

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE SALUNA Y MANGUBAT, ALIAS TITING, ACCUSED-APPELLANT.*G.R. No. 94336. September 15, 1993*

Ponente: BELLOSILLO, J.

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Titing must have been hell-bent on gratifying his lust that not even the escape of Virginia from his hold nor the strong probability that she would report to the authorities or seek help from others could deter him from his lecherous assault on her friend Arceli.

The version of the prosecution, sustained by the trial court, is that at about 4:00 o'clock in the afternoon of 21 October 1988, in Katipunan, Rogongon, Iligan City, Arceli Fernandez, a 13-year old student, after delivering "tuba" to one Gerry Bongabong, was walking home with a friend, Virginia Arnaiz, also a student, 15 years of age. Suddenly, accused Rene Saluna y Mangubat alias Titing, a tenant of Bongabong, appeared from nowhere. He asked the girls where they were going and they replied that they were on their way home. Then he grabbed Virginia but the latter struggled to be free. Virginia having slipped away, he moved fast on Arceli by holding her hand and dragging her forcibly to a forested area nearby in Kapisahan, Rogongon, Iligan City. Virginia dashed for her safety and never looked back.[1]

With a scythe on hand, Titing forcibly stripped Arceli of her T-shirt, pants and panties and positioned himself on top of her. Arceli shouted for help. Titing boxed her on her left temple, causing her to faint. By the time Arceli recovered consciousness, Titing had already raped her. He then shackled her hands with her own pants and blindfolded her with her T-shirt. She sensed him walk away. He was laughing, saying, "Don't cry anymore because nobody could hear you shout." [2]

Virginia lost no time in reporting the incident to the Civilian Home Defense Force (CHDF) unit in Katipunan, Rogongon. With CHDF men and others, they repaired to the scene where Arceli was taken away by Titing. But they found no one there. The team proceeded to the houses of Titing and a sister-in-law of his but Titing was not there either. The search party then proceeded to the purok center of Kapisahan after leaving two CHDF men at his house. But having been told by the purok president that the accused had not passed that way, the team returned to his house. There they found him already in the custody of the CHDF men they had left behind.[3]

The CHDF men presented Titing to Virginia. Upon seeing him, Virginia identified him as the man who waylaid them. When asked about Arceli, Titing pointed to the area where he took her. Finally, at around 8:30 o'clock that evening, they found Arceli, crying. She was wearing only her sando and panties, her hands tied together, her eyes still blindfolded.[4]

The outrage was reported at once to the authorities and Arceli executed her affidavit.[5] A physical examination conducted the following day by Dr. Eustiguo Oliverio of the Iligan City Public Hospital showed that Arceli sustained "2 linear abrasions, left zygoma; multiple linear abrasions, both upper and lower extremities; multiple linear abrasions, lateral lumbar; hematoma, left temporal area '1' x '1-1/2'; vaginal exam: fresh hymenal laceration

at 3:00 o'clock position 2 examining fingers readily admitted into vaginal canal."[6]

Titing was accordingly charged for rape. At the trial, the prosecution presented Arceli, Virginia and Dr. Oliverio. For the defense, only the accused Titing testified. He claimed that the imputation against him was a lie and alibied that at the time of the supposed rape he was in Kapisahan panning gold.[7] He narrated that he would see Arceli every time he would go to Sitio Katipunan to buy meat and fish but "they have not quarrel (sic) with, neither has complainant any axe to grind against him." He denied knowing Virginia.[8]

On 31 January 1990, Titing was found guilty of rape and sentenced to reclusion perpetua. But Judge Amir Pukunum Pundogar did not award indemnity for moral damages because he was "convinced of the accused's financial distress." [9]

In this appeal, Titing contends that the trial court erred in convicting him for rape despite the failure of the prosecution to establish his guilt beyond reasonable doubt. He points out that the sexual intercourse with Arceli was with her consent considering that "her companion Virginia Arnaiz x x x was able to escape unhurt." He rationalizes that he would not have dared to sexually assault Arceli knowing fully well that he would be the first target of inquiry as the prime suspect.

The accused considers the failure of complaining witness to escape from his clutches as tacit consent to have sex with him. According to him, if her companion was able to escape unhurt, it is surprising why Arceli failed to do likewise, and that her manifest inaction to save herself is not the normal behavior of a woman whose virtue was seriously threatened.

Significantly, the theory of the defense that Arceli consented to the sexual act is inconsistent with his earlier claim of alibi which he raised before the trial court. As if realizing the inherent weakness of his alibi, he now shifts his position on appeal by adopting the stance that Arceli consented to his sensuous advances. This last-ditch effort of the accused further reduces to mediocrity his already tenuous defense. On the other hand, it strengthens all the more our belief that indeed he committed the crime charged. His identity is no longer in dispute; neither his direct participation in the perpetration of the crime. By adopting the theory that his victim consented to his sexual desires he is inevitably deemed to have admitted the sexual act except as to consent which, as shown by the evidence, was never given. On the contrary, the testimony of Arceli dovetails with the physical injuries which she sustained in different parts of her body, and with the torn pieces of clothing, some even stained with blood, which are consistent with her claim that she was sexually abused by the accused without her consent. Thus -

"Q: Were you able to get away as what Virginia Arnaiz did?

