

SECOND DIVISION

[G.R. No. 91619, September 09, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. GAVINO L. PASAYAN, ACCUSED-APPELLANT.**

D E C I S I O N

TORRES, JR., J.:

This is an appeal from the September 29, 1989 decision of the Regional Trial Court of Calamba, Laguna, Branch 35 in Criminal Case No. 1717-87-C finding accused-appellant Gavino L. Pasayan guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer imprisonment of *reclusion perpetua* and to indemnify the private offended party in the sum of P25,000.00 and to pay the costs.

On May 5, 1987, Gavino L. Pasayan was charged with the crime of rape in an Information reading as follows:

"That on or about April 8, 1987 at 2:20 o'clock in the afternoon at Garden Resort Inn, Barangay Bagong Kalsada, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable court the above-named accused, with lewd design, and with the use of force, threats and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Dolores S. Catimbang against the latter's will and consent, to the damage and prejudice of the said victim.

"CONTRARY TO LAW."

Upon arraignment, accused pleaded not guilty.

Trial on the merits ensued.

As summarized in the lower court's decision, the evidence presented by the prosecution consists of the following:

"Victim Dolores Catimbang identified the accused Gavino Pasayan whom she has known since December, 1986, as he is the driver of the Royal Star Marketing where she was then the Branch Secretary at Junction, Los Banos, Laguna.

"On April 8, 1987 at about 12:35 p.m., accused came to that branch office (Royal Star Marketing) at Junction Los Banos, Laguna. She was then alone as her officemates have gone out for lunch. Accused was pleading to her to be his guarantor for a loan of P1,000.00 he was asking the Manager which he needs as his wife was then in the hospital. She agreed and accepted the invitation of the accused to join him for lunch.

She agreed because they were officemates. Besides, accused used to drive her and her officemates home in the company vehicle. On April 8, 1987, however, accused was driving a private jeep which they used in looking for a restaurant to take their lunch. At first, they tried Ellen's Fried Chicken but because it was crowded they decided to look for another place in the UP-Los Banos but accused finally decided instead to take their lunch in Dalampasigan Restaurant at the back of the Municipal Building of Los Banos, Laguna.

"It was the accused who ordered their food and softdrinks. She asked for Sprite while accused ordered Coke. The softdrinks in bottles were served ahead with two glasses with ice cubes. Despite accused's insistence for her to drink her Sprite, she refused as she was hungry and would rather drink it while eating. She then went to the comfort room where she stayed for three (3) minutes and when she returned to their table saw the accused pouring her softdrinks into her glass. Later on their food came. While eating she was also drinking her softdrinks.

"Immediately after finishing their lunch at 2:00 p.m. she asked the accused that they go back to the office as it was getting late and the key to the office was with her. They boarded the jeep but when they came out of the National Highway, the accused turned right towards Calamba instead of left towards Junction, Los Banos, Laguna, where their office is located. When asked why, accused retorted that he will just see a friend for a while and they will drive back to the office. At that time she was already feeling dizzy. When they reached Libis Ng Nayon Resort she lost consciousness and when she regained consciousness she was lying on a bed naked inside a room in a building she did not know where. The accused was lying beside her on the bed. Blood was oozing from her private parts and blood was splattered on the bedsheet. She felt pains all over her body. She knew that she was ravaged by the accused. She jumped at him, boxed and fought him. Accused, however, pushed her on the bed and poked a knife at her left shoulder threatening to kill her if she will not submit to his desires again. As she was weak then she was not able to resist the advances of the accused who was able to consummate his dastardly act. Thereafter, accused warned her not to tell her parents or the police what happened to them, otherwise, he will kill her. He also admonished her to avoid acting suspiciously when they get out of the room. When they left the room she came to know that the building they came from was the Garden Inn Resort.

"She and the accused boarded the jeep and dropped her at Bambang, Los Banos, Laguna. She walked aimlessly not knowing what to do or where to go as she felt that she was out of her mind.

"Finally, she took a jeep towards Calamba and alighted at Crossing. She was so confused and so she boarded another jeep going to Binan and while in the jeep she alighted at the corner of Mamated and the national highway and took a tricycle to Banlic, Cabuyao, Laguna, to the house of her friend Eugene Tirones. She stayed in Bo. Banlic up to April 11, 1987 where her parents found her. She told her parents what happened to her.

"On the same date, April 11, 1987, her parents took her to Dra. Solita Plastina who examined her and then they proceeded to the 224th PC headquarters where she filed a complaint for rape against the accused Gavino Pasayan.

"Larita Tirones, corroborated the testimony of Dolores Catimbang. It was in her house at Banlic, Cabuyao, Laguna, where the victim stayed from April 8 to early morning of April 11, 1987, when she asked to be transferred to the house of her Tiya Osay across the river where she was found by her parents in the afternoon of the same day.

"Moises Lemos affirmed the claim of Dolores Catimbang that she was brought by the accused to one of the rooms of Garden Inn Resort on April 8, 1987. He saw the accused pulling out Dolores Catimbang from the front seat of a private jeep with the victim looking as if she was unconscious (parang hilo). Accused was holding Dolores Catimbang by the waist with one of her hand, over his shoulder and led her to one of the rooms of the Inn. He was in the Garden Inn Resort at that time because he was engaged in fund raising for the Barrio Fiesta of Barangay Bagong Kalsada and on that date Lilian Vivas of the Inn asked him to drop by the Inn to get the P250.00 she promised to contribute to the barrio fiesta. Although Dolores Catimbang is known to her, he did not do anything because it was a resort and the man with her might be her boyfriend.

