

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICO JAMLAN SALEM, ACCUSED-APPELLANT.*G.R. No. 118946. October 16, 1997*

Ponente: BELLOSILLO, J.

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RICO JAMLAN SALEM was charged with and found guilty of rape and sentenced to reclusion perpetua with all its accessory penalties, and to indemnify his victim Marisol D. Sabellano the sum of P50,000.00 without subsidiary imprisonment in case of insolvency. Salem now comes to us for review of his conviction.

Rape, from its very nature, is a crime which is normally committed when nobody else is around; hence, the testimony of the offended party must be received with great caution. The story of the offended party, which the court must scrutinize, is that on 13 August 1994, at seven o'clock in the evening, Mirasol Sabellano was asked by her mother to buy sugar at the sari-sari store near the back of their house in Sitio Balaos, Iponan, Cagayan de Oro City. On her way to the store she saw Rico Jamlam Salem waiting for her just outside the fence. After she bought sugar for her mother, he pulled her to the "grassy area" and forced her to lie down. Then he went on top of her, pulled off her T-shirt, removed her pants and her underwear, tearing her zippers in the process. She could clearly identify Rico Salem as the place was well lighted.

After removing her underwear, Rico inserted his penis into her vagina. She resisted for a while until she could no longer hold on and the inevitable had to come. Her force was no match to his. She felt pain but had to suffer in silence because of his threat to take her life. After he satisfied his lust, he left her, weak and muddled as it was raining that evening. She wanted to go home immediately but was too weak to do so. Fortunately, some people bearing torches found her where she was and brought her home. One of them was her friend Margie Cadorna.

The following day, 14 August 1994, at one forty-five in the afternoon, SPO1 Salome Catulong of the Bulua Police Precinct No. 7 took her statement as well as those of her mother and her friend Margie Cadorna.

Rico had a different version of the incident. He did not deny having sex with Mirasol. However he claimed that they were sweethearts since 21 May 1994. He said he would visit her in her house, courted her, but her parents were against the idea.

Detailing how the sexual congress was consummated, Rico narrated in open court that on 13 August 1994 he and Mirasol agreed to meet so he waited for her outside her house. When she came out they proceeded to Balaos, Iponan, riding in tandem on his bicycle. She sat on the bicycle bar in front of him as he pedalled towards the coconut grove where they alighted. They whispered sweet little nothings to one another, and more.

Now under the coconut tree, Rico intimated to Mirasol his desire for sex. He muttered to her, "Since we are sweethearts, we should be happy." "Will you marry me?" she asked. "Don't worry, I will marry you," came his assurance.[1] And so, lusting for one another, they did what lovers would, all the way.

On their way home, they met Mirasol's father who was driving a car. Upon seeing them together, her father got

enraged. He grabbed Mirasol and forced her into his car.

Rico insisted that the sexual encounter on 13 August 1994 was not his first with Mirasol. It was actually their second as they had their first tryst on 2 August 1994. In fact, according to him, she did not resist him the first time; neither did she the second time.

Rico presented, aside from himself, two (2) witnesses in his defense, both trisikad drivers. Ricardo Robles testified that although he was only plying the Barra route, he also used to go to Balaos. On 13 August 1994, at seven o'clock in the evening, he went home to Balaos passing through Villamar Subdivision. There he saw a man and a woman riding on a bicycle. They were laughing, apparently happy. Although he did not know their names their faces were familiar to him as he had seen the man before as a trisikad driver.

Danilo Montero, another trisikad driver, testified that on 13 August 1994, at around seven o'clock in the evening, while he was driving a passenger to Balaos passing by Villamar Subdivision he saw a man and a woman on a bicycle. There was nothing unusual about them. In fact, he saw them again at eight-thirty that evening, just sitting idly by on the road to Balaos.

Apparently, we have here two (2) versions of a single incident, the complaining witness calling it rape, while the accused would deny it and assert that it was simply a sexual congress between two consenting adults.

