

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY BELARMINO, DEFENDANT-APPELLANT.*G.R. No. L-46204. November 29, 1984*

Ponente: CONCEPCION JR., J.

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On January 29, 1973, Elsie M. Besande, a 16 year-old girl from Blanco, Balingasag, Misamis Oriental, took a bus at Musi-musi of the same municipality, together with her 15 year-old friend and neighbor, Marina Ecaranum, with the intention of going to Camp 9 at Libona, Bukidnon, to look for a job at the pineapple plantation of the Philip-pine Packing Corporation. Upon reaching Crossing Puerto, in Cagayan de Oro City, the two girls transferred to Bus No. 202 of the G.I. Trans. Co., driven by Rudy Belarmino. They were informed that the bus would go to Camp 14 first, then to Sta. Fe, and finally, to Camp 9.[1] Upon reaching Sta. Fe, about 7 kilometers from Camp 9,[2] only Elsie and Marina were the passengers left in the bus. As it was already noon, Rudy Belarmino and his conductor, Romeo Reconcoc, ate their lunch at the latter's house. Elsie and Marina remained in the bus and ate the bread they had bought at Puerto. After lunch, Rudy Belarmino, sensing that the two girls did not know where they were going, told them that they would go to Crossing Libona first to get some things. Upon reaching Crossing Libona, however, the driver did not stop and proceeded towards Kiliog. After some time, Marina became impatient and complained to the driver, asking how far they had to go for the things to be picked up, and was informed that the place is a little bit farther. The bus travelled on, and on reaching the poblacion of Libona, they stopped to buy some cigarettes from a store across the municipal building, after which they proceeded on their way. After travelling for some time, a woman hailed the bus, but Rudy Belarmino did not stop. Instead, he signalled the woman that he would take her on his way back. The two girls became apprehensive as they did not know the place and it was already 4:00 o'clock in the afternoon. But, Rudy Belarmino assured them that they would be brought to their destination safe and sound. However, the two girls became alarmed when at about 7:00 o'clock in the evening, Belarmino and Reconcoc started making amorous advances on them,[3] and when Reconcoc embraced Marina and kissed her, Marina jumped out of the running bus. Reconcoc followed her and they wrestled on the ground. Fortunately, Marina was able to take hold of a stone and with it, hit Reconcoc on the head. Reconcoc was momentarily stunned and released his hold, and Marina scampered away. Reconcoc ran after her. Marina continued to run, without knowing where she was going, until she saw a religious procession at a distance. She joined the procession and recounted her experience to the people and they almost mobbed Reconcoc, had not a barrio councilman intervened and brought Marina and Reconcoc to the house of the barrio captain. Marina was informed that the place was called Kiliog. Marina complained to the barrio captain about the attempt of Reconcoc to rape her, but the barrio captain, by the name of Agustin Docdocil, dissuaded her from filing a case against Reconcoc as she was poor. Marina spent the night in the house of the barrio captain and the next day, she proceeded to Camp 9.[4]

When Marina jumped out of the bus, Elsie tried to follow her, but Belarmino held her by the arm and accelerated the bus he was driving, at the same time assuring Elsie that she would be brought to her destination safely. However, upon reaching an isolated place, Belarmino stopped the bus and rushed at Elsie and embraced her. Elsie

struggled to get away and pleaded with Belarmino not to do anything bad to her, but Belarmino showed her no mercy. Elsie also shouted for help.[5] Rosario Llanes, who was in their corn field about 200 meters away from the road, heard her screams.[6] Finally, when Elsie was already weak, Belarmino succeeded in pinning her down on her back on the front seat of the bus. He rode astride her and pressed her right thigh with his left leg, and his left arm over her breasts. Then, he pulled her pants down to her ankles, tore her panty off, and had carnal knowledge of her despite her resistance. She felt pain and after the sexual intercourse, blood oozed from her vagina to the seat of the bus, such that Belarmino had to use her sando to wipe off the blood from the seat of the bus. Thereafter, Belarmino told Elsie to change her dress and brought her to the house of his brother-in-law, Moreto de Asis, in Kiliog, Libona, Bukidnon.[7] Elsie was warned not to reveal the incident to anybody, otherwise, she would be killed. Be-cause of her fatigue and body pains as a result of her harrowing experience, Elsie slept almost immediately. The next morning, Belarmino brought Elsie to the house of one Junior Bagotsay in Cagayan de Oro City. Belarmino stood guard over Elsie, but, when Belarmino turned his back, Elsie escaped. On her way to the bus terminal, she met a policeman to whom she recounted her sad tale.[8] The policeman brought Elsie to the City Hall where she was interviewed by Pat. Leo Dagbay. Elsie was pale and trembling. After the preliminary examination, the police-man brought Elsie to the J.R. Borja Memorial Hospital for examination. However, she was not examined there. So, the policeman took her to the Northern Mindanao Training Hospital, also in Cagayan de Oro. But, the doctor was busy and they were told to come back in the afternoon. After lunch, Elsie went back to the hospital and Dr. Apolinar Vacalares examined her and found fresh lacerations in her vagina, with minimal bleeding, and positive for spermatozoa.[9]

