

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REMUS F. BUSA, JR., ACCUSED-APPELLANT.

G.R. No. 116808. April 11, 1997

Ponente: VITUG, J.

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VITUG, J.:

It is abhorrent enough that a woman becomes a piteous victim of violence and rape from a fellow being but when she even is refused immediate medical treatment for her severe injuries by a hospital no less, the outrage compounds to unbelief.

For consideration by the Court is a petition for review on certiorari assailing the decision of the Regional Trial Court of xxx, Branch xxx, in Criminal Case No. 91-23872 entitled, "People of the Philippines vs. Renato Morales, Remus Busa, Jr. and Luis Cariaga."

The complaint that charged the three accused, signed on 02 September 1991 by the complainant at the office of the Anti-Organized Crime Division of the National Bureau of Investigation, read:

"The undersigned, AAA, accuses RENATO C. MORALES, REMUS F. BUSA, JR. and LUIS C. CARIAGA of the crime of Rape under Article 335 of the Revised Penal Code, as amended, committed as follows:

"That on or about 7:30 P.M. of July 12, 1991 along xxx Avenue in front of xxx Institute, xxx City, within the jurisdiction of this Honorable Court, the said accused, in conspiracy with one another, did then and there wilfully, unlawfully and feloniously, with the use of force and violence which rendered the undersigned unconscious, sexually assault and succeed in having sexual intercourse with the undersigned.

"That as a direct consequence of the aforesaid crime committed by the accused against the undersigned, the undersigned sustained not only actual damages but also suffered mental anguish, sleepless nights, worry, serious anxiety and besmirched reputation compensable in moral and exemplary damages under the Civil Law and as maybe determined and fixed by this Honorable Court.

"CONTRARY TO LAW." [1]

The factual events, according to the prosecution, might be narrated, as follows:

It was past 7:30 in the evening of 12 July 1991. Sixteen-year old AAA was walking along xxx Avenue, past xxx Street, towards xxx Avenue, xxx City, on her way home. Suddenly, she was bumped from behind by a man. The latter went in front of her, held her by the neck tightly and dragged her towards the "kangkungan" area within the fenced compound of the xxx Hospital. The stranglehold of the man rendered AAA unconscious. When she regained consciousness, her body ached all over. She was bloodied and her face, left eye and lips were swollen. Her shirt was pulled up, her panty and pants were pulled down and her bra was unfastened. She somehow managed to get up and started to walk. On the way, she met her mother and fell into her arms.

BBB, AAA's mother, was gripping with worry when AAA failed to arrive home on time. She decided to look for her and to trace her whereabouts. Finally, she saw AAA. It was already then around 9:00 p.m. BBB failed to recognize her daughter at once because of her swollen face. It was only after she had uttered "Nanay" when BBB realized that it was her daughter. AAA complained of chest pains and of having been violated.

BBB rushed AAA to the xxx Hospital. The hospital refused to give her treatment; instead, the two women were directed to go to the police. At the Police Sub-Station 4, they were advised to have AAA treated first at the Philippine General Hospital ("PGH"). The PGH staff refused to admit AAA, and the two were told to go to the National Bureau of Investigation ("NBI"). At the NBI, Senior Agent on duty, xxx, issued a written referral to the PGH of AAA for treatment.

At the PGH, AAA was examined and treated for bruises on different parts of her body, a big wound on her vagina and serious injuries on her right nipple which was almost cut off.

AAA was able to return to the NBI the next day and was examined by Medico Legal Officer Dr. xxx. The doctor's medical report ("Living Case No. MG-91-729") disclosed the following findings:

"GENITAL EXAMINATION: (Physical injuries back page pls.)

"Pubic hair, fully grown, abundant. Labia majora and labia minora, coaptated. Fourchette, lacerated. Vestibular mucosa, contused, bilateral. Hymen, short, thick, with fresh, bleeding laceration, complete at 4:00 o'clock position, corresponding to the face of a watch, with surrounding hematoma. Hymenal orifice, originally annular, admits a tube 2.5 cm. in diameter with resistance. Vaginal walls, tight. Rugosities, prominent.

"CONCLUSIONS:

"1. The above described extragenital physical injuries were noted on the body of the object at the time of examination.

"2. Fresh hymenal laceration, present.

"PHYSICAL INJURIES:

"Abrasions, reddish: chin, 4.5 x 4.0 cms.; neck, anterior aspect, bilateral, 10.0 x 7.0 cms.; areolae, left, 5.4 x 6.0 cms., and right, 4.0 x 2.5 cms.; arm, right, anterior aspect, middle third, 1.5 x 1.0 c m.

