

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO PEREZ Y MENDOZA, ACCUSED-APPELLANT.

G.R. No. L-38719. October 10, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Ernesto Perez appealed from the decision of the Court of First Instance of Manila, convicting him of rape, sentencing him to reclusion perpetua and ordering him to pay the offended woman, Erlinda Velasquez, moral damages amounting to ten thousand pesos (Criminal Case No. 13634).

It is undisputed that in the early morning of March 14, 1973 accused Perez, 36, had sexual intercourse with Erlinda Velasquez, 22 (four times according to him, three times according to her) in Room 4 of the New Manila Restaurant and Hotel, located at 2015 Claro M. Recto Avenue (Azcarraga), corner Lepanto Street, Manila.

Erlinda, a virgin, was deflowered as a result of that sexual congress. About thirty-six hours thereafter, or at four-thirty in the afternoon of March 15, 1973, she was examined by Doctor Angelo Singian, a medico-legal officer of the Manila Metropolitan Police.

He found that there was a contused laceration of her hymen at the six o'clock position, which bled upon examination, and that there was inflammation of her hymen and the surrounding perihymeneal tissues. He concluded that she lost her virginity on the preceding day or two days before (Exh. B).

It is also undisputed that Perez and Erlinda met for the first time on March 13, 1973 (eleven-thirty in the morning, according to Perez or one-forty in the afternoon, according to Erlinda) in front of the Cinerama Theater (already demolished) at the corner of Claro M. Recto Avenue and Quezon Boulevard, Manila.

They were together that day and in the evening. He brought her to the hotel shortly before midnight or before curfew time. They left the hotel at about eight o'clock in the morning of the following day, March 14, and an hour later they separated in the Quiapo church.

They met again three days thereafter during a confrontation at the Manila police station in the morning of March 17, 1973 after Perez was arrested. Erlinda fingered him as the malefactor who ravished her inside the hotel.

Perez denied the accusation and claimed that Erlinda consented to the sexual intercourse after he had declared her love for her and had promised to marry her.

Question: Did Perez rape Erlinda eleven or thirteen hours after he met her or was he able to seduce her after that brief period of acquaintanceship?

Only Erlinda (who reached second year high school) testified on the alleged rape. Her version, which in several particulars dovetails with Perez's story, is as follows:

In the second week of March, 1973, she went to the office of Enriquez Enterprises located at Apolinario Street,

Makati, Rizal and applied for the position of cashier. After posting a bond of three hundred pesos, she reported for work. In the morning of March 13, 1973, the proprietor, Leonardo Enriquez, instructed her to look for office space in the vicinity of Claro M. Recto Avenue and Rizal Avenue in downtown Manila. Enriquez drew a sketch of her destination for her guidance and instructed her on how to reach that place.

While Erlinda was standing in front of the Cinerama Theater, at about one-forty in the afternoon, she was accosted by a person who asked her about the time. That person turned out to be Perez.

Perez inquired why she was holding a sketch. She explained her errand. He volunteered to help her. He introduced himself as an employee of the City Hall, showed her an identification card signed by Armando Cuneta, public relations officer in the office of the mayor of Pasay City (Exh. 5) and pretended that he could help her because he was influential. Erlinda was impressed. She thought that Perez was a nice fellow. She trusted him.

Perez accompanied her to the security guard in the third floor of the Cinerama Building where they inquired whether there was a vacant room for rent. The guard told them to wait for the building administrator who was out.

Erlinda waited for the administrator. Perez left her allegedly because he had an appointment and he assured Erlinda that he would return. The administrator did not appear. Erlinda left the Cinerama Building and walked to Quiapo. It was already two o'clock.

Near the Quiapo Church, Erlinda unexpectedly encountered Perez. She told him that she was going to the Banco Filipino on Plaza Santa Cruz because she was scheduled to meet there her employer, Enriquez, at three o'clock. Perez offered to accompany her to Plaza Santa Cruz.

At his suggestion, they looked for an office for rent in the Mercedes Building on Plaza Miranda and then in the Republic Supermarket Building at Rizal Avenue where they found that there was a vacant space. They proceeded to the Banco Filipino to meet Enriquez.

On learning from Erlinda that she gave to Enriquez the cash bond of three hundred pesos without any receipt, Perez remarked that she must have been swindled. He suggested that she should tell Enriquez that Perez was her uncle.