"A: No, sir because I was tightly held by his hand.

"Q: You want to impress with that quite far distance he was merely holding your left hand with his right hand following a distance?

"A: Yes, sir.

"Q: Did you persist or you struggled to desist from going with him?

"A: I tried my best to struggle but it was so tight that I could not even shout for help.

"Q: While shouting, people around were able to hear you, is that correct?

"A: No, sir because the place where I solicited for help has no houses.

x x x x

"Q: What were you doing when the accused was undressing you?

"A: I shouted for help.

"Q: In other words, at that precise time the accused was undressing you, you were conscious because you were able to shout for help, is that what you meant?

"A: Yes, sir.

x x x x

"Q: After regaining consciousness you saw scratches on your hand, do you know what caused those scratches?

"A: Because I was dragged by him.

x x x x

"Q: You said you were brought to the hospital and you further testified that you were examined physically, can you tell, rather recall what part of your body was examined by the doctor?

x x x x

"A: My part was taken.

"Q: What do you mean my part was taken, who took, what was taken?

"Atty. Edres:

I would like to place on record when the witness answered (s)he pointed to the accused.

x x x x

"Q: You stated during the direct as well as in the cross that the accused was carrying a scythe and it was pointed at you, what instance the scythe was pointed at you?

"A: Before that he was already pointing the scythe at my neck during the time he rode on top of me.

"Q: You mean to impress the court while he was riding on top of you, the accused was holding the scythe?

"A: Yes, sir.

"Q: So you know the reason why the accused was using the scythe and threatened you?

"A: He was threatening me with the scythe because I kept on shouting. That is why he threatened me with the scythe.

"Q: Why do you have to shout when he was merely riding on you?

"A: Because he threatened me with a scythe.

"Q: In other words, you shouted because of the scythe or he was riding on you?

"A: Because he was riding on me."[10]

All told, the evidence against the accused overwhelmingly points to his guilt beyond reasonable doubt. Consider the following damning circumstances: (a) Titing was positively identified by the complaining witness as the one who forcibly dragged her to the forest of Kapisahan and deflowered her against her will; (b) he was likewise positively identified by Virginia as the one who waylaid her and Arceli while they were on their way home; (c) when asked by the CHDF men, he readily pointed to the exact location where he took Arceli; (d) by his theory of

consent, he unwittingly admits his sexual congress with his victim; and, (e) his defense of alibi is so weak it cannot prevail over the clear and convincing evidence against him.

We are left no choice. The conviction of the accused must therefore be sustained. All the elements of rape as defined in Art. 335 of the Revised Penal Code have been established beyond reasonable doubt.

However, a word must be said about the refusal of the trial court to impose civil indemnity in favor of the offended party in view of the imputed indigence of the accused. It must be stressed that the indemnity awarded under Art. 345, par. (1), of the Revised Penal Code^[11] should be absolute and is never conditioned upon the financial capacity of the accused. The discretion of the trial court is only with regard to the fixing of the amount of the indemnity upon consideration of the facts of the case.^[12] Thus, as it appears from the record that the 13-year old complaining witness suffered unspeakable physical stress and emotional torment in the hands of her lecher, who after satisfying his libidinous intentions callously and mercilessly left her alone, abandoned at night in the wilds of Kapisahan, hogtied and blindfolded, and completely exposed to the elements, it is but just and fair that he should indemnify her and the amount of P50,000.00 may be considered reasonable.

WHEREFORE, the appealed decision convicting the accused RENE SALUNA Y MANGUBAT alias TITING for rape under Art. 335 of the Revised Penal Code and imposing upon him a prison term of reclusion perpetua is AFFIRMED. The accused is further sentenced to INDEMNIFY complaining witness Arceli Fernandez in the amount of P50,000.00.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quason, JJ., concur.
Griño-Aquino, J., on official leave.

[1] TSN, 18 January 1989, pp. 3-5, 7-8; 19 January 1989, 4-6.

[2] TSN, 19 January 1989, pp. 6-7, 9-12.

[3] TSN, 8 December 1988, pp. 5-8; 18 January 1989, p. 11.

[4] TSN, 8 December 1988, pp. 8-9.

[5] Exh. "1", Records, p. 3.

[6] Exhs. "G" and "G-2", Records, p. 18.

[7] TSN, 7 December 1989, pp. 3-4.

[8] See Decision penned by Judge Amir Pd Pundogar, RTC, Br. 3, Iligan City, 31 January 1990, p. 6; Rollo, p. 17.

[9] Decision, Records, pp. 109-117.

[10] TSN, 19 January 1989, pp. 23-24, 27, 30-33.

[11] Art. 345. Civil liability of persons guilty of crimes against chastity. - Persons guilty of rape, seduction or abduction, shall be sentenced:

1. To indemnify the offended woman.
2. To acknowledge the offspring, unless the law should prevent him from so doing.
3. In every case to support the offspring.

The adulterer and the concubine in the case provided for in Articles 333 and 334 may also be sentenced, in the same proceeding or in a separate civil proceeding, to indemnify for damages caused to the offended spouse.

[12] *People v. Licerio*, 61 Phil. 361 (1935).

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