But the trial court convicted the accused of rape and rationalized that -

As for force and intimidation, this was proven by the prosecution. Mirasol Sabellano testified that when accused held her wrist she wanted to shout but she was not able to do so for she was threatened to be killed if she will (sic) shout x x x x[2]

In arriving at its conclusion, the trial court obviously gave full credence to the uncorroborated testimony of Mirasol Sabellano. For, except for the doctor's medical report, no other physical evidence was presented by the prosecution.

Rico insists on his innocence. He asserts that the force and intimidation that are elemental in the crime of rape were never established; hence, he must be acquitted.

We agree. The two (2) principal and indispensable elements in the crime of rape under Art. 335, par. (1), of the Revised Penal Code, in relation to RA No. 7659, are: first, that the accused had carnal knowledge of the complainant; and, second, that the same was accomplished through force or intimidation.[3] In the instant case, there is no dispute that the accused had carnal knowledge of the offended party. The only question to be resolved is whether the same was accomplished through the use of force or intimidation as the Information avers, and as the complaining witness would have us believe.

In the review of rape cases, we are guided by three (3) settled principles, namely: (a) while an accusation for rape can be made with facility it is difficult to prove and more difficult for the person accused though innocent to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) 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 of the defense.[4] Thus we proceed to review and analyze in detail the very same pieces of evidence the trial court gave credence to in convicting the accused. Although the findings of trial courts are normally respected and not disturbed on appeal, in the present case, we have good reason to discard the observations of the trial court which were vital and crucial in the conviction of the accused.

First. Mirasol said that she was threatened by Rico, implying that had it not been for the threats on her life she

would not have yielded to his sexual advances. But on cross-examination she testified -

Atty. Felicia:

Q: Between your house and that store, of course, there are houses in between, right?

A: Yes sir.

Q: And because it was still 7:00 P.M. nobody was yet asleep because there was still light in the houses?

A: There (?) might not be asleep, but I did not see any people.

Court: Was the light bright or dark?

A: It was lighted.

Atty. Felicia:

Q: Because the lights were on, so when the accused met you outside your fence and held your wrist, as you testified, he held your wrist outside your fence until the store and from the store to the grassy area, he was still holding your hands?

A: Yes, sir, he pulled my knees.

Court: It was evening, 7:00 o'clock, how did you know that it was Rico Salem?

A: Because the lights were bright outside our house.

Atty. Felicia:

Q: You were able to recognize further Rico Salem because the light of the store is (sic) bright?

A: Yes, sir.

Court: Did you not shout?

A: I cannot (sic) shout because he threatened to kill me.

Atty. Felicia:

Q: Did you execute an affidavit?

A: Yes, sir.

Q: And if it is shown to you, can you recognize that affidavit?

A: Yes, sir.

Q: And I am showing to you an affidavit dated August 14, 1994 which forms part of the record of the case, kindly go over this and tell us if that is your signature at the bottom?

A: Yes, sir.

Q: Do you remember that you alleged in your affidavit that the accused has a bicycle? And at that moment when he held your wrist from your house to the store, and from the store to the grassy area, he held his bicycle?

A: Yes, he held his bicycle and the other hand is (sic) holding my wrist.

Atty Felicia:

Q: Who was watching the store when you buy (sic) sugar?

A: It was a woman.

Court: Were you able to buy sugar?

A: Yes, sir.

Atty. Felicia:

Q: You mean to say that he held you while you buy (sic) sugar?

A: Yes, sir.

Q: Do you know the woman who was watching the store?

A: I don't know her name.

Q: But the said store is near to your house.

A: At a distance.

Q: From your sitting position, point a distance?

Pros. Abbu: She has already testified, your Honor.

Court: Why, were you able to buy sugar while from your house you were held?

A: My other hand was held by the accused and the other one was the one used in buying sugar[5] (underscoring supplied).

