

SECOND DIVISION

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

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

D E C I S I O N

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 ₱50,000.00 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 ₱50,000.00 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 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:

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

II. 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 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.