

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PABLITO RAE, NESTOR RAE ALIAS “NESTORAY,”
EDDIE RAE ALIAS “MANAHAN,” GAMAY CABIDOG AND
ELPIDIO EMOG, ACCUSED, PABL...**

G.R. No. 64415. December 10, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

Pablito Rael and Eddie Rael were convicted of robbery with rape and sentenced to the penalty of reclusion perpetua, under an information which read as follows:

I N F O R M A T I O N

The undersigned Provincial Fiscal accuses Pablito Rael, Nestor Rael alias "Nestoray", Eddie Rael alias "Manahan", Gamay Cabidog and Elpedio Embog of the crime of Robbery In Band with Rape, committed as follows:

That on or about the 29th day of January, 1980, in the Municipality of Dagami, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with intent to gain, and by means of force and intimidation, with the use of unlicensed firearms and long bolos, did then and there wilfully, unlawfully and feloniously take, rob and carry away the following articles, to wit:

1. Pig about 30 kilos worth

- P 240.00

2. Six (6) chickens worth

- 90.00

3. Wrist Watch worth

- 200.00

4. Blanket worth

- 35.00

5. Flashlight worth

- 25.00

6. Hand saw worth

- 28.00

7. Trunk (baul) worth

- 15.00

8. Cash worth

- 1,035.00

valued all in all at P1,668.00, all belonging to Marieta Saligumba, to (the) damage and prejudice of said Marieta Saligumba in the aforementioned amounts; that by reason of and on the occasion of the above robbery, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent and with lewd designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge (of) Rowena Saligumba, against her will and consent to her damage and prejudice.

Contrary to law."[1]

At arraignment, appellants, Pablito Rael and Eddie Rael, the only ones of the five (5) accused to have been apprehended, pleaded not guilty.[2] After trial, both appellants were convicted in a Decision dated 4 April 1983.[3] The lower court awarded Rowena Saligumba the amount of P5,000.00 as moral damages and the spouses Panfilo and Marieta Saligumba the amount of P1,035.00 as actual damages.[4]

The evidence of the prosecution tended to establish the following facts:[5]

At about nine o'clock in the evening of 29 January 1980, while the family of Panfilo Saligumba was preparing to retire for the night in their house, they heard a shout from outside demanding that their door be opened. Peering through the bamboo wall of their unlit house, the seventeen (17) year old Rowena saw by moonlight five (5) persons lingering outside. She grabbed a blanket, ran up to the attic above the wooden ceiling of their house, covered herself with the blanket, and hid there. She observed the unknown persons hack their way through the door and enter the house. By the illumination of flashlights held by the intruders, she saw one of them point a gun at her father and demand money from him. The latter gave the money to the gunman. Then, her father and the rest of her family were made to lie face down on the floor. Two (2) of the intruders went down the house. From the noise subsequently, heard, the Saligumba family inferred that the family's pig and chickens were chased and seized by these two (2).

Meanwhile, the other three (3) intruders remained inside the house and searched the family's belongings, in the course of which the gunman discovered Rowena in her hiding place, and brought her down from the attic. She recognized the gunman to be the accused Pablito Rael. The intruders tried to bring Rowena with them. When she refused, Pablito Rael, Gamay Cabidog, Elpidio Embog and Nestor Rael dragged her to a camote field located about two hundred (200) meters east of the house.

She recognized Pablito Rael, Gamay Cabidog and Elpidio Embog because she had seen them a number of times in the past, their barrios being just adjacent to the 'Saligumbas' barrio.[6]

At the camote field. Rowena's left hand was held by Elpidio Embog and her right hand by Gamay Cabidog. Pablito Rael took off her blouse and removed her short pants and panties. Pablito Rael then loosened his trousers and lowered them to his knees. Rowena was pushed to the ground face upwards and held down by Elpidio Embog and Gamay Cabidog. Rowena tried to wrestle herself free and crossed her legs. Pablito Rael placed himself on top of her and forced open her legs by placing his knees in between them. He inserted his penis into her vagina and proceeded to copulate with her. When through, Pablito Rael stood up, Gamay Cabidog and Elpidio Embog then

took turns in copulating with Rowena while she was held down on the ground by the other two (2).