"Contused abrasions, reddish: chest, anterior aspect, parasternal, 16.0 x 11.0 cm.; abdomen, left, lower quadrant, 4.5 x 3.8 cm. and right lower quadrant, 2.5 x 1.0 cm., elbow, left, 2.5 x 1.2 cm. and right, 2.5 x 0.6 cms.; forearm, left, postero-lateral aspect, proximal third, 1.5 x 0.8 cms., thigh, right, antero-medial aspect, proximal third, 4.5 x 3.5 cms.

"Hematoma, reddish: orbital area, right, 6.0 x 3.5 cms., cheek, left, 12.0 x 10.0 cms., lips, upper and lower, mid-portion, 2.5 x 5.0 cm.; chin, 8.0 x 5.5 cm.; peri-areolar area, left, 10.5 x 10.0 cms., and right, 10.0 x 11.0 cms.; thigh, right, antero-lateral aspect, proximal third, 8.5 x 5.0 cms.

"Lacerated wound, sutured, areolae, right, lower border of nipple, 1.5 cms."[2]

An investigation was forthwith started by the NBI. She executed a "salaysay" and described the man who strangled and raped her. Pertinent portions of the "salaysay" read:

"T: Anong hitsura ba niya?

"S: Matangkad; maitim; kulot ang buhok na hindi gaanong kahabaan; may bigote; malaki ang katawan; medyo habain ang mukha; nakamaong at polo hindi ko lang matandaan ang kulay; medyo malaki ang mata.

"T: Ito taong ito ay dati mo nang nakikita?

"S: Hindi po. Noong gabi na iyon lang po.

"T: Bukod sa isinalarawan mong hitsura nitong suspek, ano pa ang ibang bagay na naobserbahan o napansin mo sa kanya?

"S: Amoy alak po siya.

"xxx xxx xxx

"T: Paglampas mo ng Kapiligan, anong nangyari?

"S: Tumawid ako ng xxx, tapos naglalakad ako sa sidewalk ng xxx Institute ng biglang may lalaking bumangga sa aking kanang balikat nanggaling sa aking likuran. Humarap siya sa akin at hinawakan niya ako sa magkabilang balikat. Sumigaw ako, pero sinakal niya ako at hinila sa kabila ng bakod ng xxx. Pilit kong inaabot ang buhok niya para sabunutan pero pahigpit ng pahigpit ang pagsakal niya sa akin at unti-unti akong nangingihina hanggang sa nawalan ako ng malay at hindi ko na nalaman kung anong nangyari sa akin." [3]

NBI agent xxx repaired to the vicinity of the crime and asked around for individuals who would fit AAA's description. xxx learned that a certain Luis Cariaga left the area a few days after the rape. He pursued this lead by looking for him in Isabela, Ilocos province, where he was finally located. Cariaga, who was staying with his aunt, denied involvement and signified his intention to confront the complainant. From Isabela, Panganiban escorted Cariaga to xxx and endorsed his case to the Chief of the Anti-Organized Crime Division of the NBI. [4]

Cariaga, assisted by Atty. Julio O. Lopez, executed a sworn statement [5] on 23 August 1991. Cariaga admitted having raped the complainant and implicated Renato Morales and accused-appellant Remus Busa, Jr., as co-conspirators. [6] In his statement, Cariaga described how Remus Busa, Jr., grabbed the hand of a woman and pulled her towards the xxx Institute. Cariaga and Morales followed Busa into the xxx Institute compound and helped in holding down the woman before they themselves took turns in raping the victim.

Remus Busa, Jr., and Renato Morales likewise executed, on 27 August 1991, individual sworn statements, with the assistance of Atty. Lopez, where they, too, admitted having raped AAA.

A few days after the arrest of the three suspects, the complainant was invited to go to the NBI. AAA was asked to point to the persons who raped her. She readily identified, in the presence of newsmen and law enforcement officers, appellant Remus Busa, Jr., by approaching him and slapping him. [7] Morales and Cariaga were also presented to her but she was not as emphatic with them as with appellant. [8] After this confrontation, the complaint for rape was signed at the Office of the Anti-Organized Crime Division of the NBI. The case was referred to the Department of Justice ("DOJ") which resolved that not only was there probable cause but also strong evidence of guilt against the suspects.