Clearly, the so-called "threat" or "intimidation" was more fantasy than real. Rico did not even have a knife; he was unarmed. He was holding his bicycle with one hand and grasping the wrist of Mirasol with the other, if in fact he was holding her at all. On top of it, Mirasol was able to buy sugar from the sari-sari store. If she were indeed under threat or intimidation, she could have easily extricated herself from her predicament by seeking help from the store or from the neighbors, whose lights were still on, or by simply shouting for help.

It may be argued that intimidation is very subjective and must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[6] Still, it is improbable for a victim of rape not to make an outcry against an unarmed rapist[7] when she had every opportunity to do so. We are convinced from the testimony of complainant that she could have shouted for help had she wanted to: (a) She could have hollered for help as she was just outside her house when the accused supposedly held her wrist and started to "threaten" her; (b) Again, upon reaching the store, she had every opportunity to call attention to her plight. But she did not. Although we do not in any way expect Mirasol to resist unto death, no woman would meekly give in to a sexual intruder were her life not in serious jeopardy. It strains the imagination that someone with lustful designs would allow his victim to buy sugar at a store near her house and where she could easily cry out for help and thwart his bestial intentions.

Second. Complainant would have us believe that the accused forced her to lie down on a grassy area, "(T)hen he rode on top of me and he forced (me) to remove my T-shirt and x x x also to remove my pants and the zipper was destroyed and he then also forced (me) to remove my underwear." [8] There seems to be something discordant in this sequence of movements. Where Mirasol would make it appear that she offered resistance to the forcible removal of her pants thereby provoking Rico to rip her zippers, it does not appear logical at all that she would not struggle against the removal of the shield of the very object of his lust, nor that the accused, infused with the full blast of his libido, would tear off her pants but just as suddenly calm down and remove her underwear quite naturally. The scenario defies logic and does not jell with human experience.

Third. Nothing is said, nothing absolutely, that complaining witness was boxed, slapped, kicked or pushed, nor that there was any laying of the hand nor that physical violence was employed on her. Yet, the evidence exhibits quite abundantly that Mirasol suffered linear abrasions on her back, stomach and anterior thigh, to wit: multiple

linear abrasions - back, 6 x 0.5 cm., right upper portion; 4 x 0.5 cm., right lower portion; 2 x 0.5 cm., left lower portion; abdomen, 3 x 0.3 cm., right upper quadrant; 2 x 0.5 cm., left lower quadrant; left anterior thigh, 2 x 0.3 cm., 1.5 x 0.5 cm., 2 x 0.5 cm.[9] Strangely, Mirasol never explained how and why she got those abrasions. Her version is that she was dragged to the grassy area where the accused placed himself on top of her and then raped her. From the facts as narrated by her, the Court cannot help divining how she could have suffered the linear abrasions on her stomach and anterior thigh when she was not made to lie face downwards or flat on her stomach, much less did she claim that some instrument was used by the accused to inflict the linear abrasions on her anteriors. The theory of the accused that these abrasions were caused by her own parents who detested his relationship with their daughter seems to be find support from Dr. Herod Jamis when he testified on cross-examination thus -

Atty. Felicia:

Q: Doctor, in your long experience of medico legal cases, particularly on rape, it is not foreign in your experience that sometimes victims or alleged victims could also be victims of the castigations of their parents for having caused sexual relation with men, the bodily injuries?

A: It is possible that it would be inflicted.

Q: In your span of time as medical specialist, could the injuries at the back of the abdomen of the alleged victim have been caused by a very indignant parent inflicting punishment on an erring daughter?