From the hospital, Elsie went to her friend at the Four Roses Trading in front of the market place of Cagayan de Oro, where she passed the night.[10] The next day, January 31, 1973, she went home to Blanco, Balingasag, Misamis Oriental and related to her mother the harrowing ordeal she suffered in the hands of Belarmino.[11] Her mother, Melania, sought advice from the Chief of police of Balingasag who told her to get a medical certificate and file a case in Libona, Bukidnon.[12] Elsie was immediately brought back to Cagayan de Oro where she executed a sworn statement,[13] and on February 2, 1973, she went to Libona, Bukidnon and filed a complaint for rape against Rudy Belarmino.[14]

In his defense, Rudy Belarmino admitted that he had sexual intercourse with Elsie Besande on the night of January 29, 1973, but denied using force. According to him, it was the complainant who proposed that they sleep together and have sexual intercourse in the house of Moreto de Asis and not in the front seat of the bus, as claimed by the complainant. The trial court summarized his defense, as follows:

"The defendant Rudy Belarmino in his defense denied the rape and claimed to have sexual inter-course with the offended party twice in the house of Morito de Asis at Kiliog, Libona, in the evening of January 29, 1973, with her consent. He alleged that Elsie Besande and her companion Marina Ecaranum boarded his jeep at Camp 14, Philipps, Manolo Fortich, Bukidnon and not at Puerto, at about 9:00 o'clock that morning when he arrived thereat from Cagayan de Oro City. From there he proceeded to Sta. Fe to conduct other passengers and ate lunch in the house of his conductor Romeo Reconoce. While he was resting in said house however, Marina Ecaranum and Elsie Besande allegedly went up so that they came to know each other. They listened to stereo music for some time but at half past 3:00 o'clock in the afternoon they resumed their journey and told Elsie Besande and Marina Ecaranum that he could no longer go to Camp 9 about 7 kilometers from Sta. Fe for lack of fuel and advised them to take another vehicle but the girls refused. From Sta. Fe they proceeded to the municipal building of Libona where he bought some cigarettes and then to Kiliog, about 30 kilometers away. However, when they reached Kala-kala about 23 kilometers from Sta. Fe, they stopped for sightseeing. Because Marina Ecaranum went down from the vehicle with Romeo Reconoce, Elsie Besande told him to give them a chance. So he left them there and drove his jeepney to Kiliog with Elsie Besande alone. They reached Kiliog at about 7:00 p.m. and he brought Elsie to the house of Morito de Asis who gave her a room for the

night. She however suggested that they go first to the house of the barrio captain to visit Marina and Romeo Reconoce when a barrio councilman called at the house of de Asis and informed them that she was there. In the house of the barrio captain he talked to Marina Ecaranum who was complaining of her bruises and the loss of her sandals but Elsie Besande did not go up the house to see her. Later they returned to the house of de Asis and as he was about to sleep in the sala he was beckoned inside the room by her and they made love with each other and finally engaged in sexual intercourse twice before sleeping.

"The next morning, they called again at the house of the barrio captain to fetch Marina Ecaranum but the latter refused to go to Cagayan de Oro with them and advised Elsie instead to complain to the barrio captain against him. The offended party nevertheless told Marina Ecaranum that nothing happened to her and left Marina in the house of the barrio captain. They then drove to Cagayan de Oro and ate their breakfast in the New Asia Restaurant before going to the house of his friend Junior Bagu-chay so that Elsie could take a bath. He left the house for a while and on his return found Elsie already gone.

"The accused further testified that Elsie Besande and Marina Ecaranum carried paper bags of clothing, but did not tell him of their destination when they boarded his bus at Camp 14; that he wanted to leave them at Sta. Fe but the two girls begged to go with him and his conductor to Cagayan de Oro City even if they would be benighted on the way so that he brought them along.

"Morito de Asis, a brother-in-law of the accused, testified that Rudy Belarmino arrived in his house at Kiliog at about 7:00 o'clock in the evening of January 29, 1973 with the girl Elsie Besande, and requested permission to pass the night there. That when the accused went out for a short while, he asked her where she came from and she told him from Balingasag and was on her way to Camp 9. He asked her then why they have come to his place instead of going direct to Camp 9 and she allegedly replied to be looking for her companion. He was preparing separate rooms for them when a man called from the road and informed him that the barrio captain wanted to see him. When Rudy Belarmino learned about the call he and Elsie decided to go with him. They drove to the captain's house in the same truck of the accused and upon their arrival he found there Marina Ecaranum who was complaining of her bruises that she showed to them. Rudy Belarmino also asked her what happened but she refused to answer so that Rudy invited her to go with them to his house but she refused because the barrio captain was still investigating her.