Appellant, prior to arraignment, sought a reinvestigation of the case. The motion was granted. Assistant City Prosecutor xxx conducted the reinvestigation. Counter-affidavits and Reply-affidavits were filed. After evaluating the evidence, Prosecutor xxx concluded that there was no sufficient basis to alter or modify the resolution of the investigating prosecutor finding a prima facie case against the three accused.

The prosecution placed at the witness stand AAA herself, NBI Agents xxx, xxx and xxx, Medico-Legal Dr. xxx and BBB (mother of AAA).

The three accused, in their defense, merely denied the accusation and assailed their sworn statements, questioning particularly the competence and independence of Atty. Julio Lopez, who assisted them, on the ground that he was not their, but the NBI's, chosen counsel.

The court a quo, after trial, rendered its decision finding appellant Remus Busa, Jr., guilty beyond reasonable doubt of the crime of rape and acquitting his co-accused Renato Morales and Luis Cariaga.

The trial court turned down the admissibility of the sworn statements executed by the three accused for being violative of Section 12(1), Article III, of the Constitution requiring a person under investigation to have the assistance of "a competent and independent counsel preferably of his own choice." The court said:

"In the case at bar, this Court finds itself unconvinced that Atty. Julio Lopez acted as a competent and independent counsel: First, according to him he was at the NBI attending to two of his cases between 1:00 and 5:00 o'clock noon when several NBI agents approached him regarding the instant rape case and requested that he act as counsel of the suspects. Considering that Atty. Lopez was then following his cases at the NBI he could not possibly be considered an independent counsel of the accused as regards a matter wherein the NBI badly wanted to take the confession of the suspects as they then have no strong evidence against at least two of the suspects for AAA could identify only one suspect with the NBI as before this court.

"Said lack of independence of Atty. Lopez is further shown by the fact that when he asked the three that they may not give any statement to the investigation 'but they said they are willing to give their statement,' all Atty. Lopez did was just to listen to the investigation and affix his signatures on the three Salaysays and watch the suspects sign [and] thumbmark their respective Salaysays. From Atty. Lopez' testimony and from the said confessions, it does not at all appear that Atty. Lopez exercised an independence of mind and disposition that as a trial lawyer he is expected to exhibit. In fact, Atty. Lopez admitted that he does not even know how each of the accused came to be under the custody of the NBI.

"Had Atty. Lopez examined first the NBI folder of the case and interviewed the accused he would have found out that they have, at least for Cariaga and Morales, very strong defenses due to the fact that AAA could not identify those two even at the police line-up previously formed by the NBI.

"Atty. Lopez thus in the court's opinion failed to assist the accused as a competent and independent counsel. Consequently, this court considers the extra-judicial confessions executed, respectively, by the three accused (Exh. 'D', 'H', and 'I') as inadmissible for failure to comply with the strict requirements of the Constitution.

"There is another factor which has made this court cast grave doubts about the due execution of said Salaysays of the accused. It will be noted that each accused claimed that they were asked to sign their Salaysay not at the NBI office Taft Avenue but in the evening at the Escolta Office of Atty. Julio Lopez. While Atty. Lopez denied the truth of that claim, the court finds it rather unusual that each of said Salaysays does not indicate at what time they were executed. The statement of the time of taking of a Salaysay, which is a normal part of an investigation process, is really an essential part thereof so that all concerned can be guided as to the circumstances surrounding its execution. Indeed, the Salaysay of AAA contains such indication of time and date it was taken at the NBI." [9] (Emphasis supplied.)

Concluding, the trial court adjudged:

"ACCORDINGLY, judgment is hereby rendered as follows:

"1. Accused LUIS C. CARIAGA and RENATO C. MORALES are hereby ACQUITTED of the herein charge of rape;

"2. Accused REMUS F. BUSA, JR. is hereby found GUILTY of the herein rape charge beyond reasonable doubt as a principal author thereof and he is hereby sentenced to a jail term of RECLUSION PERPETUA.

"Remus Busa is likewise ordered to pay AAA the sum of P50,000.00 as damages and P100,000.00 as moral

damages.

"Costs against said accused." [10]

Appellant Remus Busa, Jr., had come up to this Court to likewise seek his own acquittal arguing that —

I. The lower court erred in giving credence to the supposed positive identification by the complainant of the appellant before the NBI and in court.

II. The lower court erred in finding that appellant fit the description of the rapist as conjured by the complainant in the prosecution's Exhibit "A."

III. The lower court erred in considering excluded evidence in its decision, while favorably appreciating contradictory evidence submitted by the NBI.

