THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PATRICIO GOZANO, ACCUSED-APPELLANT.

G.R. No. 125965. January 21, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 37, Iriga City finding accused-appellant Patricio Gozano guilty of rape and sentencing him to suffer the penalty of reclusion perpetua, pay the victim P50,000.00 as moral damages, support the offspring, and pay the costs.

The information against accused-appellant alleged:

> That on or about the 28th day of October, 1994, in Barangay San Vicente, Bato, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence, threat and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge with one Nelly Saliente, his granddaughter, against her will and without her consent, to the victim's damage and prejudice in such amount as may be proven in court.
>
> ALL ACTS CONTRARY TO LAW.

The following witnesses testified for the prosecution: the victim, Nelly Saliente; the victim's father, Lorenzo Saliente; the midwife, Inecitas Landagan; and, as a rebuttal witness, a neighbor, Jesus Sergio.

Nelly Saliente, 19 years old at the time of the alleged rape, testified that on October 28, 1994, she was alone in their house in San Vicente, Bato, Camarines Sur, her parents and seven siblings having gone to another town to visit their grandmother who was ailing. At around 7:30 in the morning on said date, she went out of the house to get their carabao tethered by her father to a guava tree about 100 meters from their house and 15 meters from the house of accused-appellant. While she was stooping to release the carabao from the latch, she saw the feet of a person behind her. Suddenly, she was grabbed from behind, her mouth was covered by the assailant's left hand and her hands were pinned together by the person's other arm. Nelly said she tried to break from her assailant's hold and as she did so, she found that it was accused-appellant, whom she calls "Lolo Pat" because he is the husband of her paternal grandaunt, who was behind her. Nelly claimed she was dragged all the way to accused-appellant's house and once inside, thrown on the floor by accused-appellant. She said she struggled and tried to stand up but accused-appellant forced her down each time. Accused-appellant then pulled down her shorts and panty and succeeded in ravishing her.

After accused-appellant was through, Nelly said, he warned her that if she told anyone about what happened, he would kill her and her family. He then left.

Nelly said that after accused-appellant had left, she put her panty and shorts on, got the carabao, and went home. When her parents arrived the next day, she did not tell them anything about the incident.

According to Nelly, even after the incident, accused-appellant continued to threaten her if she talked about what

happened. Everytime she would see him, he would show his knife to her and warn that he would kill her if she mentioned the incident to others. Although she soon realized she was pregnant, she concealed her pregnancy for nine months because of fear of accused-appellant. Her parents did not suspect anything and came to know of the incident only after she was delivered of her baby on July 31, 1995. The next day, when asked by her father, she revealed for the first time that accused-appellant had raped her on October 28, 1994.[2]

Lorenzo Saliente, father of Nelly, corroborated his daughter's testimony. Nelly was left alone in their house on October 28, 1994. When he and his family came home the following day, they did not notice anything unusual with Nelly. Nor did he ever know that his daughter was pregnant until July 31, 1995 when she gave birth to her child. Although he noticed that she was gaining weight, he never suspected that she was pregnant, because she did not have any suitor or boyfriend. On August 1, 1995, Nelly told him for the first time that she had been raped by accused-appellant on October 28, 1994. Forthwith Lorenzo went to the barangay captain and filed a complaint.[3]

Inecitas Landagan, a midwife, testified that on July 31, 1995, at 6:30 in the morning, she was fetched by a brother of Nelly Saliente and was told that the latter was about to give birth. She, therefore, went to the house of the Salientes and assisted Nelly in her delivery.[4]

The defense presented accused-appellant Patricio Gozano as lone witness. Accused-appellant was 46 years old at the time of the incident. He denied the allegations against him. According to him, his work in the fishpond of the Gonzales brothers in Lake Bato required him to leave his house at 4:00 each morning and stay there until 4:00 or 5:00 in the afternoon. On certain occasions when there was work to be done, he spent the night in the workplace. Upon cross-examination, however, he testified that he leaves home at 4:00 in the morning only if there was work to be done at the fishpond. Otherwise, he did not leave the house until 5:00 or 6:00 in the morning to go to the house of "Manoy" Aning at the poblacion of Bato to wait for people who might want to hire him.[5]

Accused-appellant also testified that the family of Nelly Saliente was angry at him because he had a mistress in the absence of his wife. The latter worked in Abu Dhabi, while their two children lived in Manila. The land worked on by accused-appellant was owned by his wife's relatives, Francisco and Primitiva Abinal. He claimed that he was being evicted from the land by the Abinals without any just cause.

