

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIALITO BARCENILLA ALIAS MARCIAL QUIZON,
ACCUSED-APPELLANT.**

G.R. No. 61716. January 31, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from the judgment of the defunct Court of First Instance of Surigao del Sur in Criminal Case No. L-524. The condemnatory portion of the judgment reads as follows:

"In view of the foregoing considerations, the court finds the accused guilty beyond reasonable doubt of the crime of Rape penalized under Art. 335 of the Revised Penal Code, and there being no aggravating or mitigating circumstances attending the commission of the crime, hereby sentences said accused to the penalty of reclusion perpetua; to pay Veronica Licup and her parents the amount of Ten Thousand Pesos (P10,000.00) as moral damages for the shame and humiliation they suffered; without subsidiary imprisonment in case of insolvency; and to pay the costs." (Decision, p. 9.)

The People's version of the facts is to the effect that:

"At about 8:00 o'clock in the evening of April 7, 1978, complainant Veronica Licup, a comely girl of fourteen years, together with her friends Ginging, Shirley, Susan and Dodong, went to the One Eleven Night Club at Barangay Mangagoy, Bislig, Surigao del Sur. At the nightclub, Veronica met another friend Glenda Fernandez. Glenda introduced Veronica to appellant, a combo player in said nightclub (tsn, Jan. 17, 1979, pp. 7-10.)

"At around 11:30 p.m., Veronica together with Glenda, appellant and a friend of appellant by the name of Jerry left the nightclub. Veronica's original companions left earlier without Veronica's knowledge. It was Veronica's intention to go home but since it was almost midnight, curfew was still imposed, and her house was quite far, Glenda and appellant suggested that Veronica pass the night with the lady boarders of appellant at Dominitz building in said barangay. Veronica insisted on going home but because nobody was willing to accompany her home, she agreed (tsn., Jan. 17, 1979, pp. 10-13.)

"Veronica, with appellant and Jerry, then proceeded to appellant's boarding house. The three went up to the third floor of the boarding house where the lady boarders sleep. While waiting for lady boarders, Veronica sat on the stairs. After several minutes and the lady boarders have not yet arrived, appellant and Jerry persuaded Veronica to enter a room which turned out to be appellant's room. Jerry and appellant first cleaned the room. When Veronica entered the room, Jerry left. Veronica expected the appellant to leave likewise, but the latter stayed (tsn., Jan. 17, 1979, pp. 13-16).

Moments later, Veronica saw appellant drink wine direct from the bottle. Sensing danger, Veronica immediately grabbed her sandals and tried to get out of the room but found the door locked from outside (tsn., Jan. 17, 1979, pp. 16-19).

"Appellant then grabbed Veronica's hair and poked a knife at her back. Appellant told Veronica to lie down on the

bed, threatening to kill her if she refused. Veronica struggled but was eventually forced to lie down on the bed. Appellant tried to remove her shirt but Veronica continued her struggle. Appellant then gave Veronica a blow on her nape rendering her unconscious. When Veronica regained consciousness, appellant was already on top of her. Veronica made a final struggle but appellant through force and intimidation, succeeded eventually in consummating the sexual act. After satisfying his lust, appellant remained on top of Veronica and continued threatening her. Again, Veronica resisted and struggled to free herself but appellant punched her again. Veronica again lost consciousness. Appellant then ravished Veronica for the second time (tsn., Jan. 17, 1979, pp. 20-26; tsn., July 9, 1979, pp. 84-86).

"At around 5:00 o'clock in the morning of April 8, 1978, Teodora Licup, Veronica's mother, accompanied by Glenda Fernandez, found Veronica crying inside appellant's room. Veronica told her mother that she was sexually abused by appellant. Teodora Licup then brought Veronica home and the latter related to her father and brothers what happened to her. A family conference decided that a case be filed against appellant. Veronica and her parents then went to the police station to report the incident. Thereafter, Veronica was accompanied to the rural health physician of Bislig, Surigao del Norte where she was examined (tsn., March 18, 1981, pp. 8-13).

"The finding of Dr. Cesar G. Salvanera, the rural health physician, showed the following:

FINDINGS

Fairly develop, fairly nourished, afebrile, coherent, ambulatory female adult. The breast are fully developed, hemispherical in shape, firm, the nipples are prominent surrounded by brownish areols.

EXTERNAL EXAMINATION:

Contusions-abrasions, back, posterior lateral aspect, right and left sides.