"The next day, Rudy again asked him to go with them to the house of the barrio captain and upon arrival there, Elsie Besande went up and talked to Marina Ecaranum who advised Elsie to complain to the barrio captain. Elsie however told Marina that there was nothing to complain about. They went back to his house and shortly after Elsie Besande asked permission to leave for Cagayan de Oro with Rudy Belarmino. De Asis further testified that he learned upon arrival at the house of the barrio captain that Rudy Belarmino brought him there because Marina Ecaranum and Romeo Reconoce were apprehended by one of the barrio councilors during the procession because of her complaint about her bruises and the loss of her sandals.

"Agustin Docdocil, the barrio captain of Kiliog, testifying for the defense, said that in the evening of January 29, 1973, as he was taking supper, one of his barrio councilmen brought a girl named Marina Ecaranum to his house with the bus conductor Romeo Reconoce because Marina complained that Reconoce tried to abuse her. While he was still investigating them at about 9:00 o'clock that evening, Rudy Belarmino arrived with Morito de Asis and Belarmino talked with Marina who refused to go with them to the house of Morito de Asis. Shortly after, Rudy Belarmino and De Asis went down to get the girl from the jeep outside who was introduced to him as Elsie Besande. The girl however did not complain of anything to him. The next day, at about 9:00 o'clock, Marina took another bus to Cagayan de Oro City after refusing again to go with Elsie Besande in the vehicle driven by the accused."

On July 26, 1976, the Court of First Instance of Bukidnon rendered a decision, the dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered find-ing the accused RUDY BELARMINO alias Rudy, guilty beyond reasonable doubt of the crime of RAPE, con-trary to and in violation of Article 335 of the Re-vised Penal Code, as amended by Republic Act No. 4111 for which he is hereby sentenced to suffer imprisonment for the rest of his natural life which shall not, however, exceed thirty (30) years, with all the accessory penalties provided by law, to in-demnify the offended party Elsie M. Besande in the sum of Six Thousand (P6,000.00) Pesos as moral dam-ages for the humiliation, mental anguish and anxiety she suffered and to pay the costs.

"As the offended party did not become pregnant, no pronouncement is made with respect to support of the offspring."

From this judgment, Rudy Belarmino appealed, claiming that the trial court erred in giving weight to the incredible testimony of Elsie Besande and in convicting him on the basis thereof. He cites the following circumstances which allegedly militate against the claim of Elsie Besande that she was raped on the night of January 29, 1973:

1. Absence of contusions, bruises, and scratches on the body of the complainant; and
2. Complainant is bigger than the accused so that she could have easily prevented him from molesting her.

The contention is without merit.

1. The absence of contusions, bruises and scratches on the body of the complainant does not necessarily show lack of resistance on the part of the complainant. The element of force was established not only by the testimony of the injured girl, but also by the fact that the garments worn by her at the time were torn and heavily stained with blood.[15]
2. The fact that the complainant was found by the trial court to be "a robust young woman with well deve-loped breasts, with solid constitution including her upper stems which are quite muscular for a girl of her age" and the accused, "while appearing to be taller is quite thinner in body" and "has weary arms",[16] does not preclude the use of force in the accomplishment of the rape com-plained of. The comparison was made 21 months after the commission of the offense and the complainant, who was only 16 years old when she was ravished by the appellant, may not have been as robust and husky as the appellant at the time.

Counsel for the appellant also points to the follow-ing unrefuted facts which are allegedly conclusive evi-dence of the fact that the sexual intercourse in question was with the consent of the complainant, to wit:

- 1) The supposed victim Elsie Besande did not deny that accused Rudy Belarmino courted her;
- 2) At Sta. Fe when they were invited for lunch, they played and listened to stereo music for almost 3 hours;
- 3) The conductor Romeo Reconoce stopped a jeep at Sta. Fe for Elsie Besande and Marina Ecaranum, for them to board for Camp 9 but they refused on the ground that they have no fare money;
- 4) Elsie Besande did not deny that she was given money by the accused;
- 5) Elsie Besande and Marina Ecaranum did not alight, much less complain when the accused stopped for about ten minutes in front of the municipal building of Libona to buy cigarettes; if it were true that they were given the run-around, they could have escaped during the stop-over or while the bus was negotiating its way toward Kiliog considering that the bus was running slowly due to the presence of potholes and the rugged condition of the road;
- 6) The supposed victim and Marina Ecaranum did not refute the testimony of the ac-cused that they agreed to ride with them to Cagayan even if benighted on the way, and that upon the suggestion of Elsie Besande, they stopped at Kala-kala to see the view;