Appellant would capitalize on the supposed failure of the complainant to identify him, when she was brought to the vicinity of the crime aboard a tinted vehicle by NBI agents about two weeks after the incident. Two male persons were made to stand in front of the window of the vehicle, one of whom allegedly was appellant, but that the complainant was unable to identify him. Her testimony during cross-examination would corroborate, according to appellant, this assertion.

"ATTY. CHAVEZ:

"Q. Was that a government car, if you know?

"WITNESS:

"A. Yes sir.

"ATTY. CHAVEZ: Now, would you recall that that car was heavily tinted.

"WITNESS:

"A. Yes sir.

"ATTY. CHAVEZ:

"Q. That the party inside or the persons riding in the car could not be seen from outside.

"WITNESS:

"A. Yes sir.

"ATTY. CHAVEZ:

"Q. Were you in the car, or were you not?

"WITNESS:

"A. Yes sir in the car.

"ATTY. CHAVEZ:

"Q. You remember that on that occasion two suspects were presented to you, they were asked or ordered to face the car while you were inside and they were outside.

"WITNESS:

"A. I was inside that government vehicle and the two suspects were outside the car.

"ATTY. CHAVEZ:

"Q. Would you know those two suspects?

"WITNESS:

"A. I did not.

"ATTY. CHAVEZ:

"Q. Did you know Miss AAA that one of them was Remus Busa whom you were not able to identify.

"COURT:

Let us set the foundation first.

"ATTY. CHAVEZ:

"Q. When those two persons when they were shown to you when you were inside the car and these two were outside were you asked to identify these two?

"WITNESS:

"A. Yes sir.

"ATTY. CHAVEZ:

"Q. And now did you know that one of them was Remus Busa whom you were not able to identify that time?

"WITNESS:

"A. No sir.

"ATTY. CHAVEZ:

"Q. Did you know that the NBI left this Busa and the other party to set free on that occasion?

"WITNESS:

"A. Yes sir."[11]

Appellant's claim that he actually was one of the two suspects who were made by NBI agents to face the tinted car had not been convincingly established; certainly, not by the foregoing testimony. If, indeed, he was one of the two persons made to face AAA, it would have been easy for appellant to present either the other person, or anyone also who was there at the time,[12] to corroborate him.

In any event, it would be foolhardy to assail the positive identification made by the victim. Here is her testimony:

"Q. You said that earlier you were raped in what particular portion in that place where you were at the time you said you were raped?

"WITNESS:

"A. Inside the stone fence of xxx Compound.

"FIS. PENAMORA:

"Q. How far was that `Kangkungan' in relation to the wall fence of the xxx Compound?

"WITNESS:

"A. Only one arm length from the stone fence.

"FIS. PENAMORA:

"Q. How about the place when you said you were then walking at the time you have no companion, how far is that to the `Kangkungan?'

"WITNESS:

"A. About one arm length also.

"FIS. PENAMORA:

"Q. And do you know how you reach that place at the `Kangkungan' from the place where you were at the time you were walking at xxx?

"WITNESS:

"A. A man, while I was walking, a man suddenly bump me and then he strangled my neck and then he pulled me to the compound to the Kangkungan.

"FIS. PENAMORA:

"Q. If you will see that man again whom you said bump you and strangle you, were you able to identify him?

"WITNESS:

"A. Yes ma'am.

"FIS. PENAMORA:

"Q. Will you please look inside the courtroom and inform this Honorable Court if that person is inside this room?

"WITNESS:

"A. That one ma'am the man wearing stripe blue and white shirt.

"INTERPRETER:

Witness pointing to a person inside the courtroom and identified himself as REMO BUSA.

"FIS. PENAMORA:

"Q. After you pointed that person you said dragged you in the Kangkungan, what happened next if any after that?

"WITNESS:

"A. I cannot say what happened next because after he strangled me I lost consciousness."[13]

When AAA, in fact, was asked, shortly after the three suspects were arrested by the NBI, to identify the person who attacked her, she immediately responded by approaching and slapping appellant Remus Busa, Jr.

Appellant still would insist that AAA lied when she gave the following testimony:

"Q. (Atty. Chavez) Let's go individually to your description. Is he `matangkad'?

"A. (AAA) Yes sir.

“Q. Would you call him `maitim’?”

“A. `Eh kasi naman ho madilim, hindi makikita kung maputi o maitim iyong tao.’

“Q. So you are in doubt whether he is `maitim’ or not?”