INTERNAL EXAMINATION:

Pubic hairs, abundant, labia majora and labia minora are ecapdated. Contusions, base of the hymen, right and left sides. Laceration of the hymen corres-ponding to 3:00, 6:00 and 9:00 o'clock position in the face of the watch. Hymenal orifice admits 8.6 cm. circumference bottle with moderate resistance. Vaginal canal moderately tight. The ruge-sities of the vaginal canal are pro-minent.

CONCLUSION:

Physical virginity lost. (Exhibit "B")." (Brief, pp. 2-5.)

The appellant admits that he had sexual congress twice with Veronica in his room on the night of April 7, 1979 but claims that they were done with her consent for they were already sweethearts since one month before.

In assailing the decision of the trial court, the appellant makes no less than twelve assignments of error but all of them raise but, one issue: who is telling the truth - Veronica or the appellant? In such a case it is worth repeating that "We are not disposed to discard the appreciation of the evidence by the court a quo because it was in a peculiar position to do so having personally seen the witnesses tes-tify and their demeanor while doing so." (People vs. Malate, L-40791, Sept. 11, 1982; 116 SCRA 487, 492.)

The sexual acts were consummated in a locked room whose only occupants were the appellant and Veronica. Under the circumstances, the only persons who could have testified directly on the matter would be Veronica and the appellant.

When Veronica testified on January 17, 1979, she was already 15 years old. (Exhibit C-2 shows that she was born

on May 31, 1963; also testimony of her mother on page 184 of the TSN.) She narrated that on April 7, 1978, she went to the One-Eleven Night Club with some friends where she met the appellant for the first time. Because her companions had left ahead, Veronica was persuaded to sleep at the boarding house for women owned by the appellant. This is what happened at the boarding house according to Veronica:

"Q. [Private Prosecutor Meliton Emuslan]

When Gerry as you said left the room, where was Marcial at the time?

A He was inside the room, fixing the bed.

Q When Gerry left, may we know if he returned to the room?

A No, sir.

Q When Gerry left the room, what did he do, did he close the door?

A He closed the door.

Q After Gerry closed the door, where was Marcial still?

A He was inside the room where I went in.

Q What was he doing that time?

A He was already half-naked.

Q When Marcial entered the room, was he still fully clothed?

A Before they came in to the room, they went to another room and Marcial dressed-up, he was in shorts and shirt.

Q We are made to understand that when you went inside the room, Marcial and Gerry went out the room and entered another room.

A When I was still sitting on the stairs, I noticed them, they were doing something inside the other room.

Q My question is: When you went inside the room and Marcial was fixing the bed was he still in full clothing or as you said in short?

A He was already in shorts.

Q What was his shirt, was it sleeveless or with sleeves?

A It has sleeves.

Q What else have you noticed when you were inside the room with Marcial?

A When I turned my back, I notice he was already drinking a bottle of wine.

Q Directly from the bottle or from the glass?

A Directly from the bottle.

Q What was your reaction when you saw Marcial drinking liquor?

A I immediately grab my sandals and went near the door.

Q What was your purpose why you grabbed your sandals?

A I wanted to go out from the room I was afraid something might happen to me if I stay in the room any further.

Q May we know if you endeavour to open the door and get out of the room?

A I could not open the door and when I was near the door he went near me and asked me where I am going.

Q When he asked you where are you going, what did you answer?

A I told him I better go home than to stay here and wait for the lady co-boarders.

Q What did he answer to what you told him?

A He was still convincing me, telling me just to wait for the lady co-boarders to arrive.

Q. Did you agree to wait for the lady co-boarders?

A No more, I insisted on going home.

Q What did you do when you insisted that you want to go home?

A I tried to open the door but Marcial immediately grabbed my hair and poked a knife on me.

Q When he grabbed your hair and poked a knife, did he say anything?

A He threatened me.

Q How did he threat you?

A He said that if I will make an outcry he will kill me.

Q Will you show to the court how Marcial grabbed your hair and poked a knife at you, with the Interpreter as yourself and you as Marcial?

A Yes, sir. I was trying to open the door and he immediately grabbed my hair and poked a knife at me (the witness showing how her hair was grabbed, showing that Marcial grabbed her hair with his left hand and the right hand pointing the knife at her back , middle portion).

Q What else did he do to you after he grabbed your hair and poked a knife at your back on the portion pointed by you?

A He told me to lie down.

Q Lie down where?

A On the bed.

