

## SECOND DIVISION

[ G.R. NO. 138033, February 22, 2006 ]

### RENATO BALEROS, JR., PETITIONER VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### D E C I S I O N

##### GARCIA, J.:

In this petition for review on certiorari, petitioner Renato Baleros, Jr. assails and seeks the reversal of the January 13, 1999 decision<sup>[1]</sup> of the Court of Appeals (CA) in *CA-G.R. CR No. 17271* as reiterated in its March 31, 1999 resolution<sup>[2]</sup> denying petitioner's motion for reconsideration.

The assailed decision affirmed an earlier decision of the Regional Trial Court (RTC) of Manila, Branch 2, in Criminal Case No. 91-101642 finding petitioner Renato Baleros, Jr. y David (CHITO) guilty of attempted rape.<sup>[3]</sup>

The accusatory portion of the information<sup>[4]</sup> dated December 17, 1991 charging petitioner with attempted rape reads as follow:

That about 1:50 in the morning or sometime thereafter of 13 December 1991 in Manila and within the jurisdiction of this Honorable Court, the above-named accused, by forcefully covering the face of Martina Lourdes T. Albano with a piece of cloth soaked in chemical with dizzying effects, did then and there willfully, unlawfully and feloniously commenced the commission of rape by lying on top of her with the intention to have carnal knowledge with her but was unable to perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance, said acts being committed against her will and consent to her damage and prejudice.

Upon arraignment on February 5, 1992, petitioner, assisted by counsel, pleaded "Not Guilty."<sup>[5]</sup> Thereafter, trial on the merits ensued.

To prove its case, the prosecution presented thirteen (13) witnesses. Among them were private complainant Martina Lourdes Albano (Malou), and her classmates, Joseph Bernard Africa, Rommel Montes, Renato Alagadan and Christian Alcala. Their testimonies, as narrated in some detail in the decision of the CA, established the following facts:

Like most of the tenants of the Celestial Marie Building (hereafter "Building", ...) along A.H. Lacson Street, Sampaloc, Manila, MALOU, occupying Room 307 with her maid, Marvilou Bebania (Marvilou), was a medical student of the University of Sto. Tomas [UST] in 1991.

In the evening of December 12, inside Unit 307, MALOU retired at around 10:30. Outside, right in front of her bedroom door, her maid, Marvilou, slept on a folding bed.

Early morning of the following day, MALOU was awakened by the smell of chemical on a piece of cloth pressed on her face. She struggled but could not move. Somebody was pinning her down on the bed, holding her tightly. She wanted to scream for help but the hands covering her mouth with cloth wet with chemicals were very tight (TSN, July 5, 1993, p. 33). Still, MALOU continued fighting off her attacker by kicking him until at last her right hand got free. With this ...the opportunity presented itself when she was able to grab hold of his sex organ which she then squeezed.

The man let her go and MALOU went straight to the bedroom door and roused Marvilou. xxx. Over the intercom, MALOU told S/G Ferolin that: "may pumasok sa kuarto ko pinagtangkaan ako" (*Ibid.*, p. 8). Who it was she did not, however, know. The only thing she had made out during their struggle was the feel of her attacker's clothes and weight. His upper garment was of cotton material while that at the lower portion felt smooth and satin-like (*Ibid*, p. 17). He ... was wearing a t-shirt and shorts ... Original Records, p. 355).

To Room 310 of the Building where her classmates Christian Alcala, Bernard Baptista, Lutgardo Acosta and Rommel Montes were staying, MALOU then proceeded to seek help. xxx.

It was then when MALOU saw her bed ... topsy-turvy. Her nightdress was stained with blue ... (TSN, July 5, 1993, pp. 13-14). Aside from the window with grills which she had originally left opened, another window inside her bedroom was now open. Her attacker had fled from her room going through the left bedroom window (*Ibid*, Answers to Question number 5; Id), the one without iron grills which leads to Room 306 of the Building (TSN, July 5, 1993, p.6).

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Further, MALOU testified that her relation with CHITO, who was her classmate ..., was friendly until a week prior to the attack. CHITO confided his feelings for her, telling her: "Gusto kita, mahal kita" (TSN, July 5, 1993, p. 22) and she rejected him. .... (TSN, July 5, 1993, p. 22).

Meanwhile, according to S/G Ferolin, while he was on duty, CHITO arrived at the Building at 1:30 in the early morning of December 13, 1991, wearing a white t-shirt with "...a marking on the front of the T-shirt T M and a Greek letter (sic) ΣÇ¾" and below the quoted letters the word '1946' 'UST Medicine and Surgery'" (TSN, October 9, 1992, p. 9) and black shorts with the brand name "Adidas" (TSN, October 16, 1992, p.7) and requested permission to go up to Room 306. This Unit was being leased by Ansbert Co and at that time when CHITO was asking permission to enter, only Joseph Bernard Africa was in the room.

He asked CHITO to produce the required written authorization and when CHITO could not, S/G Ferolin initially refused [but later, relented] .... S/G Ferolin made the following entry in the security guard's logbook ...:

"0130HBaleros Renato Jr. is a visitor of Ansbert Co who has not have (sic) a Request letter from our tenant of Unit #-306 Ansbert, but still I let him inter (sic) for the reason that he will be our tenant this coming summer break as he said so I let him sign it here

(Sgd.) Baleros Renato Jr."  
(Exhibit "A-2")

That CHITO arrived at Room 306 at 1:30 A.M. of December 13, 1991 was corroborated by Joseph Bernard Africa (Joseph), ....