7) Elsie Besande, the first time they went to the house of the barrio captain of Kiliog, chose to remain alone in the jeep at which instance, she could escape, had she wanted to;

8) The second time they sent back to the house of the barrio captain, Elsie Besande was urged by her companion Marina Ecaranum to file a charge saying: "Els, you file a charge, this is a barrio cap-captain"; to which Elsie Besande answered: "Why will I file a charge when nothing happened to me"; and

9) Elsie Besande, the supposed victim failed to explain why she kept on going with the accused, rode on the front seat beside the accused always after the incident. In fact, she agreed and rode back to Cagayan de Oro City with the accused. They took their breakfast at New Asia Restaurant and took her bath at the house of Junior Baguchay. She could have chosen to remain at the house of the Barrio Captain as what her companion Marina Ecaranum had done in the first chance she had. This attitude is highly unnatural for a woman who has undergone an outrage.

These unrefuted statements, however, cannot be unquestionably considered as conclusive evidence. In order that uncontradicted statements may be considered conclusive evidence, it is necessary that the witness testifying thereon deserves credence and the events on which he testify fill the necessary requisites of probability and credibility. In the instant case, the testimony of Rudy Belarmino was found to be inherently incredible so that the statements pointed out by him, although uncontradicted, are not conclusive. The trial court said:

"After a judicious evaluation of the evidence presented the court is constrained to arrive at a firm conviction that the defense offered by the accused is palpably untenable and devoid of any reasonable basis. His manifest lack of candor on the witness stand coupled with the inherent improbabilities of his testimony detract from his credibility." (Italics supplied)

At any rate, these statements have been fully explained by the Solicitor General in his Brief.

Counsel for the appellant also impugns the credibility of the complainant on the ground that her testimony conflicts with the sworn statement she had previously signed. Counsel argues:

"What is worse, the testimony of the supposed victim greatly varies from the Sworn Statement of the Complainant, English translation thereof is marked as Exhibit '1'. Among other things, the following are the vital inconsistencies: In the Sworn Statement the supposed victim admitted: 'We were invited by them to eat and so we took our lunch'; At the witness stand, however, she denies this. (TSN, p. 104, Dec. 10, 1974); In the sworn statement, Elsie Besande stated that 'x x x Rudy was able to remove my trousers and panty until I was undressed by him and he forced me to spread my legs x x x'. But, at the witness stand, she testified she was not completely stripped off during the intercourse. Her pants were only up to her legs. (TSN, p. 115, Dec. 10, 1974)."

These inconsistencies, pointed out by counsel for the appellant, however, refer to minor details which do not materially affect the main story of the complainant. The variance, if it be so, does not detract from the fact that Belarmino had sexual intercourse with the complainant against her will. Besides, the sworn statement was not prepared by the complainant so that it may contain inaccuracies in the interpretation of her declarations.

On the whole, the judgment of the trial court is correct, except that the sentence of "imprisonment for the rest of his natural life which shall not, however, exceed thirty (30) years," imposed upon the accused-appellant, should be changed to "reclusion perpetua."^[17] The amount of indemnity to be paid to the offended party should also be changed and increased to P30,000.00.

With these modifications, the decision appealed from should be, as it is hereby, **AFFIRMED**. With costs against the accused-appellant.

SO ORDERED.

Makasiar, Aquino, Abad Santos, Escolin, and Cuevas, JJ., concur.

- [1] t.s.n. of December 5, 1974, p. 66.
- [2] t.s.n. of November 11, 1975, p. 28.
- [3] t.s.n. of December 5, 1974, pp. 67-69.
- [4] t.s.n. of March 5, 1974, pp. 7-11.
- [5] t.s.n. of December 5, 1974, pp. 69-72.
- [6] t.s.n. of April 11, 1975, p. 40.
- [7] t.s.n. of December 5, 1974, pp. 72-81.
- [8] t.s.n. of December 10, 1974, pp. 115-128; 160.
- [9] t.s.n. of April 11, 1975, pp. 56-57; t.s.n. of October 25, 1974, pp. 45-48, Exh. B.
- [10] t.s.n. of December 5, 1974, p. 87.
- [11] t.s.n. of December 10, 1974, pp. 133-135.
- [12] t.s.n. of October 25, 1974, pp. 8-9.
- [13] Exhibit 1.
- [14] Exhibit A-2.
- [15] t.s.n. of December 5, 1974, p. 73; see *People vs. Licerio*, 61 Phil. 361.
- [16] t.s.n. of Oct. 25, 1974, p. 54.
- [17] *People vs. Mobe*, 81 Phil. 58.

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