As Rowena underwent her ordeal, the other two (2) intruders stood guard, at the foot of a coconut tree, against possible rescuers of Rowena.

After Pablito Rael, Elpidio Embog, and Gamay Cabidog had, one by one, finished violating Rowena, they released her and left. Rowena went back to the house and told her mother what the (3) three had done to her.

Rowena and her parents reported the gang-rape to Barangay Captain Emeterio Sosing next morning, i.e., 30 January 1980.[7] They then proceeded to the INP Station in the poblacion of Dagami, Leyte for the same purpose; the police entered the report in the police blotter.[8] At the municipality's Rural Health Unit, Dr. Virgilio C. Gernale conducted a physical examination on Rowena Saligumba at 11:00 A.M. on 30 January 1980. He issued a medical certificate stating (among other things) that Rowena could have undergone sexual intercourse with a man at about 9:00 P.M. on 29 January 1980.[9]

In the present appeal, appellants raise the following assignment of errors:

1. The lower court erred in not ruling that there was no clear and positive identification of the accused as the perpetrators of the crime charged.
2. The lower court erred in relying on the testimony of the alleged victim of the rape despite the fact that said testimony is riddled with improbabilities and lacks adequate corroboration.
3. The lower court erred in finding that the sum of money allegedly robbed was in the amount of P1,035.00 despite the lack of evidence, oral or documentary, establishing such amount.
4. The lower court erred in basing its judgment of conviction on what it perceived to be the weakness of the defense rather than on the inherent strength and adequacy of the evidence for the prosecution."[10]

The ultimate issue posed in this case is whether Rowena Saligumba had adequately identified Pablito and Eddie Rael as two (2) of the five (5) persons who robbed them at their home and subsequently raped her. We discuss the liability of each appellant separately for purposes of clarity.

Three (3) witnesses testified on behalf of Pablito Rael. Barangay Captain Emeterio Sosing declared that on the morning of 30 January 1980, the spouses Panfilo and Marieta Saligumba, accompanied by a teenage daughter, came to his house to report that the night before, persons whose identities they did not know had divested them of personal property worth about P1,000.00 and had violated their daughter. Sosing added that the report of the Saligumbas was witnessed by Igmedio Bandoles, who happened to be visiting with him (Sosing) at the time.[11] Dagami policeman Andres Orcado authenticated in court[12] to the satisfaction of the prosecution a police blotter entry which did not specify the names of the five (5) malefactors and which was worded thus:

"001938/30 Jan 80/0910/ ROBBERY IN BAND WITH RAPE

Mrs. Marianita (sic) Saligumba resident of Brgy. Buntay this Mplty. reported that they were robbed by following articles: 5 hens & one (1) rooster, one (1) male pig 30 kilos, cash P1030.85 by five persons armed with assorted firearms and her daughter, Ruena (sic) Saligumba, 17 yrs. old was raped by three persons. Incident happened at 9:00 o'clock in the evening 29 Jan. 80 at Brgy. Buntay, Dagami, Leyte. Case under investigation."[13] (Underscoring supplied)

Igmedio Bandoles corroborated the testimony of Sosing regarding the report of the Saligumbas and their failure to mention the identities of the malefactors.[14] He added an alibi for Pablito Rael declaring that the latter spent the entire evening of 29 January 1980 at his house, located more than a kilometer away from the Saligumba residence, attending a celebration held for the recovery of his child from illness.[15]

However, the Court notes that Pablito Rael was positively identified in open court by Rowena Saligumba as the gunman who had taken the money from her father and as one of the three (3) men who had sexually assaulted her afterwards.[16] This circumstance negatives the claim of the defense that a gap existed in the prosecution's evidence regarding the identification of Pablito Rael.

