

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENRICO PERALTA AND COSME TAMOR, ACCUSED-APPELLANTS.

G.R. No. 83812. December 07, 1995

Ponente: VITUG, J.

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VITUG, J.:

Little did she expect that on the night of 12 July 1983, Merlyn Robiños would experience what was to become a most bizarre story in her life. That evening, Merlyn was waiting for a ride, near the gate of Eastland, a manufacturing enterprise in Rosario, Pasig, when the incident she would rather forget transpired. She was robbed and raped.

The incident triggered the filing, on 18 July 1983, of an Information against herein appellants Enrico Peralta and Cosme Tamor. The information read:

"That on or about the 12th day of July 1983, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with a bladed weapon, with intent of gain and by means of force and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away the following articles, to wit:

One Citizen's wrist watch

P600.00

Wedding ring yellow gold

90.00

One pair of earring yellow gold

50.00

One necklace yellow gold

600.00

Cash money amounting

65.00

Shoulder bag

25.00

with a total value of P1,430.00 all belonging to one Merlyn Robiños y Bainto, to the damage and prejudice of the latter in the aforementioned amount of P1,430.00; that on the occasion of the aforesaid robbery, accused Enrico Peralta y Cruz and Cosme Tamor y Abogado, pursuant to their aforementioned conspiracy and by means of force and intimidation, willfully, unlawfully and feloniously had carnal knowledge of one Merlyn Robinos y Bainto against her will.

"Contrary to law."[1]

Upon arraignment, appellants who were assisted by counsel de parte, entered a plea of "not guilty."

The evidence presented by the prosecution during the trial pictured, in great detail, the incident.

At around six o'clock in the evening of 12 July 1983, complainant Merlyn Robiños went to Eastland in order to place an order for earrings from a former lady co-worker thereat. When she was done, she left the building and waited near the gate of Eastland for a ride back home to Countryside subdivision. There, at about 7:30 in the evening, she saw a tricycle which she recognized to be that owned by Antonio Flores, a former co-worker and an acquaintance, who, she thought, was then driving the vehicle. She hailed the cab. When the tricycle stopped and she was about to board it, she noticed that it was, instead, manned by accused Enrico Peralta. A companion of Peralta, accused Cosme Tamor, was in the passenger cabin. Tamor instantly pulled her to his left, next to the driver's seat. Tamor poked an icepick on her neck and announced a "hold-up." When the tricycle started to speed away, Tamor tied a handkerchief around Merlyn's mouth placing it between her lips. He divested her of (1) a Citizen's wristwatch, (2) a yellow gold necklace, (3) a pair of earrings, (4) a wedding ring, (5) P65.00 cash, and (6) her handbag.

Not content, Tamor now also began to display his lust. He placed his hand between Merlyn's legs and moved to get it inside her panty. Attempts to stop him proved futile. Meanwhile, the duo talked about bringing the girl to Cainta but once they reached Life Home Subdivision in Rosario, Pasig, Peralta suddenly stopped the tricycle. Tamor alighted and drew Merlyn out of the tricycle. Peralta followed. During the struggle, she was able to take the handkerchief off her mouth. She begged the accused not to molest her. Peralta, once again, covered her mouth with a handkerchief and then dragged her to a vacant lot with an L-shaped wall about four meters away from the tricycle and about thirty meters behind Sinalab Restaurant. Peralta hurriedly laid the girl against the wall, while Tamor kept on pointing the icepick at her. Her efforts to wiggle out from the hold of Peralta only infuriated him. Determined to pursue his craving, Peralta forced himself between her legs, firmly held her by the hips and finally penetrated her. She cried, trembled and almost lost her breath. Suddenly, a man looked over the wall. Peralta slightly moved away from Merlyn and remarked, "Walang anuman ito pare, kasintahan ko ito.[2] When the man, who was about six meters away, appeared to have departed, Peralta resumed his sexual attack. Later, the man who moments ago had left, returned together this time with a security guard of Life Home Subdivision. Peralta moved back from Merlyn who swiftly pulled down the handkerchief from her mouth and shouted for help. The man and the security guard promptly went after appellants. When the latter tried to fight back, the security guard fired his gun. After the gunshot, at least five other persons from Sinalab Restaurant rushed out. Sensing what was then happening, the group intercepted appellants. Merlyn was brought to a nearby house where she lost consciousness.