“A. Yes sir.

“Q. Now, would you again look at the accused Remus Busa and tell the Honorable Court if he is `kulot’.

“A. His hair was not like what it appears this morning when I saw him at the NBI.

His hair has been cut.

“Q. How about `bigote’?”

“A. He has already shaved it.

“Q. Would you look at his body if he is `malaki ang katawan’?”

“A. `Medyo ho.”[14] (Underscoring supplied.)

The Court fails to see any discrepancy in her above testimony vis-a-vis her sworn statement. As so keenly observed by the trial court —

"While Remus seems to make much criticism on the discrepancy as to hair ('kulot') in her Salaysay (Exh. 'A'), skin tone ('maitim'), built ('malaki'), and 'may bigote.' (Exh. 'A'), the Court has observed that the hair of Remus Busa is naturally wavy which in the vernacular is commonly expressed as 'kulot.' His skin while light brown can easily be considered 'maitim' in the dark of night. His built can likewise be considered 'malaki' considering that AAA is small in height. Indeed he is quite lanky in built and is tall. As to the moustache, the same can easily be shaved. Relative hereto, Remus testified that he does not grow hair on his face. It is correct to say that his facial skin does not look like one where a beard could easily be grown, but AAA never said that the man who dragged her has a beard. Remus' skin above the upper lip could easily grow a small moustache." [15]

Relative to appellant's last assigned error, suffice it to state that the extrajudicial confessions of appellant and his two co-accused were not given any probative value by the trial court which it readily struck down and excluded.

The case for the prosecution against appellant, in sum, has been sufficiently proven. There is no doubt but that the complainant was sexually abused. The medical certificate[16] issued by Dr. xxx, who physically examined her, is incontrovertible. Appellant's only disagreement with the trial court is that he has not been positively identified. This Court itself has made a thorough review and assessment of the evidence on record, including the victim's "Salaysay" and her testimony in court, as well as the factual findings and conclusions on which the impugned decision is based, but hardly can the Court see any cogent reason to depart from the findings of the trial court. There is no evidence shown or logical explanation given why the complainant would so falsely implicate appellant for so grave a crime if it were untrue. On matters of credibility, moreover, appellate courts must accord due respect to the factual evaluation of the trial judge.[17]

An award of moral damages for rape is mandated under Article 2219 of the Civil Code.[18] Considering the circumstances in the commission of the crime, appellant should be held liable in the amount of fifty thousand pesos (P50,000.00) by way of indemnity to the aggrieved party.[19]

The Court cannot end this ponencia without expressing great disappointment over the refusal of the two hospitals, hereinabove already named, to provide immediate treatment to the victim, AAA, who obviously was in need of prompt medical assistance. The Court directs a copy of this decision to be furnished to his Honor, the Secretary of

the Department of Health, and, to His Honor, the Secretary of Justice, for their information and action such as may be appropriate towards ensuring that, in emergency cases particularly, proper priorities in extending proper medical treatment are not unduly sacrificed for convenience and apprehensions of some hospital staff and personnel from being required to give testimony before the courts.

WHEREFORE, the appealed decision, finding appellant Remus Busa, Jr., guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of RECLUSION PERPETUA, is AFFIRMED. The award of indemnity is MODIFIED by ordering appellant alone to pay AAA the amount of fifty thousand pesos (P50,000.00).[20] Costs against accused-appellant.

SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on leave.

[1] Records, p. 1.

[2] Records, pp. 30-31.

[3] Records, pp. 13-14.

[4] TSN, 25 February 1992, pp. 30-41, 65.

[5] Exhibit H.

[6] TSN, 27 February 1992, pp. 7-10, 23.

[7] TSN, 28 November 1991, pp. 37-39.

[8] At p. 48.

[9] Rollo, pp. 35-36.

[10] Rollo, pp. 36-37.

[11] TSN, 15 January 1992, pp. 20-25.

[12] TSN, 19 November 1992, pp. 19-24.

[13] TSN, 28 November 1991, pp. 11-15.

[14] TSN, 15 January 1992, pp. 10-12.

[15] Rollo, p. 36.

[16] Living Case Report No. MG-91-729, Exhibit "J," Records, p. 248.

[17] *People vs. Pinca*, 234 SCRA 710.

[18] *People vs. Miranda*, 235 SCRA 202.

[19] *People vs. Tismo*, 204 SCRA 535; *People vs. Magaluna*, 205 SCRA 266.

[20] Following the acquittal of the two other co-accused.

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