It is a commonplace rule that the defense of alibi cannot prevail over the positive identification of the accused. Pablito Rael had not shown that it was impossible for him to reach the scene of the crime from the Bandoles' house, which was merely a kilometer away, at the time of the robbery with rape.[17]

Documentary evidence listing at least some of the personal property taken from the Saligumba family is furnished by the police blotter entry. Considering it is a public document whose authenticity was not only presumed, but was established and even admitted by both parties, the entry represents adequate proof of the nature of the personal property taken from the Saligumba family.[18] Rowena also gave uncontradicted testimony that her watch, blanket and flashlight, as well as the family's saw ("serotso") and guitar, were taken by the accused.[19] The value imputed to the articles listed in the blotter entry and in her testimony, and set out in the information, was not successfully disputed by the defense.

The defense assailed Rowena's testimony concerning her being raped as inherently improbable and lacking in adequate corroboration: 1) the medical certificate indicated that no evident physical injury was noted on Rowena's body by Dr. Gernale; 2) the uniform manner in which she described her violation "hardly inspires trustworthiness in her narration;" 3) Rowena failed to call for help and neither her parents nor neighbors exerted any effort to rescue her; 4) Rowena fabricated the story about the two (2) accused at the foot of the coconut tree because she would not have noticed them while being abused by the other three accused; 5) it is "hardly believable" for the accused to have lingered near the crime scene to violate Rowena, considering they were heavily-laden with looted property and would have been preoccupied with thoughts of escape; and 6) notwithstanding the inherent weakness of Rowena's testimony, the prosecution failed to present her parents as corroborating witnesses.[20]

The Court is not persuaded. In a prosecution for rape, it is not necessary to show proof of physical injuries sustained by reason of resistance to the sexual attacker because the exertion of irresistible force by the latter is not an element of the offense.[21] Here, the intimidation and physical force exercised on Rowena by three (3) men, at least one of whom was armed, while bringing her to an isolated place and throwing her upon the ground, was more than sufficient to have prevented her from offering any more violent resistance which would have left prolonged marks on her body.

We do not think Rowena's description of the details of her violation by three of the accused was farfetched or implausible.[22] It would appear to the Court that a plea or shout for help from Rowena would not only have been futile but also an invitation for further violence and possibly death or physical injuries at the hands of the rapists. The presence of the five (5) malefactors was sufficient to have discouraged Rowena's family or neighbors from interfering with her attackers. Such is not contrary to human nature or experience.[23] A sense of impunity born out of their number and possession of at least one firearm would explain why the malefactors were bold enough to delay their escape from the crime scene and to take the time to ravish Rowena.

The claim that Rowena had merely fabricated her story concerning the other two (2) accused who had not joined the rape, is scarcely persuasive. That claim in any case does not bear upon the truth of her statements concerning the three (3) who had, one after the other, raped her. Moreover, the defense failed to cross-examine Rowena on this point.[24]

It appearing to the Court that Rowena's testimony describing the sexual assault upon her to be adequate in all essential respects, the prosecution cannot be faulted for dispensing with other witnesses and in relying instead on

her sole, positive and credible declarations on this matter.[25]

The defense contended that the lower court erred in imposing on Pablito Rael the burden of proving his innocence when it appreciated his failure to take the witness stand in his behalf as an incriminating circumstance.[26] The Court must agree with the defense on this point. Such omission cannot be interpreted by the lower court as implying a desire to conceal guilt. Such interpretation is ultimately at war with Pablito Rael's right against self-incrimination.[27]

This error of the lower court did not, of course, overturn other evidence of record which established beyond reasonable doubt that Pablito Rael, together with four (4) other persons, had committed the special complex crime of robbery with rape.

Turning now to co-accused and co-appellant Eddie Rael, the Court is compelled by the condition of the evidence on record to arrive at a different conclusion as to his guilt.