Patrolman Domingo Fortaleza, Col. Bernabe, Policemen Fernandez and Villaran, in response to a call for police assistance, proceeded to the scene and conducted an investigation. Later, Merlyn, the two appellants and Benedict

de Guilo (the security guard) were brought to the Pasig Police Station. Complainant was also taken to the Philippine Constabulary Crime Laboratory for physical examination at the request of Eastern Police District Captain Ricardo L. Carlos.

Dr. Dario Gajardo, Chief of the Medico-Legal Branch of the PC Crime Laboratory, Camp Crame, Quezon City, after conducting his examination issued his Medico Legal Report No. M-1943-83. The report disclosed:

"There are no external signs of recent application of any form of trauma.

"xxx xxx xxx

"Subject is in non-virgin state physically. Labia Majora are full, convex and gaping with the pale brown, slightly hypertrophied labia minora presenting in between. On separating the same are disclosed a congested vulvar mucosa and carunculae myrtiliformis. External vaginal orifice offers slight resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is wide with flattened rugosities. Cervix is eroded and posterior lip and congested with scanty amount of whitish secretion admixed with blood.

"Vaginal and per-urethral smears are negative for gram-negative diplococci and for spermatozoa."[3]

The defense denied the complainant's accusation, and it gave a different version of the incident.

Enrico Peralta, testifying, said that on 12 July 1983, at about 7:00 to 7:30 p.m., he and Cosme Tamor went to Gines Avenue, Rosario, Pasig, to borrow from Antonio Flores his tricycle. Flores loaned the vehicle but requested Peralta and Tamor to fetch a friend, Merlyn Robiños, and to drive her home. Peralta drove the tricycle, while Tamor sat himself inside the cab. The two fetched Merlyn. Along a dimly lighted road, near Sinalab Restaurant, the complainant requested Peralta to stop the vehicle. The complainant alighted and went to a vacant lot near a wall evidently to urinate. While waiting by the roadside, the two saw complainant waving her hand. Peralta hesitatingly approached the complainant followed by Tamor. To appellants' surprise, the complainant raised her skirt and put down her panty. Abruptly, a man appeared and asked what they were doing. Then they heard a gunshot that made them scamper. Unfortunately, they were overtaken and mauled by a crowd coming from Sinalab Restaurant. Arrested, the duo were brought to a police precinct for investigation but they did not give any statement. Cosme Tamor corroborated Peralta, adding that before he and Peralta could even get close to the complainant, she already had started to scream upon noticing the approach of the security guard. Both denied having robbed and raped the complainant.

Apparently convinced of the case presented by the prosecution, the trial court, on 05 April 1988, rendered its decision convicting both accused; thus:

"Premises considered, the Court finds the accused ENRICO PERALTA Y CRUZ and COSME TAMOR Y ABOGADO guilty beyond reasonable doubt of the crime of robbery with rape. However, since the crime of rape is committed with the use of deadly weapon or by two persons, the penalty shall be reclusion perpetua to death as penalized under Article 335 and not under Article 294(2) of the Revised Penal Code. (People vs. Obtinialia, 38 SCRA 651) Pursuant to Article 335 of the Revised Penal Code, and in view of the abolition of the death penalty under the 1987 Constitution, both the accused are hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the complainant the sum of P1,430.00, the value of the goods taken, plus the additional sum of P20,000.00, for and as moral damages."[4]

The two accused now anchor their appeal on what they consider to be reversible error of the trial court in accepting and giving full probative value to the evidence tendered by the prosecution and in so finally finding them guilty as charged.

Appellants cite inconsistencies between complainant's testimony during the trial and the declarations contained in her affidavit.[5] For instance, they point out that in her sworn statement, complainant said that she hailed the tricycle owned by his friend Antonio Flores but, upon seeing that the driver was not Flores, she hesitated from boarding it but Tamor pulled her in ("bigla na lang akong binatak ng kasama ni Enrico,").[6] In court, however, she testified that she got into the tricycle ("Sumakay ako sa tricycle") when it stopped in front of her,[7] indicating, according to appellants, that she voluntarily boarded the vehicle.

We have carefully gone over complainant's narration, and we are satisfied that the trial court has not misjudged the credence of her testimony. Here is how it went:

"Q

While you were on your way home, do you remember anything unusual that happened to you on your way home?

"A

I saw the tricycle which I thought was that of my co-worker, I recognized the tricycle and as a matter of fact, I even thought that the one driving the tricycle was my co-worker, and I hailed the tricycle not knowing that it was not my co-worker who was driving the tricycle.

"Q

Now, it was not your co-worker who was driving the tricycle, who was then driving the tricycle at the time you hailed it?