He quieted Erlinda's fears about losing the three hundred pesos by pretending that, because he had friends in the City Hall and he knew Mayor Cuneta, he would be able to recover that amount from Enriquez and at the same time he promised that he would get a job for her at La Suerte Cigarette Factory.

They waited for Enriquez up to four o'clock. He did not show up. They took merienda in a canteen near the Banco Filipino. Perez poured the soft drinks into her glass when she was not looking at him. They ate hot cakes. Erlinda felt dizzy after taking the soft drinks but she did not worry about that sensation. She just ascribed her dizziness to fatigue.

At the suggestion of Perez, they tried to see Enriquez in his office at España Extension. Enriquez was not there. Perez told the girl in the office of Enriquez that Erlinda was swindled because she delivered the three hundred pesos to Enriquez without any receipt.

It was already five o'clock in the afternoon. Perez said that they should go to the office of Enriquez in Makati. They rode in a bus. Enriquez was not in his Makati office. Perez told the woman in Enriquez's office that Erlinda wanted to get back her deposit of three hundred pesos.

As it was already dark, Erlinda told Perez that she wanted to go home. Her house was in the Marigold District, Rivera Village, Pasay City. Perez dissuaded her, telling her that they should try to recover the three hundred pesos and making her believe that she was hired, not to act as a cashier, but for purposes of prostitution.

Perez convinced her not to go home and, instead to go with him to Batangas Street, Tondo where they met a woman named Rebecca, whom Perez said was his niece and who was also applying for a job at La Suerte Cigarette Factory. Rebecca asked Erlinda to spend the night with her. Erlinda insisted on going home.

They went to Plaza Lawton (now Liwasang Bonifacio) so that Erlinda could take the bus of the California Liner for Pasay City. It was about ten o'clock already in the evening. She was not able to take the bus although she waited up to eleven o'clock. She was apprehensive because she knew that there would be a curfew at midnight. Perez said that she should spend the night with his sister in Santa Mesa.

Erlinda again said that she wanted to go home because if she did not do so her brothers and sisters would get worried. Perez countered that the members of her family would think that she stayed with her employer. He told her not to worry. They took the jeepney going to Quiapo and from there they rode in a bus bound for Santa Mesa.

After several minutes, they alighted at a place which was not known to Erlinda. Perez said that it was Santa Mesa and that his sister resided in the other street. They ate noodles (mami) in a restaurant and drank coke. She went to the counter to get napkins and when she returned to the table she noticed that Perez had already poured the coke into her glass.

Again, she experienced dizziness after taking the coke. They left the restaurant, crossed the street and entered a house which, according to Perez, was his sister's abode. They went upstairs. Perez showed her the room and the bed where she would sleep. He said that he would sleep in another room and that his sister was already asleep.

They talked about their plan for the next day. He would contact Rebecca so that the three of them could go to La Suerte Cigarette Factory. She said that she wanted to rest but then Perez said that he would stay in the room. As she was feeling weak, she sat on the edge of the bed and told Perez to leave the room.

Instead of doing so, he placed his polo shirt on the hanger and then sat beside her, telling her that they were inside a room in the hotel. That revelation left her unmoved because she was in a state of vertigo.

When she tried to get up, he prevented her from leaving the bed by holding her shoulders and forcing her to lie down. She resisted by removing his hands from her shoulders and telling him not to hold her. When she was able to get up, he pushed her and said that she should give him what he wanted.

He pinioned her arms behind her back and then assaulted (sinalakay) her, meaning he placed himself on top of her, telling her at the same time to yield to his desire and reminding her that nobody would know about it. She remonstrated with him not to abuse her trust in him. He just smiled.

He said that if she would not submit voluntarily to his desire, he would consummate the coition by force and nobody would help her. He could even kill her. She replied that he could kill her because she would not yield to him what he wanted.

Perez remarked that she was hard-headed. He shook her, spread her legs and removed her short pants, panties and shoes, and kissed her on the cheeks. She moved her body sideways. Her head was hanging from the bed, almost touching the floor. She demonstrated this during the trial. She told him to pity her (maawa ka). She also shouted for help. (Tulungan ninyo ako, maawa kayo.) (She was so overcome with emotion when she testified on that point that the trial had to be continued for another date.)

