

FIRST DIVISION

[G.R. No. 118946, October 16, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICO
JAMLAN SALEM, ACCUSED-APPELLANT.
D E C I S I O N**

BELLOSILLO, J.:

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 Jamlan 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?