

EN BANC

[G.R. No. 132169, October 26, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SANICO NUEVO @ "SANY," ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On automatic review is the decision^[1] of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, finding accused Sanico Nuevo @ "Sany" guilty of rape and sentencing him to death.

His conviction stemmed from the following information:^[2]

That, in the evening, on or about the 4th day of December, 1994, in the municipality of Godod, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste design and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one ROBERTA CIDO, a 20 year old married woman, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).

A plea of not guilty was entered upon arraignment.

During trial, the prosecution presented three witnesses, namely: (1) complainant Roberta Cido; (2) Anselmo Cido, Jr., the complainant's husband; and (3) Dr. Esmeralda Nadela, a resident physician of the Sindangan District Hospital, Sindangan, Zamboanga del Norte. They testified as follows:

ROBERTA CIDO^[3] recalled that at about 9:00 o'clock in the evening of December 4, 1994, Sanico Nuevo passed by their house and invited her husband Anselmo Cido, Jr., to a drinking spree at the house of Anselmo, Sr., her father-in-law.^[4] She was left at home with her 10-month-old daughter and her nine-year-old niece Gemma Atis. They slept in the living room, *cum* bedroom, the only room in the house.^[5] At around 11:00 P.M., appellant surreptitiously returned and entered their room. She was awakened when appellant held her neck, pinned down her arms and took off her clothing. While Sanico was removing her panties, she struggled to extricate herself but to no avail. She was unable to shout because appellant was covering her mouth. While she was lying on her back, appellant laid on top of her and proceeded to forcibly have sexual intercourse with her, at the same time pinning her down with a bolo. As this was happening her niece Gemma, who was present, witnessed what

was being done to her. Appellant even warned Gemma not to reveal what she saw and at the same time threatened Roberta not to tell her husband about the incident or else he would kill her.^[6] He thereafter left the house.

Roberta further testified that her husband Anselmo, Jr., returned home only the morning after. She immediately told her husband about the previous night's incident. The latter hastened to the house of Sanico but did not find him. Appellant was arrested that same afternoon.^[7]

Although Roberta testified on cross-examination, that she did not see him because it was very dark that night, she identified him through his voice.^[8] She was certain it was he because she was very familiar with appellant's voice. Not only have they been neighbors since childhood, she also heard the appellant when he invited her husband earlier that evening, and when he warned her and her niece not to tell anyone what happened.

For his part, ANSELMO CIDO, JR., corroborated part of his wife's story. He narrated that at around 9:00 P.M., December 4, 1994, Sanico with companions dropped by their house and invited him to a drinking spree in his father's (Anselmo, Sr.) house, about 50 meters away from theirs. While there, they drank until dawn. Sanico left his father's place at around 11:00 P.M., purportedly to answer the call of nature, and returned only at around 1:00 A.M. of December 5, 1994. At the time Sanico left, Anselmo, Jr., observed that he was carrying an 18-inch bolo. When Anselmo, Jr., arrived home early in the morning, his wife told him of her ordeal.^[9]

DR. ESMERALDA NADELA testified on her medical findings contained in her Medico-Legal Certificate dated December 6, 1994, which document^[10] she brought along and read in open court. She said Roberta told her that the latter was submitting herself for medical examination because she was raped, and that her last sexual contact with her husband was a week before the incident. Nadela testified further that based on her examination conducted two days after the alleged incident, no fresh injuries were actually found on the victim; that only old lacerations were present; that such absence was possible due to the victim's previous child birth; and that no spermatozoa was found on the victim, which was likely because the examination was conducted only two days after the alleged rape.^[11]

For the defense, two witnesses were presented. First was the appellant himself, SANICO NUEVO. He declared that he knew Roberta since they were schoolmates in grade school and she was a former neighbor. He lived about 100 meters from her house. Moreover, her husband Anselmo, Jr., was his "*barkada*". He recounted that at about 6:30 P.M., December 4, 1994, his father and he went to the house of Anselmo, Sr., to buy Tanduay Rum and drank with their friends Rudy and Ami Tinambakan. On the way, they had to pass by the house of Anselmo, Jr. He denied he invited the younger Anselmo to go drinking as the latter's house was already close by. It was Anselmo, Jr., who later followed and joined them until around 10:30 P.M. Appellant said he stayed in the house of Anselmo, Sr., where he slept at around 12:00 o'clock midnight. It was already 6:30 A.M. the following day when he woke up. He denied raping Roberta. He added that the house of Anselmo, Sr., was only about 35 meters from the house of Roberta.^[12]

The second witness for the defense was EMELIO^[13] NUEVO, brother of appellant. He claimed that he was with his brother Sanico and two neighbors the night of the incident. He corroborated his brother's story that they were drinking at the house of Anselmo, Sr., and he noticed his brother asleep on the upper floor of Anselmo Sr.'s house, when he left at around 5:00 A.M. early in the morning while the others were still dancing downstairs. He admitted, however, that he told no one of seeing his brother sleep in the house of Anselmo Sr., even when he found out that his brother was to be arrested, and even when he saw him tied up and already in the custody of the police. He did not disclose this fact, even when he was already alone with his other brother who was a councilor of their place. It was only in his testimony during trial that he chose to reveal these facts in Sanico's defense. He also said he was not aware of any misunderstanding between his brother and the spouses Roberta and Anselmo, Jr.^[14]

The trial court found the prosecution's version of events credible and disbelieved that of the defense. It rendered judgment as follows:

IN VIEW OF THE FOREGOING, the Court finds the accused SANICO NUEVO guilty beyond reasonable doubt of the crime charged in the above-quoted information with aggravating circumstances of dwelling (Article 14, (3) of the Revised Penal Code; *People vs. Padilla*, 242 SCRA 629) and committed in full view of the relative within the third degree of consanguinity (Sec. 11 R.A. 7659), but since no mitigating circumstances (sic) to offset the above aggravating circumstances, the Court hereby sentences the accused Sanico Nuevo to suffer the maximum penalty provided by law which is DEATH and to pay the private offended party in the sum of P50,000.00.

COSTS de officio.

SO ORDERED.^[15]

In his brief, appellant assigns one error only:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT SANICO NUEVO OF COMMITTING RAPE AGAINST ALLEGED VICTIM ROBERTA CIDO DESPITE INSUFFICIENT EVIDENCE OF HIS POSITIVE IDENTIFICATION.^[16]

In resolving cases of rape, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the appellant, although innocent, to disprove; (b) in view of the intrinsic nature of the crime 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 merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense (*People vs. Quijada*, 321 SCRA 426 [1999]); and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in