

FIRST DIVISION

[G.R. No. 105676, April 10, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN ESPANOL Y DE LOS SANTOS, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

This is an appeal from the decision of the Regional Trial Court, 9th Judicial Region, Dipolog City, Branch 10, convicting accused-appellant Benjamin Espanol y de los Santos of the crime of Rape and sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the victim Teofila de los Santos in the sum of P30,000.00 and to pay costs.

As a result of the filing by Teofila de los Santos of a complaint dated August 24, 1989,^[1] the following information was filed against appellant:

That in the afternoon, on or about the 20th day of April, 1989, in Barangay San Francisco, City of Dapitan, within the jurisdiction of this Honorable Court, the above-named accused, armed with a handgun, moved by lewd and unchaste design, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously hug, kiss, box her right thigh, poke a handgun on her, threatened her, laid her down, removed her panty, then lay on top of her and have sexual intercourse with one TEOFILA DE LOS SANTOS nee Manlupig, against her will and without her consent.^[2]

Upon arraignment, appellant pleaded not guilty.^[3] Trial ensued, resulting in the conviction of appellant.

The trial court gave full faith and credence to the testimony of the victim Teofila de los Santos, as summarized in the People's Brief, thus:

On April 20, 1989 at about 9:00 o'clock in the morning, complainant Teofila de los Santos and some members of the local farmer's association, including appellant Benjamin Espanol, attended a group work locally known to them as "pahina" or "pintakasi" on the land of Mayor Saturnino Bohol situated in Barangay Silano, Mutina, Zamboanga Del Norte (tsn, March 6, 1991, pp. 3 to 4).

At around 4:00 o'clock in the afternoon, Teofila, before going home, rested a little as she and some of her companions, including appellant, lived in Barangay San Francisco, Mutina, Zamboanga Del Norte. Barangay

San Francisco is about four (4) kilometers away from Barangay Silano. After resting for about thirty (30) minutes, Teofila, Picto Maghinay and appellant started to walk home (Ibid., p. 5). Later, Picto Maghinay followed another road leading to his house, hence, Teofila and appellant were left alone (Ibid.).

Along the way, appellant and Teofila passed by a creek and upon crossing the creek, appellant suddenly stopped and held her arm. Teofila resisted and tried to push appellant away but he was able to hold her tight and drag her by the side of the trail. Then, appellant boxed Teofila at her thigh and pointed a handgun at her. Teofila struggled to free herself but he prevailed since he was stronger. He removed Teofila's pants, and his own pants. At this point, Teofila continued to resist appellant but she could not shout because she was intimidated by the handgun pointed at her by appellant. Thereafter, appellant lay on top of her and had sexual intercourse with her (Ibid., pp. 5 to 7).

After appellant had satisfied his lust, he got up and left Teofila (Ibid., p. 8). On her part, Teofila immediately proceeded home and informed her husband about the incident. The following day, Teofila and her husband reported the matter to the police authorities at Dapitan City (Ibid., pp. 9 to 10).^[4]

The physical examination of Teofila, conducted by Dr. Filipinas S. Nielo on April 22, 1989, disclosed the following:

- I.E. - Vagina admits 2 fingers with ease
- Multiple old vaginal lacerations around
- Slight vaginal bleeding noted (Regular menses -3rd day)
- Contusion hematoma noted at the right anterior middle thigh

NOTE; VAGINAL SMEAR FOR SPERMATOZOA TAKEN- NEGATIVE^[5]

Dr. Nielo testified that the hematoma could have been caused by boxing blow on Teofila's thigh.^[6]

The defense gives a different version of the incident.

Appellant admits having sexual intercourse with Teofila but asserts that they were lovers.

Appellant says that after the "pahina," he and Teofila agreed to meet at the copra dryer of a certain Gil Saliot, where they had sexual intercourse.^[7] In the course of their love-making, they heard a sound, like a coconut falling to the ground. Startled, and suspecting that the sound came from a peeping tom, Teofila pushed appellant and in her struggle to stand up, his knees hit her thigh, which explains the bruise on it.^[8] That sound turned out to come from peeping toms Catalino Dahilog, Jr. and Policarpio Donggon.^[9] A few days later when appellant asked Teofila why she filed a

case against him, she replied that she had to do it to cover their illicit relationship because she suspected that someone had seen them at the copra dryer.^[10]

Appellant presented as his witnesses Gil Saliot and Honorato Altamera, who testified that during the "pahina," appellant and Teofila openly showed affection for each other by "pinching," "whispering," and "caressing."^[11]

Also presented for the defense was Catalino Dahilog, Jr., who testified that he saw appellant go to Gil Saliot's copra dryer, followed by Teofila. He, with a certain Policarpio Donggon, approached the copra drier to peep, and saw appellant and Teofila in the act of sexual intercourse. They startled the couple when the foundation they were standing on slipped and they fell to the ground. He then saw Teofila struggle to get up.^[12]

In this appeal, appellant raises the following assignment of errors:

THE COURT A QUO GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE OFFENDED PARTY DESPITE THAT THE SAME WAS FRAUGHT WITH INCONSISTENCIES AND IMPROBABILITIES.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE EVIDENCE OF THE ACCUSED-APPELLANT THAT HE AND TEOFILA DE LOS SANTOS WERE LOVERS, AND THEY BOTH MUTUALLY AGREED TO MAKE LOVE IN THE COPRA DRYER OF GIL SALIOT.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE COMPLAINING WITNESS HAD NO REASON TO FABRICATE AND INVENT HER STORY OF RAPE DESPITE THE FACT THAT CONTRARY EVIDENCE SHOW THAT SHE CONCOCTED THE CHARGE TO HIDE HER ILLICIT RELATIONSHIP WITH THE ACCUSED-APPELLANT.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME AS CHARGED DESPITE THE UTTER FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

^[13]

Appellant asserts that Teofila's testimony is fraught with inconsistencies, to wit:

a. On direct examination, she stated that after attending the "pahina," she, with appellant and a certain Perfecto Maghinay, went on their way home together. On cross-examination, she failed to name Maghinay as one of her companions, but remembered Concepcion Altamera, Perla de los Santos, Gil Saliot, Tomas Fuerza and his wife.

b. On direct examination, she stated that Maghinay, as they were on their way, took another route, leaving her and appellant. On cross-examination, she again forgot to mention Maghinay.