

FIRST DIVISION

[G.R. No. 121979, March 02, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SAMUEL ULZORON, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

SAMUEL ULZORON was charged with rape with the use of a deadly weapon. Complaining witness was Emily Gabo. On 8 March 1995 the trial court adjudged him guilty as charged and sentenced him to *reclusion perpetua*. [1] No indemnity was awarded to Emily for the sexual assault.

On 31 March 1987, at around 10:00 o'clock in the morning, Emily was watering her plants near a well in Brgy. Tumarbong, Roxas, Palawan, when Samuel suddenly appeared. He was armed with a 2-foot long bolo hanging in its scabbard around his waist with a long-sleeved work shirt slung over his shoulder. He asked Emily where her husband was. She replied that Roberto was already in the *kaingin* so she advised him to follow her husband there. But Samuel opted to remain and rest on an anthill some two and a half (2 ½) meters from the well. [2]

After Emily finished watering her plants and before she could start washing clothes, Samuel grabbed her wrists and locked them with one hand behind her back with the other drawing his bolo and pointing it at her neck. She struggled to free herself from his hold but was so intimidated with the bolo that she could not shout for help; she lost her strength eventually. After she weakened, he dragged her some forty (40) meters away to the bushes and tall grasses. He forced her to lie down; then he mounted her. He laid his bolo beside him, pinned her arms with one hand, and with the other, loosened the buttons of her dress. Emily could only struggle in vain until he ripped off her dress and panties. He opened the zipper of his pants and then inserted his penis to her vagina. He copulated with her for about fifteen (15) minutes. She did everything to disengage herself from the sexual imbroglio but her efforts proved no match to his strength. [3]

At this moment, Emily heard her husband's voice calling for her. Roberto was now somewhere within the *vicino*. He saw Emily's slippers near the well so he frantically hollered, "Baby!" She answered back. When Roberto's voice was heard by Samuel, he dashed off and fled to the thickets. [4]

Roberto followed the direction of Emily's voice until he saw her emerge from the thick bushes. She was in a state of shock. He asked her what happened and she told him that she was sexually abused by Samuel Ulzoron. Emily pointed Roberto to the place where she was dragged and raped. Together when they went there and found Ulzoron's bolo and work shirt and took them home. [5]

The following afternoon, Emily went to Dr. Feliciano M. Velasco Jr. for physical examination. The doctor noted the discharge mixed with semen in her private part. He

opined that it could have been caused by sexual intercourse within twenty-four (24) hours prior to his examination. He found her cervix to be parous with superficial erosions. Her hymen was obliterated with caruncles.⁶ The next day Emily lodged a complaint for rape against Samuel Ulzoron as she turned over his belongings to the police authorities as her evidence in support thereof.⁷

Ulzoron had his own story to tell. He said that on the day of the incident he saw Emily at the well. She told him that work in the *kaingin* would be in the afternoon yet so she advised him to come back. Since he was returning in the afternoon, he decided to leave his bolo and work shirt near the well. However, at around 10:00 o'clock that morning, as he was about to retrieve his bolo and shirt, he saw the Gabo spouses having sexual intercourse in a hut with a wall only on one side. As he was ashamed to be seen by them he proceeded instead to the house of a relative.⁸

On the strength of the testimony of Emily Gabo, the trial court convicted the accused. It found her testimony straightforward and credible. It rationalized that she would not have filed her complaint for rape if her accusations were not true, for to do so would only expose herself to public shame or ridicule. No improper motive on her part to file the case had been shown. The findings of the examining physician also lent credence to her claim. On the other hand, the trial court found the defense of the accused too weak, anemic, for if Ulzoron really felt embarrassed to be seen by the Gabo spouses, he could have taken a detour or passed another way to get back his bolo and work shirt. Besides, it was never established that the Gabos had so much yearning for each other that they had to indulge in sexual congress in a hut that was open to public view and at such an unlikely hour.⁹

Appellant concedes, even as he assails his conviction, that his defense is inherently weak. Nevertheless, he faults the trial court for convicting him on the basis of his defense. He argues that the undisputed facts and circumstances made it more likely that Emily was involved in an adulterous relationship with him.¹⁰ He claims, for instance, that there was absolutely nothing to support the victim's claim of struggle, and that while he allegedly dragged her forty (40) meters away before assaulting her sexually, the examining physician could not conclude that physical force was actually inflicted since she did not sustain any physical injuries.¹¹ Another point raised by the defense in her testimony that while he was on top of her his bolo was beside him. The plain import of such testimony, according to the accused, is that the bolo was not a necessary instrument in the commission of the crime.¹² He also invites attention to the circumstance that the judge who wrote the decision did not personally try the case and therefore lacked the opportunity to observe the demeanor of the parties and their witnesses.¹³

The arguments of appellants are unpersuasive ; they fail to convince us. Contrary to his claim that he was convicted because of his weak defense, his conviction was actually founded on the overwhelming evidence of the prosecution. With regard to his claim that he had an adulterous relationship with the victim, the Office of the Solicitor General observed that such claim was a radical departure from the defense of denial he raised at the trial. The OSG observed further that the "sweetheart defense" was being raised for the first time in this appeal hence should be disallowed conformably with established jurisprudence.¹⁴ Here, the Court does not necessarily agree. Appellant could only be emphasizing the point that the facts and circumstances established could lead to a conclusion of the existence of adulterous relationship between him and Emily and not of rape. In other words, appellant could be utilizing the "sweetheart theory" not necessarily as a defense but as a focal point in disputing the