Accused-appellant denied he had any bladed weapon, much less brandishing a knife everytime he saw the complainant. Although he admitted keeping a mistress, he denied having more than one. He did not know of any possible reason why he should be accused of abusing complainant.[6]

The prosecution presented Jesus Sergio, a neighbor of accused-appellant, as a rebuttal witness. Sergio testified that he once saw accused-appellant near the house of complainant's aunt Norby, which is 15 meters away from the house of the Salientes. Accused-appellant was brandishing a knife when seen. He claimed that accused-appellant once invited him to his house to watch as accused-appellant had sex with a woman other than his mistress. Allegedly, Sergio was with Lorenzo Saliente, Nelly's father, when he saw accused-appellant and the woman in the sexual act.[7]

On the basis of the foregoing evidence, the trial court found accused-appellant guilty of rape. The dispositive part of its decision, dated February 26, 1996, reads:

> WHEREFORE, in view of the foregoing, the court finds the accused Patricio Gozano guilty beyond reasonable doubt of the crime of rape as penalized under Art. 335 of the Revised Penal Code, as amended, as principal thereof and accordingly, hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify Nelly Saliente P50,000.00 as moral damages, to support the offspring . . . and to pay the costs.
>
> The accused in the service of his sentence shall be credited with the full period of his preventive imprisonment

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should he abide in writing pursuant to Art. 29 of the Revised Penal Code.

SO ORDERED.

Hence, this appeal. Accused-appellant assigns the following errors as having been allegedly committed by the trial court:

- THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE CONFLICTING AND IMPROBABLE TESTIMONY OF THE PRIVATE COMPLAINANT.

- THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE INSUFFICIENCY OF EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Accused-appellant argues that complainant's sworn statement during the preliminary investigation on how the rape occurred is inconsistent with her testimony in court. He contends that it was improbable that Nelly was able to keep her pregnancy secret for nine months, and that he (accused-appellant) threatened her with a knife each time he saw her to prevent her from reporting her abuse by him.

After examining the evidence in this case, particularly the testimony of complainant Nelly Saliente, we entertain some doubts as to accused-appellant's guilt. Accordingly, we think accused-appellant's conviction must be reversed.

In rape cases, courts are guided by the following considerations:

(1)

An accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent, to disprove the same;

(2)

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; 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.[8]

In finding accused-appellant guilty, the trial court said:

The facts as established through the testimony of the private offended party given in a straightforward, frank and unaffected manner coming as it does from a simple and rural young woman, show that the accused who was staying alone in his house in the morning of October 28, 1994 and knowing that the parents and other kins of Nelly were in Bato, Camarines Sur that morning took advantage of the situation when in isolated setting in a rural place, he saw Nelly alone trying to get the carabao that was tethered near his house. Accused surprised Nelly and forcibly dragged her to his house and despite her resistance and struggle, this petite young woman could not have possibly put up a serious resistance against the assault of the accused. Thus, herein accused, through force and intimidation, succeeded in having carnal knowledge of Nelly until the day has come when she has to face the music as the baby could not be kept forever in her womb. Nelly has to finally reveal to her parents the ordeal she underwent at the hands of her Lolo Patricio. It was nine months after the incident that she revealed for the first time the rape committed against her by the accused.

From the backdrop of the case especially the circumstances and the delay in revealing the incident of rape, has

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the accused indeed, by force and intimidation, had carnal knowledge of Nelly Saliente against her will?