The trial court found that Eddie Rael had been identified as one of the malefactors by Rowena. On this point, the trial court said:

"Both the accused Pablito Rael and Eduardo Rael rely on this defense that during the investigation of the victims in the house of the barangay captain on January 30, 1980, the victims could not identify the persons who robbed them and raped Rowena Saligumba. But this defense is belied because Rowena Saligumba identified in open Court Pablito Rael (and) Eduardo Rael. She further explained why she was able to identify Pablito (should be "Eddie") Rael. Eduardo (sic) Rael was identified by her as the one who remain(ed) on guard while Pablito Rael, Gamay Cabidog and Elpedio (sic) were raping her.

Although Eduardo Rael did not actually rape Rowena Saligumba, yet he participated by being on guard to insure that nobody will rescue Rowena. This Court believes that he is just as guilty as Pablito Rael." [28] (Underscoring and parentheses supplied)

The record shows that the identification by Rowena of Eddie Rael was carried out in the following manner:

"Q. Do you likewise know the other accused in this case by the name of Eddie Rael alias Manahan?

A. Yes.

Q. If that accused is here in court now, will you point to him?

A. That one.

INTERPRETER:

Witness pointed to a man in court and when asked of his name answered that he is Eddie Rael." [29] (Underscoring supplied)

It must be observed that the above questions propounded by the Fiscal to Rowena did not serve to identify Eddie Rael as one of the four (4) persons who, per Rowena, had together with Pablito Rael carried out the robbery at the Saligumba house on the night of 29 January 1980. The Court has minutely scrutinized the entire testimony of Rowena contained in the record of this case. Nowhere does the record show that Rowena was asked by the Fiscal questions that would have elicited statements from Rowena -- and so Rowena did not make any statement of record -- identifying Eduardo Rael as: (a) one of the five (5) persons who entered their house on the night of 29 January 1980; or (b) one of the two (2) persons who seized the family pig and chickens; or (c) one of the other three (3) persons who searched the Saligumba house for items of value to take away; or (d) one of the three (3) persons who brought her to the camote field where she was sexually assaulted; or (c) one of the two (2) persons

standing guard at the foot of the coconut tree while Pablito Rael, Gamay Cabidog and Elpidio Embog were alternately assaulting Rowena sexually.²⁹ A Relevant excerpts of the testimony of Rowena follow:

"Q. Now when you peeped through the hole at the bamboo walling of your house, what did you see, if any?

A. I saw five persons outside.

Q. Did you recognize those persons at that time?

A. At first I did not recognize them.

x x x x x x x x

Q. Now since not a member of your family opened the door, what happened?

A. They hacked at our door.

x x x x x x x x

A. The door, they were able to open the door and they entered.

Q. How many entered?

A. The five of them.

x x x x x x x x

Q. And when your father gave that money, what happened next, if any?

A. They made my father lie down face downward.

Q. Now your father had handed that money to whom?

x x x x x x x x

A. Pablito Rael.

Q. Now when this Pablito Rael was receiving that money from your father, can you tell this Honorable Court where the other four persons (were)?

A. They were there also.

x x x x x x x x

Q. Now after that, what happened next?

A. Two of their companions went down and took our pigs and chickens.

x x x x x x x x

Q. How about the three persons who remained upstairs, what did they, the three, do there, if any, while the two went down?