Perez had removed his pants and underwear and was naked below the waist. After spreading out her legs, he repeatedly tried to insert his organ into her private part. After several attempts, he was able to do so in her weakened condition and notwithstanding her resistance.

As he made the push-and-pull movement, she felt pain in her private part. She noticed that she was bleeding.

There was blood on the bedsheet. She cried. He kissed her on the lips and neck and touched her private organ. He wiped it with the blanket.

He was able to repeat the carnal intercourse in spite of her resistance. He had sexual intercourse with her three times. She was not able to sleep during that early morning. They left the hotel at about eight o'clock in the morning and entered the Quiapo Church where Perez left her on the pretext that he was going to fetch Rebecca. He instructed her to wait for him.

Instead of waiting, she went home. There was nobody in the house. When her sister arrived in the evening, Erlinda narrated to the former her horrible experience. Her sister and brother-in-law reported the outrage to the uncle of her brother-in-law. They filed a complaint in Camp Crame.

The complaint for rape, which was sworn to before the fiscal, was filed in the lower court on March 19, 1973.

The defense of Perez was that Erlinda consented to have sexual intercourse with him. He admitted with some variations the details of Erlinda's story.

He testified that they met at eleven-thirty in the morning of March 13, 1973, not one-forty in the afternoon, as testified by Erlinda.

He left her in the Cinerama Building and went to keep an appointment with a friend and then he lunched at the Lyric Restaurant in Quiapo. When he went out of the restaurant, he unexpectedly met Erlinda who told him that she was not able to talk with the administrator of the Cinerama Building.

He testified that when he and Erlinda were not able to locate Enriquez and as it was already late, he suggested that they should see his friend Rebecca. (Erlinda said that he told her that Rebecca was his niece.)

Perez said that Erlinda paid for the food which they ate before they entered the hotel "hand in hand". Room 4, which was assigned to them, was near the counter.

Perez said that after they had entered the room and the bell boy had plugged the air conditioner, Erlinda told him that she "wanted to wash and urinate" and so he accompanied her to the ladies room (which was outside their room) and then he returned to the room assigned to them and waited for her. He allegedly waited for her for about half an hour.

When she returned, he asked her why she stayed a long time in the comfort room. She allegedly answered that she cleaned herself. He held her hand, told her that she was pretty and proposed that they enjoy themselves because the next day they would get married. She allegedly agreed to his proposal. He kissed her repeatedly on the lips and other parts of her body. She agreed to sleep with him.

Perez testified that because of the kisses he was able to make her succumb to his desire. She herself removed her panties and raised her dress up to her bosom. He took off his own pants and underwear and removed her brassiere. He had sexual intercourse with her four times.

Perez declared that when they were not having sexual intercourse, they talked about their future, the children they would beget and their marriage the next day.

According to Perez, after the four acts of sexual intercourse, he slept. He did not know whether Erlinda slept. They left the room at about nine o'clock the next morning. They breakfasted downstairs. Erlinda paid for the breakfast because Perez had no money.

They walked to the Quiapo Church. Perez left her there because he wanted to go home and get money so that he could buy her a new dress. Her old dress had bloodstains. But when he returned to the Quiapo Church, she was no

longer there.

He could not bring Erlinda to his residence because his mistress was staying there and the two might quarrel. Moments later, Perez said in his testimony that his mistress was not in his house and that Erlinda just consented to remain in the church.

He denied that he promised to get a job for her. He tried to get her address at the D' Virgin Restaurant in Makati, which was operated by Enriquez, but he was not able to meet Enriquez.[*]

In holding that Perez was guilty of rape beyond reasonable doubt, the trial court noted that Erlinda was a simple, modest and typical Filipina whose testimony "has the ring of truth".

The court applied the well-known observation that a young and unmarried girl would not tell a story of defloration, allow the examination of her private part and endure the ordeal of a public trial if she is not motivated by an honest desire to have the culprit apprehended and punished.

The Solicitor General in his brief theorizes that the accused placed drugs in the drinks and food of the victim so that he could easily attain the object of his lust.

Appellant's counsel argues that the trial court erred in giving credence to the improbable testimony of the complainant, which allegedly contains inconsistencies, and in not holding that the sexual intercourse was the product of mutual desire.

The accused in his letter to the Chief Justice, which was received in this Court on April 8, 1980, admits that his story is somewhat difficult to believe. He said (p. 112, Rollo):

"Naniniwala po akong kayo'y kakasihan ng tunay na liwanag upang ang tunay na katarungan ay lumitaw sa ating batas na iginagalang.