From the only available evidence on record, the court believes so.[9]

To be sure, the guilt of the accused in rape cases can be established solely on the basis of the testimony of the victim.[10] However, the application of the rule is premised upon the victim's giving a credible narration of the incident. Such evidence is wanting in this case. The trial court described Nelly's testimony as straightforward and candid. There are, however, nagging doubts engendered by her testimony which would not allow the mind to rest easy as to the veracity of her account. The question is whether Nelly Saliente had been raped.

First. Accused-appellant is the husband of a sister of complainant's paternal grandmother. She calls him "Lolo" Pat. Given their close relation, it is unlikely that accused-appellant would have to resort to force by grabbing her from behind and dragging her to his house. There appears to be no reason why accused-appellant should do this when he could just have asked Nelly to his house, unless he had tried to do this before but Nelly refused, making it necessary for him to use force in order to get her. However, no claim to this effect was made by any of the parties.

Second. The incident allegedly happened in broad daylight, at 7:30 in the morning, in a place where at least three other relatives' houses stood within a 50-meter radius.[11] Could the incident have happened without anyone noticing accused-appellant abducting complainant who, if she is to be believed, was struggling as she was being dragged into the house of accused-appellant?

Nelly testified:

ATTY CABALTERA

Q

At that instance you did not immediately shout?

. . . .

WITNESS

A

I was not able to shout because my mouth was covered.

ATTY. CABALTERA

Q

Am I correct to say that your mouth was tightly gagged by that hand?

A

Yes, sir.

Q

And you even said that because your mouth was gagged by a hand you were able to identify who that man was that put his hand in your mouth?

A

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Because I looked back and I saw the man.

Q

Am I correct to say that the holding of your mouth was not so tight because you were even able to look back Madam Witness?

A

When I looked back simultaneously he covered my mouth.

Q

In that situation where your both hands were embraced by one hand and your mouth was covered by another hand you were dragged inside the house by Patricio Gozano?

A

Yes, sir.[12]

If Nelly was able to recognize the man who grabbed her from behind because she was able to turn her head and find who it was, it would have been possible for her to make an outcry to attract attention. Why did she not?

Third. Nelly claimed that she did not tell anyone about the incident of October 28, 1994 and the fact that she was pregnant because of a constant threat by accused-appellant that he would kill her and her family if she did. But if this was the case, why did she point to accused-appellant as the father of her child after she was delivered of the baby?

Indeed, Nelly could not say when the supposed threats started and how they were made. Again, we quote her testimony:

Q

Now, between that period of time from Oct. 28, 1994 up to the time you delivered a baby, your Lolo Patricio did not physically threaten you, is it not?

A

While I was still on my family way, Lolo Patricio was telling me that if I tell the incident to my parents, he will kill me including the members of my family.

. . . .

ATTY. CABALTERA

Q

Am I correct to say that you were threatened by your Lolo Patricio after you were raped on Oct. 28, 1994 ?

A

Yes, sir.

Q

Now, when you were molested at the house of your Lolo Patricio on October 28, 1994 , am I correct to say that you were just left behind by him inside his house?

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.. . . .

WITNESS

A

Yes, sir.

. . . .

Q

You said that you were threatened by your Lolo Patricio for several times. Can you tell us that specific number that several times that you were threatened?

A

Many times but I did not count.

Q

Could it be more than five (5)?

A

More than that.

Q

And almost always when you were threatened by your Lolo Patricio he is displaying a knife that was already open, is that correct?

A

Yes, sir.

Q

And when you were threatened how far is your Lolo Patricio to you?

A

About this distance (more or less ½ meter).

Q

No persons witnessed that action being made by your Lolo Patricio when you were threatened by that same knife?

A

None.

Q

Of course, Madam Witness, this acts made by your Lolo Patricio occurred during the daytime?

A

Daytime and nighttime.

Q

And these acts of threatening you made by your Lolo Patricio was always made in the absence of your parents and immediate members of the family?

. . . .

COURT

Q

You claimed that from October 28, 1994 up to the time that you delivered a baby you were threatened several times?

A

Yes, sir.