"A

Peralta and Tamor, sir, Tamor was insider the tricycle while Enrico was driving the tricycle.

"Q

By the way who was that your co-worker you were referring to?

"A

Antonio Flores, sir.

"Q

Before the incident happened, have you known Antonio Flores for a long time?

"A

Yes, sir, because he is my co-worker.

"ATTY. BAROT:

It is not responsive your honor, I move to strike out her answer, 'matagal na kakilala, kasamahan sa trabaho?'

"ATTY. MARCAIDA:

She answered, yes, sir, and then she said he is my co-worker.

"COURT:

Let it remain in the record.

"Q

Was that the first time you saw the tricycle?

"ATTY. BAROT:

Already answered, your honor, during . . . in fact she was expecting that Antonio Flores is the one driving the tricycle.

"ATTY. MARCAIDA:

Your honor, she knows Antonio Flores for a long time but then, we are, we would like to establish here that she also recognized the tricycle of Antonio Flores so that when she saw the tricycle coming by she hailed it.

"ATTY. BAROT:

Precisely, the question is already answered.

"COURT:

She hailed the tricycle because she thought it was being driven by Antonio Flores, yes, already answered, reform the question.

"ATTY. MARCAIDA:

When you hailed the tricycle, what happened?

"A

The tricycle stopped and I rode the tricycle then I was suddenly pulled in by Cosme. ('Sumakay ho ako sa tricycle, bigla akong hinatak ni Cosme')

"ATTY. BAROT:

May I ask for the reading back of the answer of the witness.

"(Stenographer read back the question)

"ATTY. BAROT:

What is your answer?

"WITNESS:

'Sumakay po ako at tapos hinila akong bigla ni Cosme.'

"COURT:

Why don't you put it on record, so that there will be no more translation. Let it be placed on the record the way she answered.

"ATTY. BAROT:

Yes, your honor.

"ATTY. MARCAIDA:

Were you already inside the tricycle when you were pulled in by Cosme?

"ATTY. BAROT:

I object to that, your honor, May I ask that the question be propounded, apparently, the witness is not, .. well

she is an intelligent witness ...

"COURT:

In the course of the question, it has already been answered. How were you pulled in by Cosme?

"WITNESS:

I was pulled inside the tricycle.

"ATTY. BAROT:

'Itinulak', the word is 'itinulak.'

"ATTY. MARCAIDA:

'Itinulak po ako sa kabila.'

"ATTY. BAROT:

May I ask that the phrase 'itinulak ako sa kabila', be put in the record, that is already pushed not pulled.

"COURT:

Where were you pushed to?

"A

To the other side, sir.

"ATTY. MARCAIDA:

You said that Cosme Tamor was sitting inside and that it was Cosme Tamor who pushed you inside the tricycle, what particular part of the tricycle cab was he sitting when he pushed you?

"ATTY. BAROT:

I will object, your honor on two grounds, first, the first portion of the question is misleading in the sense that the first act of the witness was not her having been pulled, she a ready inside when she was pushed, so I object your honor.

"ATTY. MARCAIDA:

I think, your honor, that the counsel is being ...

"COURT:

Let the witness answer the question, the question is to establish where Tamor was sitting inside the tricycle?

"ATTY. BAROT:

If that is the premise, your honor, I submit.

"WITNESS:

At the middle of the seat of the cab, sir.

"ATTY. MARCAIDA:

And when you were pushed in ...

"ATTY. BAROT:

No, 'di ba nasa loob na tayo', we were already inside?

"ATTY. MARCAIDA:

Where did Tamor make you seat? Where?

"ATTY. BAROT:

Your honor, there is no ...

"ATTY. MARCAIDA:

In what particular part of the cab?

"ATTY. BAROT:

Then that is misleading in the very sense that it was not Tamor who made her sit, she was the one who got into the cab until the time when Tamor pushed her to the other side, the question has no basis, your honor, I object.

"COURT:

When you rode into the tricycle, which part of the tricycle did you sit?

"A

In this side, your honor.

"(Witness demonstrating her left side)

"COURT:

Which side?

"A

I was still at the entrance part of the tricycle then I was pushed into the other side, at the left side, sir.

"COURT:

Next question.

"ATTY. MARCAIDA:

After you were pushed inside the tricycle, what happened, if any?

