dr. Jocson said that she could not remember. She could not remember either whether there was sperm in the victim's vagina when she examined the latter. She said that no sperm specimen had been taken from the victim. She testified that it could not be determined how many times the victim had previously engaged in sexual intercourse because this would depend on the elasticity of the victim's hymen. She opined, however, that it would be less than 10 times in the case of the victim. Dr. Jocson stated it was possible the victim agreed to have sexual intercourse voluntarily based on the lack of marks of violence on the latter, although it was also possible that she was merely forced to have sex because she was threatened. On re-direct examination, she stated it was possible that seminal fluid was not found on