A. They searched our belongings.

x x x x x x x x

Q. And when you were dragged down stairs, what happened next to that (sic)?

A. They tried to bring me with them but I did not want to go with them (so) they continued dragging me.

Q. Now, you said they pulled, they dragged you, now, who were these persons who dragged you?

A. Pablito Rael, Gamay Cabidog and Elpedio (sic) Embog.

x x x x x x x x

Q. Now, while these three committed these acts (the rapes) on you, where were the other two, if you know?

A. They were hiding at the foot of a coconut tree, maybe watching for someone to rescue me, they were just behind."31 (Underscoring supplied)

In his Brief, the Solicitor General attempted to add specificity to the last statement quoted above made by Rowena when she merely referred to "they" without naming names (obviously for failure of the fiscal to ask her to do so32):

"Prosecution witness Rowena Saligumba identified Eddie Rael as one of the five accused in the present case of robbery with rape (pp. 7-8, tsn., August 27, 1981). Since she identified Pablito Rael, Gamay Cabidog and Elpidio Embog as the three persons who dragged her to the camote plantation and alternately raped her, by the process of elimination, when she testified that the two other accused were at the foot of the coconut tree watching for someone to rescue her, she was referring to Eddie Rael and Nestor Rael."33 (Underscoring supplied)

The Solicitor General's suggestion evidently made in the effort to rectify a conspicuous defect in the handling of this case by the trial fiscal, is itself seriously flawed because it merely assumed that Eddie Rael was one of the five (5) persons who actually formed the group of robbers who broke into the Saligumba house in the first place. But, as already noted, Rowena did not actually name Eddie Rael as one of the gang of five (5) who had collectively carried out the robbery and rape that night. Neither was Eddie Rael identified as one of the gang of five (5) by any other witness presented by the prosecution. Strangely enough, Rowena was the only witness actually presented by the prosecution.

Rowena had also declared in court that she and her mother had executed sworn statements, both dated 1 February 1980, before the police authorities at Dagami, Leyte:

"Q. Did you report this incident to the barrio captain or to the police authorities?

A. Yes.

Q. To the police authority?

A. Yes.

Q. You were investigated by the police?

A. Yes.

x x x x x x x x

(Cross-examination)

Q. Who actually reported the matter to the police department, you, or the barangay captain, or your mother, or your father?

A. I, my mother and my father.

Q. Of course you told the details of the incident to the police isn't it (sic)?

A. Yes."34 (Underscoring supplied)

Rowena's and her mother's affidavits became the basis for issuance by Municipal Judge Teofilo P. Avestruz of a warrant of arrest dated 1 February 1980 directed against all five (5) accused in this case.³⁵ In her affidavit, Rowena named the five (5) accused as the persons who had victimized, her family:

"QO7 -- Can you name names (sic) who robbed and raped you?

A -- Yes sir. They were PABLITO RAEI, NESTOR RAEI Alias Nestoray, EDDIE RAEI Alias Manahan, Alias Gamay Cabidog and ELPIDIO EMBOG."36 (Underscoring supplied)

The prosecution, however, failed to offer Rowena's affidavit in evidence. Hence, her averment in that affidavit identifying Eddie Rael, a statement not reiterated in open court during her testimony, never went into the record of the case and, accordingly, could not be taken into account either by the trial court or by this Court.³⁷ Accused Eddie Rael was not therefore given an opportunity to cross-examine Rowena on the statements made in her affidavit. Rowena may well have been truthful in her affidavit when she named Eddie Rael as one of the five (5) malefactors. But the fiscal's errors leave this Court no alternative.

The failure of the lone eye-witness presented by the prosecution to identify the accused Eddie Rael as one of the five (5) perpetrators of the robbery with rape, is a basic flaw that is fatal to the prosecution's cause.³⁸

WHEREFORE, the decision of the trial court dated 4 April 1983 is hereby MODIFIED in the following manner:

1. Appellant Pablito Rael shall suffer the penalty of reclusion perpetua for the robbery perpetrated upon the Saligumba family as well as the rape of Rowena Saligumba committed on the occasion thereof. The indemnity due Rowena in the form of moral damages is hereby increased to Thirty Thousand Pesos (P30,000.00).³⁹ The amount which this accused is obliged to deliver by way of reparation to the Saligumba spouses on account of the robbery is hereby increased to One Thousand Six Hundred Sixty-Eight Pesos (P1,668.00), in order to reflect the aggregate value of all the articles established by the evidence on record to have been taken from them, with interest at the legal rate accruing from the date of promulgation of the decision appealed from on 29 April 1983.⁴⁰

2. Appellant Eddie Rael is hereby ACQUITTED of the crime charged for failure of the prosecution to establish his guilt beyond reasonable doubt.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 9-10.