"A

They poked a sharp pointed object at me, sir."[8]

On cross examination, complainant remained unmoved; with sufficient consistency, she answered thusly:

"ATTY. BAROT: CROSS EXAMINATION

"Q

Mrs. Robiños according to you on the 12th day of July 1983, while you waited for a ride, in the evening of that day, you were . . . you heed a tricycle and rode that said tricycle which turned out to be the one operated by Enrico Peralta and Cosme Tamor, is that correct?

"A

Yes, sir.

"Q

But your taking or believing that it was the same tricycle of a friend of yours, Antonio Florez you entered the cab of the tricycle and immediately sat at the right side of the cab, is that correct?

"A

Hindi po sa kanan, dahil kaupo ho siya sa gitna tapos ako ho doon sa kabila, nandoon na ho si Cosme Tamor.

"Q

Now, let me see, this tricycle that you rode on on that night on the standard tricycle, the cab is about four feet from the floor?

"A

Hindi ko po alam iyon.

"Q

When you stand up by the side of the tricycle can you enter the cab of the tricycle by standing up straight?

"A

No, sir.

"Q

In other words, because of the height of the ceiling of the cab, you have to stoop to be able to enter the cab?

"A

Yes, sir.

"Q

When you stoop, the reason for your stooping is that the ceiling of the cab is made up of GI sheet, is that correct?

"A

Yes, sir.

"Q

And then again, the side of the cab when you enter is only a small space between the front cab and the body of the cab?

"A

Yes, sir.

"Q

You said Tamor was already seated inside the cab when you started to get inside the cab?

"A

Yes, sir.

"Q

But you made yourself inside carefully to be able to get inside?

"A

Hindi ho madahan dahil hinawakan na niya ako.

"Q

He only held you?

"A

Tapos itinulak niya ako sa loob.

"Q

When you said itinulak, do I get you correctly that your body was already inside the cab as to allow the Tamor to push you?

"A

Wala pa po ako sa loob, nakahakbang pa lang po.

"Q

So you were not pulled but your were pushed?

"ATTY. MARCAIDA:

Your honor, I would like to make of record that the witness, your honor is making a pulling motion while testifying.

"ATTY. BAROT:

That is already in the record that she is speaking in tagalog, and it was she who said the word itinulak. This is not the first time she used the word 'itinulak' . . .

"ATTY. MARCAIDA:

Your honor . . .

"WITNESS:

Nuong nakahakbang na po ako binatak niya ako tapos itinulak sa loob ng tricycle.

"ATTY. MARCAIDA:

Your honor, she was dragged . . .

"ATTY. BAROT:

Your honor the word dragged institutes some kind of pressure . . .

"COURT:

Let it place on record what she actually said."[9]

It seems quite evident that, contrary to what appellants assert, there is no serious incongruence in complainant's sworn declaration and in her testimony. In any event, discrepancies between statements in an affidavit and those made on the witness stand would seldom, if at all, discredit the declarant. The Court, in *People vs. Miranda*,^[10] has observed —

"x x x Predictably, testimonies given during trials are much more exact and elaborate than those stated in sworn statements. Ex-parte affidavits are almost always incomplete and often inaccurate for varied reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Witnesses cannot be expected everytime, except when told, to distinguish between what may be consequential and what may be mere insignificant details" —

and, still later, in *People vs. Reyes*^[11] —

"x x x Differences in the narration of an incident between the sworn statements and the testimony of a witness are not unknown. The infirmity of an extra-judicial statement is a matter of judicial experience. An extra-judicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement; hence, omissions and misunderstandings by the writer are not infrequent."

Appellants would want it believed that it was the complainant who enticed appellants, both total strangers to her, and unceremoniously offered her body to them. Frankly, the claim would appear very close to being, if not indeed, totally absurd. Even while the cab was still negotiating Gines Avenue, Tamor, from all indications, already had started forcing himself on Merlyn. Her efforts to prevent the sexual advances proved futile, however, by the strong hands of Tamor. The complainant struggled when she was brought to the vacant lot, compelling Peralta to, once again, cover her mouth and Tamor to poke the icepick on her neck. Her resistance was obvious enough to arouse suspicion by the man who chanced upon them. Thus:

"ATTY. MARCAIDA:

In the process what happened?

"A

Then the man came and asked what we are doing.

"Q

After, and the accused answered to the man whom you said came, that you were sweetheart, what did the man do?

"A

He left already and I cannot ask for help because the ice pick was still poked at me.

"Q

After that man left, what did Cosme Tamor and Enrico Peralta do, if any?

"A

Enrico again inserted his penis into my private part.