A: Possible.[10]

The implication of this dialogue between the medical expert and the defense counsel is not uncommon. In rape cases, this claim that the accused now advances appears to be a common testimonial, an expedient and face-saving subterfuge.[11] It could be that complainant's mother, or father, wanted to save face in the community where everybody knows everybody else, and in an effort to conceal their daughter's indiscretion and escape the wagging tongues of their small rural community, they had to weave the scenario of this rape drama.[12]

Fourth. Defense witness Ricardo Robles asserted before the court that when he saw the offended party and the accused that evening they were both laughing as though nothing untoward happened. Verily, Mirasol could not have been laughing with the accused if indeed she had been raped by him -

Atty Felicia:

Q: Did you notice any expression on their faces at that moment?

A: Yes.

Q: Were they happy or sad?

A: They were laughing when they overtook me.

Q: By the word they, you were referring that the girl and the boy were laughing?

Q: Yes.[13]

Robles was consistent on cross-examination -

Court:

Q: I have here a bicycle. Usually there is only one space for the driver, where is the female riding?

A: (Witness was made to demonstrate how the accused and the complainant rode the bicycle at the time they were seen by this witness - that the lady was seated on a bar in front of the driver).

Q: They were loving?

A: Yes [14] (underscoring supplied).

The "sweetheart" defense put up by the accused merits serious consideration. While the theory does not often gain favor with the Court, such is not always the case if the hard fact is that the accused and the supposed victim are in fact intimately related except that, as is true in most cases, the relationship is either illicit or the parents are against it. In such instances, it is not improbable that when the relationship is uncovered, the victim's parents would take the risk of instituting a criminal action rather than admit to the indiscretion of their daughter. And this, as the records reveal, is what happened in this case.

For, in his testimony Rico stated that he had a picture of Mirasol in his wallet but that his wallet was with the jail warden. He also mentioned that the complainant and her mother even visited him in jail although the mother confronted him on his temerity in wanting to marry her daughter.[15] These statements were never objected to nor refuted by the prosecution.

Thus, the guilt of Rico Jamlam Salem was not successfully established beyond reasonable doubt. In concluding that Rico raped Mirasol, the trial court must have presumed that she would not choose to implicate her attacker at all and subject herself to the stigma and indignities her accusations would entail unless she was telling the truth. But this "presumption" of guilt does not in itself destroy the presumption of innocence which is founded upon the basic principle of justice - not a mere form but a substantial part of the law. This presumption of innocence is not overcome by mere suspicion or conjecture, or by the probability that the defendant committed the crime or that he had the opportunity to do so.[16]

In this case, several circumstances co-exist which clearly demonstrate and ineluctably persuade this Court that there was no rape on the alleged date, time and place, and that the charge of rape was but the contrivance of an afterthought rather than the truthful plaint for redress of an actual wrong.[17] The accused must be acquitted and set free for his guilt has not been proved beyond a whisper of a doubt.

WHEREFORE, the appealed decision is REVERSED and accused-appellant RICO JAMLAN SALEM is ACQUITTED on reasonable doubt. His immediate release from custody is ordered unless there are other valid grounds for his continued incarceration. No cost.

SO ORDERED.

Davide, Jr., (Chariman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] TSN, 23 September 1994, p. 8.

[2] Rollo, p. 104, Decision p. 8.

[3] People vs. Godoy, G.R. Nos. 115908-09, 6 December 1995, 250 SCRA 703.

[4] People v. Tacipit, G.R. No. 109140, 8 March 1995, 242 SCRA 241

[5] TSN, September 2, 1994, pp. 8-10.

[6] People v. Grefiel, G.R. No. 77228, 13 November 1992, 215 SCRA 597.

[7] People v. Nunez, G.R. No. 79316, 10 April 1992, 208 SCRA 34.

[8] TSN, September 2, 1994, p. 4.8 TSN, September 2, 1994, p. 4.

[9] Exh. "A," Records, p. 22.

[10] TSN, 1 September 1994, p. 7.

[11] See Note 3, p. 680.

[12] Ibid.

[13] TSN, 21 September 1994, p. 5.

[14] Id., p. 8.

[15] TSN, 23 September 1994, pp. 8-10.

[16] See Note 3, p. 683.

[17] Id., p. 703.

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