"Hindi po ako magdaramdam kung hindi po pabor sa akin ang inyong hatol pagkat naniniwala po ako sa inyong kakayahan sa paglutas ng tunay na katarungan.

"x x x x x x x x x

"Alam ko rin po na pati kayo'y mahihirapang maniwala sa aking storya pagkat sa loob lamang ng dalawampu at apat oras ay nagkagustuhan na kami.

"Ako man po ay halos hindi makapaniwala sa nangyari, kaya marahil po ay talagang kapalaran ko ang makulong sa aking pagibig."

It is readily deducible from the evidence that from the start the thirty-six year old accused, a womanizer by his own admission (he had a mistress), had harbored the plan to have sexual congress with Erlinda who appeared to be naive, inexperienced, guileless and gullible.

Knowing that Erlinda would be helpless and would be in his power if by curfew time she would still be in his company, he made her believe that he could recover from Enriquez the three hundred pesos which she had delivered to the latter. He knew all along that he would not be able to get back that amount. He had no moral and legal obligation to be with Erlinda from eleven-thirty in the morning to eleven-thirty in the evening. Yet, he persisted in keeping her company and worming himself into her good graces by means of false pretenses.

So, to kill time, Perez took Erlinda to the España office of Enriquez, then to his Makati office, then to the house of Rebecca and then to Liwasang Bonifacio at about past ten o'clock in the evening, when he knew that passenger buses would no longer be making trips to Pasay City because of the curfew.

Perez was successful in bringing about the situation he had contrived. He and Erlinda were overtaken by the

curfew. She had no choice but to go with him to a hotel where, as his captive companion, she was intimidated and forced into surrendering to his bestial desire.

After the initial sexual intercourse, the subsequent acts of coition were facilitated by his glib promise of marriage. This would explain his statement to the police after his arrest that he had carnal knowledge of Erlinda by means of seduction and a promise of marriage.

The crime committed by Perez is simple rape or rape without the attendance of the qualifying circumstances mentioned in the last four paragraphs of article 335 of the Revised Penal Code, as amended by Republic Act No. 4111.

The trial court correctly imposed the penalty of reclusion perpetua and properly adjudged the payment of ten thousand pesos which may be regarded as the indemnity contemplated in article 345 of the Revised Penal Code.

WHEREFORE, the trial court's judgment is affirmed. Costs against the accused-appellant.

SO ORDERED.

Barredo, (Chairman), Fernandez,[*] Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., is abroad.

[*] Fernandez, J., was designated to sit in the Second Division.

[*] The testimony of Perez contains details or embellishments not found in his sworn statement to the police, which is partly quoted below:

"5. T - Kailan mo ba nakilala itong si Erlinda Velazquez? – S - Noong araw ng Martes, Marso 13, 1973 mga alas 11:30 ng tanghali.

"6. T - Saan lugar mo siya unang nakilala? – S - Sa tapat ng Cinerama Theater diyan sa C. M. Recto corner ng Quezon Blvd., Manila.

"7. T - Sa anong pagkakataon mo nakilala itong si Erlinda Velasquez? – S - Nakita ko nga siya sa lugar na iyon at ako ay nagtanong sa kanya kung anong sketch iyong kanyang binabasa.

"8. T - Maari bang ituloy mo kung ano pa ang mga sumunod na pangyayari? – S - Ang sabi sa akin ay naghahanap siya ng room for rent. Sabi ko sa kanya ihahatid ko siya doon sa Administrator ng Cinerama Bldg. para doon magtanong.

"Iniwan ko siya doon at ako ay umalis na. Makaraan ng isang oras ay kumain ako doon sa Lyric Restaurant doon sa Quezon Blvd. malapit sa simbahan, ay paglabas ko ay nakasalubong ko siya uli. Tinanong ko sa kanya kung nakausap niya ang namamahala ng building at ang sagot naman niya sa akin ay hindi na niya hinintay.

"Sabi ko sa kanya ay pumunta kami sa Mercedes Bldg. para maghanap uli pero wala rin kaming nakuha doon. Ang ginawa ay sinamahan siya uli sa Republic Supermarket para maghanap ng kuwerto. Nakakita kami doon at naibigay sa amin ang halaga ng upa at ang mga regulasyon.