[2] Record, pp. 18 and 77.

[3] Rollo, p. 22.

[4] Id.

[5] Rollo, pp. 12-15.

[6] TSN, 27 August 1981, p. 28.

[7] TSN, 27 August 1981, pp. 27 and 28, TSN, 10 November 1982, pp. 4-6.

[8] Exhibit "A," Folder of Exhibits, p. 7.

[9] Rollo, p. 15; Folder of Exhibits, p. 6.

- [10] Rollo, p. 97.
- [11] TSN, 10 November 1982, pp. 4-6, 10-11.
- [12] TSN, 15 February 1983, pp. 3-5, 6, 9-10.
- [13] Folder of Exhibits, p. 7.
- [14] TSN, 12 August 1982, pp. 35-37, 40.
- [15] Id., pp. 32-35, 39.
- [16] TSN, 27 August 1981, pp. 14, 20.
- [17] Decision, Rollo, pp. 19-20: *People v. Cinco* 194 SCRA 535, 542-543 (1991).
- [18] Sections 17, 19[a] and 23, Rule 132; Section 7, Rule 130; see *Orient Insurance Co. v. Revilla*, 54 Phil. 925-926 (1930).
- [19] TSN, 27 August 1981, p. 29.
- [20] Appellee's Brief, Rollo, pp. 104-107.
- [21] *People v. Bacalzo*, 195 SCRA 557, 565 (1991).
- [22] *People v. Manago*, 191 SCRA 552 at 561 (1990).
- [23] See *People v. Calixtro* 193 SCRA 314-315 (1991).
- [24] TSN, 27 August 1981, pp. 27-29.
- [25] *People v. Soliao*, 194 SCRA 250, 255 (1991).
- [26] Appellee's Brief, Rollo, pp. 27-29.
- [27] Constitution, Article 3, Section 17; Rules of Court, Rule 115, Section 1 (d) and (e); *People v. Vda. de Cabangahan* 175 SCRA 162, 169-170 (1989); *People v. Ayson* 175 SCRA 216, 233 (1989).
- [28] Rollo, p. 20.
- [29] TSN, 27 August 1981, pp. 7-8.
- 29A Although the trial court in its Decision (at p. 3) identified four (4) persons as having dragged Rowena from the house to the camote field, namely, Pablito Rael, Gamay Cabidog, Elpidio Embog and Nestor Rael, the only evidence on this matter, consisting of Rowena's testimony (TSN, 27 August 1981, p. 16) indicated that only three (3) persons had dragged her to the camote field, namely, Pablito Rael, Gamay Cabidog and Elpidio Embog.
- 31 TSN, 27 August 1981, pp. 11-16 and 26.
- 32 Folder of Stenographic Notes, pp. 29 and 36; the fiscal was Assistant Provincial Fiscal Nilo Bacolod.
- 33 Appellee's Brief, p. 11; Rollo, p. 153.
- 34 TSN, 27 August 1981, pp. 27-28.
- 35 Record, p. 5.
- 36 Id., p. 6.

37 Rule 132, Section 34; *People v. Villapana*, 161 SCRA 72, 79 (1988); *Aquino v. Sison*, 179 SCRA 648, 651-652 (1989); *Tabuena v. Court of Appeals*, 196 SCRA 650, 654-655 (1991).

38 *People v. Tamayo*, 183 SCRA 375, 384-386 (1990). See also *People v. Ablao*, 192 SCRA 698, 702-704 (1991).

39 *People v. Tumulad*, 188 SCRA 203, 215 (1990).

40 Civil Code, Article 2211; Decision, Record, p. 207.

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