Q Did you lie down as you were told?

A I struggled still but I lay down because of fear; I was afraid he will kill me so I followed what he told me but still I struggled.

Q When you were told to lie down on the bed, what did Marcial do, if any?

A He tried to take off my shirts.

Q Was he able to take off your shirts?

A No, because I struggled and I moved.

Q After that what happened?

A I felt the pain on my back; he gave me a blow here (witness pointing her nape.)

Q. After he gave you a blow at your nape and you suffered pain, what happened?

A I felt unconscious.

Q Could you tell the Court how long were you rendered unconscious?

A I can't estimate.

Q When you regained consciousness, what did you notice?

A I noticed that Marcial was already on my top. And he was trying to make love to me and even though I was already weak, I was trying to struggle again.

Q When you said the accused was on top of you, what was he doing, if any?

ATTY SATOR: [Defense counsel]

Already answered, your Honor. He was trying to make love to her.

COURT:

The term used by the witness is very vague. The witness will answer.

WITNESS:

A He was trying to insert his sexual organ to mine but I still moved; I still struggled because I thought of pushing him away from me but I can't because I was already very weak because of the blows he gave me.

ATTY EMUSLAN:

Q You said he gave you blows, what part of your body did you receive those blows?

A The blow he gave me when he told me to lie down and the blow he gave me on my nape.

Q Where was the other blow he gave you aside from the blow at your nape?

A At my back.

Q Will you show to the Court?

A Here (witness pointing her back).

Q Where else in your body did you receive any blow?

A Here, on the left side of my stomach.

Q When you said that Marcial or the accused was on top of your body and making love to you, were you rendered naked that time entirely or not?

A I was half-naked.

Q While he was on top of you, will you be specific to the Court whether he has inserted his sexual organ in yours?

ATTY SATOR:

Objection, your Honor, the question is very leading.

COURT:

Reform the question.

ATTY EMUSLAN:

Q All right. When he was on top of you after regaining consciousness, what happened?

A When I noticed that I already regained consciousness, he hit me again on my stomach, here (witness points the left side of her stomach), and I was still very weak, so I felt unconscious again.

Q You did not get my question. When he was on top of you, will you tell the Honorable Court what did he do to you while he was on top of you after regaining consciousness?

A He tried to make love again to me.

Q This term trying to make love is very vague. Could you be very, specific?

A He was trying to insert his sexual organ to mine but I struggled.

Q After that, what happened?

A He again got the knife and poked it to me.

Q What did he say when he again poked the knife to you?

A He told me 'I will kill you if you will make an outcry'.

Q Were that all that he told you?

A No, sir.

Q What more did he tell you?

A He told me to better give myself to him because if I would not and I will make an outcry, he will kill me.

Q What was your feeling or what was your reaction to the accused after he poked a knife to you. Did you make any outcry?

A I did not make any outcry but I was still struggling.

Q Miss Licup, how many times did the accused sexually abused you?

A I think twice.

Q After he abused you, what did you physically feel?

A I felt intense pain on my thighs and I have blood on my organ; I felt the pain of the blows he gave me.

Q Aside from those, what other feeling did you suffer?

A I felt the pain of the blows he gave me.

Q After he abused you twice, what did you do when you left already the premises of the room. Did you leave the room?

A No, sir. I can't leave the room.

Q Why can't you not leave the room?

A He won't let me go home; he was still threatening me; watching me, he did not sleep but watched me.

Q How about you, were you able to sleep that evening?

A No, I was crying the whole night.

Q Were you able to go home on the following day, that is, April 8, 1978?

A He did not allow me to go home but when my mother came, my mother was the one who brought me home.

Q What time did your mother come?

A Around five or six o'clock in the morning.

Q Of what date?

A April 8, 1978.

Q When your mother arrived or came to that room where you were, on April 8, 1978, was Marcial still inside the room?

A Yes, he was watching me that I might escape.

Q Who opened the room when your mother came in?

A My mother, she pushed it.

Q What did you tell your mother, if any, upon seeing you there?

A She immediately embraced me; I told her I was abused.

Q Abused by whom?

A By the accused.

Q What was the reaction of your mother when you told her you were abused by the accused?

A My mother said something to the accused but I don't remember what she said, then she brought me home."
(TSN, pp. 16-28.)