"Dra. Solita Plastina, Municipal Health Officer of Calamba, Laguna, examined Dolores Catimbang on April 11, 1987 as shown by her Medico-Legal Report marked as Exhibit C. She also took photographs of the victim which were marked as Exhibits "B", "B-1" to "B-5." She found the victim bleeding from a 6:00 o'clock laceration of her hymen; and fresh bleeding erosion in her labia majora; her [sic] fourchette [sic] opened and her vaginal canal and cervix wounded, which injuries would have been caused by the penetration of the penis or sexual intercourse. She likewise found contusion (Exh. "B-3") in her upper breast, contusion-hematoma in her left upper area (Exh. "B-4") and another contusion (Exh. "B-5") in her upper breast. These injuries could have been four (4) days at the time of the examination."^[1]

On the other hand, the evidence presented by the defense consists of the following:

"Accused Gavino Pasayan admitted having brought the complainant Dolores Catimbang to the Garden Inn Resort at 2:00 P.M. on April 8, 1987 and had a sexual tryst with her up to 4:30 P.M. that day. That was their fifth time to go to the Garden Inn Resort as they have been sweethearts as early as four (4) months before April 8, 1987, although he met her for the first time only in December 1987 (sic).

"He denied having drugged the softdrinks of Dolores Catimbang while they ate lunch at Dalampasigan Restaurant on April 8, 1987. She was conscious and ambulant when they entered the Garden Inn Resort. In fact, she even walked alone ahead of him from the jeep to the room

which they occupied.

"Dolores Catimbang's motive in filing this rape case against him could have been his refusal to accede to her request to abandon his wife and live with her.

"Florencia Zafe, the Garden Inn Cashier merely testified on the procedure how customers check in and check out of the Garden Inn Resort and the relative position of the Cashier's window in relation to the 18 rooms of the motel and entrance and exit from the highway to the Garden Inn. From her place at the cashier's window she could see anything that is taking place from the time a customer gets in and out of the Inn.

"Dionicio Panaligan, former Bo. Captain of Brgy. Parian, Calamba, Laguna testified that as the incumbent Barangay Captain in 1986, it never came to his knowledge whether Dolores Catimbang ever filed it as all processes to be served in his barangay passes through him specially if the subpoena and/or arresting officer does not know the person to be served with the process."^[2]

After evaluating the evidence for both parties, the lower court rendered judgment finding the appellant guilty beyond reasonable doubt of the crime charged and convicting him of the crime of rape.

Accused-appellant is now before this Court, imputing to the trial court the following assignment of errors:

"The lower court erred:

"1. - in finding that the accused-appellant is guilty of the crime of rape beyond reasonable doubt;

"2. - in finding that the element of carnal knowledge is beyond question as accused has openly admitted having had sexual intercourse with Dolores Catimbang on April 8, 1987 inside one of the rooms of Garden Inn Resort;

"3. - in assuming that accused was able to satisfy his beastly act freely and without resistance on the part of Dolores Catimbang for the first time on April 8, 1987 when she was unconscious and weak;

"4. - in finding that after Dolores Catimbang was deflowered and regained consciousness and when accused attempted to commit the sexual assault on her for the second time, she fought ferociously that would account for the injuries found on her person by the examining physician;

"5. - in misinterpreting the results of the Medico-Legal Report, Exhibit "C";

"6. - in finding that Dolores Catimbang was confused after she was dropped by the accused along the Los Banos National Highway,

immediately after coming from the Garden Inn Resort on April 8, 1987;

"7. - in finding that Dolores Catimbang went to Banlic, Cabuyao, Laguna instead of Banlic, Calamba, Laguna;

"8. - in giving credence to the testimony of Dolores Catimbang."^[3]

We find the appeal without merit.

Being interrelated, and all pertaining to the question of whether or not Dolores Catimbang voluntarily went to the Garden Inn Resort with Gavino, the first, second, third and fourth assignment of errors shall be discussed jointly.

Appellant alleges that the finding of the trial court that "Dolores Catimbang could have taken the invitation for lunch as a show of gratitude on the part of the accused since she acceded to the latter's request to guarantee his loan of P1,000.00 from their manager" demonstrates shallowness of reasoning because Dolores waited for Gavino to come and fetch her from the office for why else did she not take the lunch break?; and she agreed to have lunch in a place that is relatively far from their office.

Appellant argues that if Dolores was unconscious when she arrived at the Garden Inn Resort and when she was brought to the room of said resort, then she would have to be bodily carried from the jeep to the room of aforesaid resort; the testimony of prosecution witness Moises Lemos that he did not help Dolores upon seeing her with the appellant in the Garden Inn Resort because "the man might be her boyfriend" shows that their actuation at the time gives the impression that they are sweethearts; and that no medical examination of Dolores' blood was conducted to determine whether she had ingested drug that would make her unconscious.

According to appellant the minuscule injuries in the complainant's body omitted in the report but which Dr. Plastina caused to be photographed invites suspicion that said injuries did not exist at the time of the said medical examination. Appellant further alleges that no man in his right mind will believe that the said contusion hematoma would make a person so injured to almost lose consciousness and, therefore, it is safe to assume that it was inflicted by the parents or uncles of Dolores.

We are not persuaded.

While Dolores Catimbang was in the office at 12:35 p.m. when the appellant arrived therein on April 8, 1987 and did not go out with her officemates to take her lunch, this fact is not enough to conclude that she had been waiting for the appellant to fetch her. She was busy when the appellant arrived.^[4] Contrary to appellant's claim, complainant did not readily agree to eat at Dalampasigan Restaurant precisely because it was far from the office. She told him she preferred to eat in a nearby place.^[5]

As to her condition upon their arrival at the Garden Inn Resort at around 2:00 p.m. on that day, Dolores Catimbang said that she was still conscious but was "no longer myself". She did not know anymore what was happening and where she was at that