Q

And, in fact, everytime that you were threatened, you were at the distance of about one (1) meter?

A

Yes, sir.

Q

And from October 28, 1994 to the time that you delivered you had a chance to talk to your Lolo Patricio?

A

No, sir.

Q

Does the court understand that everytime you were threatened, there was no communication at all except for the gesture of Patricio Gozano holding a knife?

A

Yes, sir.

Q

You never asked him why despite the fact that you were related to him you were abused?

A

I did not ask him because I was afraid.

Q

You claimed that everytime you meet Patricio Gozano, Patricio Gozano tell you that he will kill you when [you] did not talk to each other?

A

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Everytime I pass by him, he was brandishing the bladed weapon and say by the time that I report the incident to anyone, he will kill me.

Q

So, it is now clear that everytime you see Patricio Gozano, Patricio Gozano say something to you?

A

He was not saying anything. He was just threatening me.

Q

He was just threatening you by brandishing a knife?

A

Yes, sir.

Q

Without telling you that by the moment you report the matter to your parents you will be killed including the members of your family?

A

He was threatening me by brandishing a knife and by telling me that if I will report to anybody he will kill me including my family.

Q

So, it is now clear that you were not only threatened by actions but also by words?

A

Yes, sir.[13]

The improbabilities and inconsistencies in the testimony cast serious doubt on its veracity. Since Nelly and accused-appellant were neighbors, it is presumed that their encounters were often, if not daily. It is thus hard to believe that in each of these occasions, within a period of nine months, accused-appellant would be holding a knife and would threaten Nelly with it without anybody witnessing the event.

Fourth. To explain the delay in the filing of this criminal case against accused-appellant, the prosecution tried to show that Nelly's parents did not know of her pregnancy even though she carried her child to the full term. Nelly's father, Lorenzo Saliente, claimed he noticed Nelly's growing fat around the waistline but thought that his daughter was only gaining weight. This hardly merits belief. The trial court described Nelly as a "petite young woman." Any weight gain, therefore, in her small frame, especially around the waist in the final trimester of her pregnancy could not have escaped her parents' notice and suspicions.

In sum, the prosecution's evidence establishes only two things: (1) that Nelly had sexual relations with a man sometime in October 1994; and (2) that such relations resulted in her pregnancy which terminated in her delivery of a child on July 31, 1995. But there is no evidence to show that force or intimidation was employed by the man with whom she had sexual relations. On the other hand, the testimony of Jesus Sergio, the prosecution's rebuttal witness, deserves scant consideration. His claim that accused-appellant invited him to witness the latter's sexual act with a woman is not in the least material to this case. At most, his testimony attempted to show that accused-appellant might be a pervert or an exhibitionist, but not that he could have raped complainant.

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WHEREFORE, the decision of the Regional Trial Court, Branch 37, Iriga City is REVERSED and accused-appellant is ACQUITTED on grounds of reasonable doubt.

The director of prisons is hereby directed to forthwith cause the release of accused-appellant unless the latter is being lawfully held for another cause and to inform the Court accordingly within ten (10) days from notice.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Ernesto B. Amisola.

[2] TSN, pp. 4-14, Dec. 19, 1995.

[3] TSN, pp. 9-10, Jan. 25, 1996.

[4] TSN, p. 3, Dec. 19, 1995.

[5] TSN, p. 10, Feb. 5, 1996.

[6] Id., at pp. 11-12.

[7] TSN, pp. 2-3, Feb. 19, 1996.

[8] People v. Bayani, 331 Phil. 169, 191 (1996)

[9] Records, pp. 17-18.

[10] See People v. Pontilar, Jr., 275 SCRA 338 (1997); People v. Apilo, 263 SCRA 582 (1996); People v. Lao, 249 SCRA 137 (1995)

[11] TSN, pp. 4-6, Dec. 19, 1995; TSN, pp. 4-6, Dec. 20, 1995.

[12] TSN, p. 9, Dec. 20, 1995.

[13] TSN, pp. 4-7, Jan. 25, 1996.

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