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xxx

Joseph was already inside Room 306 at 9 o'clock in the evening of December 12, 1991. xxx by the time CHITO's knocking on the door woke him up, .... He was able to fix the time of CHITO's arrival at 1:30 A.M. because he glanced at the alarm clock beside the bed when he was awakened by the knock at the door....

Joseph noticed that CHITO was wearing dark-colored shorts and white T-shirt (*Ibid.*, p. 23) when he let the latter in. .... It was at around 3 o'clock in the morning of December 13, 1991 when he woke up again later to the sound of knocking at the door, this time, by Bernard Baptista (Bernard), ....

xxx. With Bernard, Joseph then went to MALOU's room and thereat was shown by Bernard the open window through which the intruder supposedly passed.

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Later, at about 6 to 6:30 in the morning of December 13, 1991, Joseph was finally able to talk to CHITO .... He mentioned to the latter that something had happened and that they were not being allowed to get out of the building. Joseph also told CHITO to follow him to Room 310.

CHITO did just that. He followed after Joseph to Unit 310, carrying his gray bag. xxx. None was in Room 310 so Joseph went to their yet another classmate, Renato Alagadan at Room 401 to see if the others were there. xxx.

People from the CIS came by before 8 o'clock that same morning .... They likewise invited CHITO and Joseph to go with them to Camp Crame where the two (2) were questioned ....

An occupant of Room 310 ... Christian Alcala (Christian) recalled in Court

that in the afternoon of December 13, 1991, after their 3:30 class, he and his roommates, Bernard Baptista and Lutgardo Acosta (Gary) were called to the Building and were asked by the CIS people to look for anything not belonging to them in their Unit. While they were outside Room 310 talking with the authorities, Rommel Montes (Loyloy), another roommate of his, went inside to search the Unit. Loyloy found (TSN, January 12, 1993, p. 6) a gray "Khumbella" bag cloth type (*Ibid*, pp. 44-45) from inside their unit which they did not know was there and surrender the same to the investigators. When he saw the gray bag, Christian knew right away that it belonged to CHITO (*Ibid*, p. 55) as he had seen the latter usually bringing it to school inside the classroom (*Ibid*, p. 45).

In their presence, the CIS opened the bag and pulled out its contents, among others, a white t-shirt with a Taunu (sic) Sigma Phi sign (*Ibid*, p. 7), a Black Adidas short pants, a handkerchief , three (3) white T-shirts, an underwear, and socks (*Ibid*).

Christian recognized the t-shirt (Exhibit "D-4"), the Adidas short pants (Exhibit "D-5"), and the handkerchief (Exhibit "D-3) to be CHITO's because CHITO had lent the very same one to him .... The t-shirt with CHITO's fraternity symbol, CHITO used to wear on weekends, and the handkerchief he saw CHITO used at least once in December.

That CHITO left his bag inside Room 310 in the morning of December 13, 1991, was what consisted mainly of Renato R. Alagadan's testimony.

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The colored gray bag had a handle and a strap, was elongated to about 11/4 feet and appeared to be full but was closed with a zipper when Renato saw it then (*Ibid*, pp. 19-20). At that time Christian, Gary, Bernard, and Renato went back to Room 310 at around 3 to 4 o'clock that afternoon along with some CIS agents, they saw the bag at the same place inside the bedroom where Renato had seen CHITO leave it. Not until later that night at past 9 o'clock in Camp Crame, however, did Renato know what the contents of the bag were.

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The forensic Chemist, Leslie Chambers, of the Philippine National Police Crime Laboratory in Camp Crame, having acted in response to the written request of PNP Superintendent Lucas M. Managuelod dated December 13, 1991, (Exhibit "C"; Original Records, p. 109.) conducted laboratory examination on the specimen collated and submitted.... Her Chemistry Report No. C-487-91 (Exhibit "E"; *Ibid.*, p. 112) reads in part, thus:

"SPECIMEN SUBMITTED:

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xxx

xxx:

- 1) One (1) small white plastic bag marked 'UNIMART' with the following:

xxx

xxx

xxx

- 2) One (1) small white plastic bag marked 'JONAS' with the following:

Exh. 'D' – One (1) printed handkerchief.

Exh. 'E' – One (1) white T-shirt marked 'TMZI'.

Exh. 'F' – One (1) black short (sic) marked 'ADIDAS'.

#### PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of volatime (sic), non-volatile and/or metallic poison on the above stated specimens.

#### FINDINGS:

Toxicological examination conducted on the above stated specimens gave the following results:

Exhs. 'C' and 'D' – POSITIVE to the test for chloroform, a volatile poison.

Exhs. 'A', 'B', 'E' and 'F' are insufficient for further analysis.

#### CONCLUSION:

Exhs. 'C' and 'D' contain chloroform, a volatile poison."<sup>[6]</sup> (Words in bracket added)

For its part, the defense presented, as its main witness, the petitioner himself. He denied committing the crime imputed to him or making at any time amorous advances on Malou. Unfolding a different version of the incident, the defense sought to establish the following, as culled from the same decision of the appellate court:

In December of 1991, CHITO was a medical student of ... (UST). With Robert Chan and Alberto Leonardo, he was likewise a member of the Tau Sigma Phi Fraternity .... MALOU, ..., was known to him being also a medical student at the UST at the time.

From Room 306 of the Celestial Marie Building ..., CHITO, wearing the prescribed barong tagalog over dark pants and leather shoes, arrived at their Fraternity house located at ... Dos Castillas, Sampaloc, Manila at about 7 o'clock in the evening of December 12, 1991. He was included in the entourage of some fifty (50) fraternity members scheduled for a Christmas gathering at the house of their senior fraternity brother, Dr.