"Pagkatapos noon, ay nagpunta kami sa Banco Filipino sa Plaza Sta. Cruz para tagpuin iyong kanyang manager na sabi niya ay kung saan sila magkikita ng alas tres y medya ng hapon. Naghintay kami hanggang alas kuwatro beinte at tapos kaming magmerienda ay hindi dumating si Mr. Enriquez na manager daw niya.

"Nagtuloy kami sa opisina na kanyang pinagaaplayan dahil gusto ko siyang tulungan na macontact iyong kanyang pinagaplayan para iyong sinabi niyang nagbigay siya ng three hundred pesos ay walang ibinigay na

resibo sa kanya. Hindi namin inabutan doon sa opisina sa España Extension si Mr. Enriquez pero nakausap namin iyong dati niyang sekretarya na ang sabi ay baka nandoon si Mr. Enriquez sa Apolinario Street sa Makati, Rizal sa D'Virgin Restaurant.

"Hindi rin namin nakita doon si Mr. Enriquez, kaya ang ginawa namin ay nagbalik kami sa España Ext. Hindi pa rin namin inabutan si Mr. Enriquez mga alas otso na ng gabi iyon.

"Ang ginawa ko ay isinama ko si Erlinda doon sa bahay ng isang kaibigan ko sa 1068 Batangas St., Tondo, Manila para makiusap doon sa kaibigan ko na si Rebecca Laiz na kung maaari ay doon na siya magpalipas ng gabi. Nahiya si Erlinda dahil maraming tao sa kuwarto ni Rebecca.

"Ang ginawa ko ay nagpunta kami sa Luneta at binalak ko na doon sa bahay ko na siya dalhin. Pero hindi siya pumayag kaya niyaya ko na siya sa hotel sa isa kong kaibigan na namamahala ng hotel sa Claro M. Recto (Avenue). Pumayag naman siya na doon na kami matulog.

"Pasado alas onse y medya na ng kami ay pumasok doon sa New Manila Hotel. Sa loob ng Room #4, ay nagkuwentuhan kami at doon nga ay nagtapat ako sa kanya ng pagibig. Hindi siya pumayag at ang sabi pa sa akin ay maging magkaibigan na lang kami. Nahiga na kami pareho sa iisang kama kaya nang maguumaga na dahil siguro nagustuhan na rin niya ang mga sinasabi ko ay hindi na kami nakapagpigil pareho at nakuha ko ang kanyang pagkababae. Apat na beses ko siyang ginalaw sa magdamag na iyon.

"Mga alas nuwebe ng umaga, ay bumaba na kami ng Hotel at nagpunta kami sa simbahan ng Quiapo at ang sabi ko sa kanya ay isasama ko siya sa bahay pero nang tumawag ako sa amin, ay nandoroon iyong matandang aking kinakasama na si Carmelita Marquez; kaya, hindi ko na siya binalikan doon sa pinagiwanan ko sa kanya sa loob ng simbahan para magisa akong pumunta sa amin at kausapin ang kinakasama ko para pumayag na dalhin ko si Erlinda sa bahay at handa ko nga siyang pakasalan.

"Nagkausap kami ng aking kinakasama at siya ay pumayag, kaya ang aking ginawa ay bumalik ako sa simbahan para isama na sa bahay si Erlinda, pero wala na si Erlinda ng bumalik ako sa simbahan; kaya, ang aking ginawa ay tumawag ako sa D'Virgin Restaurant at nakausap ko iyong driver ni Mr. Enriquez na ang pangalan daw niya ay Peter at ang sabi ay wala pa si Erlinda at si Mr. Enriquez. Dahil hindi ko alam puntahan ang Rivera Village na tinitirhan ni Erlinda, kaya hindi na kami nagkausap pa.

"9. T - Aming ipinabatid sa iyo, na nagreklamo sa amin dito si Erlinda Velasquez na diumano siya raw ay ginahasa mo sa isang hotel. Ano ang masasabi mo dito? – S - Hindi po totoo iyon at saksi ko iyong mga boy ng Hotel na hindi ko siya ginamitan ng dahas dahil iyong kuwartong aming pinasukan ay malapit sa counter.

"x x x x x x x x".

The foregoing statement of Perez was sworn to before Fiscal Doroteo Daguna and was presented in evidence by the defense as Exhibit 1.

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