"Q

What did you feel, rather, what were you feeling when Enrico Peralta again inserted his penis to your private part?

"A

I was nervous and I was crying.

"Q

Why?

"A

Because of the incident that was happening to me.

"Q

And then can you recall how long did the penis of Enrico Peralta was inside your vagina?

"A

About five (5) minutes, sir.

"Q

You said that there was an agreement between the two accused that Tamor will be the next, was Cosme Tamor able to also do the same thing that Enrico Peralta do to you?

"ATTY. BAROT:

I object your honor, first the question has no basis, there was no showing that they have a previous agreement and second, the question is leading, your honor.

"ATTY. MARCAIDA:

Your honor, please, the witness previously answered that Cosme Tamor was hurrying up Enrico Peralta because Cosme Tamor would be the next, I am now asking your honor, whether Cosme Tamor able to do the same to the witness?

"ATTY. BAROT:

But the question that was premised was there an agreement between the accused, that is entirely without basis, your honor.

"COURT:

That premise was not answered yet, let the witness answer.

"WITNESS:

No, he was not able to do to me because the man who saw us returned together with another fellow, the security guard of the Life-Homes Subdivision.

"Q

I see, aside from the security guard, was that man together with another fellow?

"A

That is the same person who came earlier and approached us, is the same man who was accompanied by a security guard.

"Q

What did they do, if any?

"A

As they were coming near us, the man addressed to the accused that if it is true that I am his sweetheart, why is it that am screaming (pumapalag) (Bakit pare pumapalag?)

"Q

What was the reply of the accused?

"A

The accused moved back from me.

"Q

After that what did the accused do, if any?

"A

After they moved back I was able to remove or pulled down the handkerchief covering my mouth and I was able to shout for help." [12]

The absence of external signs of physical injuries does not negate the commission of rape.[13] The fact of the matter is that complainant has struggled and pleaded to be spared. Whether it is a bladed weapon or a pointed instrument that has been used to restrain her would hardly be of consequence. Neither would the absence of sperm in the vaginal area, likewise strongly exploited by appellants, be a defense. The presence of sperm in the vaginal area is not indispensable in the crime of rape. It is enough that the woman is entered no matter how slight the entry may have been. The physical examination conducted by Dr. Dario L. Gajardo showing congestion in the orbital organ of the complainant is indicative of pressure on that part of her genitalia.[14] The testimony of the offended party alone, when credible, can sustain a conviction for rape.[15]

Finally, the question concerning the credibility of witnesses is best addressed to the sound judgment of the trial court whose assessment should rightly be accorded due respect on appeal.[16] No ulterior motive has been shown that would have impelled complainant to wrongly impute on appellants (whom she had not known before) a crime so serious as that with which they have been charged.[17]

Appellants would assail the trial court's appreciation of the existence of conspiracy. The unity of appellants' criminal design, however, was clearly evident from their concerted action starting from the time when the complainant was pulled into the cab, poked with an icepick, held-up, and finally brought to a vacant lot and sexually abused. In not a single instance did either of the two desist from that common design.

All considered, the Court finds no sufficient basis to overturn the appealed decision.

WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATION that the award to the complainant of moral damages is increased from P20,000.00 to P30,000.00 consistent with prevailing jurisprudence.[18] Costs against appellants.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Panganiban, JJ., concur.

[1] Rollo, p. 8.

[2] TSN, 09 November 1983, p. 42.

[3] Rollo, p. 60.

[4] Rollo, pp. 33-34.

[5] Exh. "A."

[6] Exh. "A" p. 343, Records.

[7] TSN, p. 25, 09 November 1983.

[8] TSN, pp. 22-29, 09 November 1983.

[9] TSN, pp. 4-10, 04 February 1985.

[10] 235 SCRA 202, 213-214.

[11] G.R. No. 79896, 12 July 1995.

[12] TSN, 09 November 1983, pp. 45-49.

[13] See *People vs. Monteverde*, 142 SCRA 668.

[14] p. 30, TSN, 14 December 1983.

[15] *People vs. Lascuna*, 225 SCRA 386; *People vs. Segundo*, 228 SCRA 691; *Anciro vs. People*, 228 SCRA 629.

[16] *People vs. Lakibul*, 217 SCRA 575; *People vs. Manuel*, 234 SCRA 532.

[17] *People vs. Eustaquio*, 230 SCRA 527; *People vs. Matamorosa*, 231 SCRA 509.

[18] *People vs. Laroa*, G.R. No. 98428, 18 September 1995.

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