Teodora Licup, Veronica's mother, testified that Veronica did not come home in the evening of April 7, 1978, so she presumed that Veronica had slept at the Andres Soriano Memorial Hospital; that when she went to the hospital the next day, she discovered that Veronica was not there; and that from Glenda she learned that Veronica had spent the night at the appellant's place. Part of Teodora's testimony follows:

"A We went up the third floor and I heard somebody crying. And I was already apprehensive that it was my daughter.

Q When you heard somebody crying on the third floor and you were apprehensive that it was your daughter, what did you do, if any?

A I knocked the door louder and it opened.

Q After you knocked the door, what transpired?

A The door opened and I saw my daughter crying and in disarray.

ATTY VIOLA:

At this juncture, your Honor please, I just want to make of record that while the mother is testifying in connection with the search of her daughter, she is crying in open Court.

COURT:

Proceed.

ATTY VIOLA:

Q What did you do, if any, after you saw your daughter crying and in disarray?

WITNESS:

A I immediately embraced her and asked her why she did not go home.

Q And what did she tell you, if any?

A She told me she was forced and sexually abused by Marcial Quizon.

Q Will you describe to the Honorable Court the situation of your daughter Veronica Licup when you saw her and where was she at that time?

A She was on the floor.

Q What was her position on the floor?

A She was semi-seated.

Q What about her attire or clothes, what did you observe?

A I could not recall, sir.

Q When she told you that she was abused by Marcial Quizon, what did you do, if any?

A I also confronted him and he denied.

Q Was Marcial Quizon inside the room?

A Yes, sir." (TSN, pp. 189-190.)

Veronica's claim that she was raped is corroborated not only by the circumstantial evidence given by her mother, supra, but also by the testimony of Dr. Cesar G. Salvanera who examined Veronica on April 10, 1978, and confirmed his statement in Exhibit B that she had "Contusions-abrasions, back, postero-lateral aspect, right and left sides." (Expe-diente, p. 14.)

To prove that they had been sweethearts and that the fornication was by mutual consent, the appellant submitted a small ID photo (Exhibit 3) of Veronica with the following words at the back: "Mar, Ano ang pag-ibig? Ronette." The statement is not dated. It could have been written before April 7, 1978, in which case Veronica could not have met the appellant for the first time on that date; or it could have been written after April 7, 1978 - a supposition not altogether unfounded as will be seen below. At any rate, We agree with the trial court's evaluation of the exhibit that:

"This piece of evidence does not indicate that accused and complainant are sweethearts. The dedication at the back of said picture does not convey any expression of love coming from complainant whose nickname is 'Rennet', to said accused. The expression at the back of the picture is just a question about the meaning of love." (Decision, p. 6.)

The appellant also submitted a letter (Exhibit 4) dated April 24, 1978, or 17 days after the incident, written by Veronica to him which states, among other things, "Alam mo miss na rin kita kaya lang wala na tayong magawa."

On its face, Exhibit 4 gives credence to the appellant's defense. But Veronica gave a satisfactory explanation by narrating the circumstances which attended the writing of the letter. She said:

“ATTY EMUSLAN:

Q This Exh. 4 of the defense which you claimed was written by you, will you please tell the Honorable Court the circumstances why you wrote this letter?

WITNESS:

A Beforehand, the friends of Marcial, the cousins, the parents and even the sister of Marcial came to the house and they convinced me that I got married with Marcial. And also they were bringing a friend of ours by the name of Glenda who was also convincing me that we got married. But I did not think about it first. And after the second time that they convinced me, I was con-vinced to agree to what they want because I fear that I might get pregnant and for what the shame I had and my honor, and all the people knew what happened to me. So I agreed and I knew that my parents would not agree to it. So Glenda was telling me to write a letter for Marcial but it would just be seen for my parents, not to be given to anybody or to Marcial. But when I wrote this as she told me what to write, I knew that the letter was not given to my parents but they let the people read about my letter and they made me a laughing stock." (TSN, pp. 165-166.)

Anent Exhibit 4, We agree with the trial court's assessment of the same as follows:

"Considering the tender age of complainant and her state of mind at the time she wrote said letter (Exh. 4), complainant must have been swayed by the advice of her friend, Glenda Fernandez, and accused's relatives, that said letter would ease if not solve her predicament then.

"The court believes that the tenor of said letter was framed by Glenda Fernandez, a close friend of complainant, to whom she reposed trust and confidence at that time when she needed advice most. She could not rely on her parents' advice because she committed a rash act which her parents did not take lightly, for as a matter of fact, they were angry at her. Thus, she had to seek for help from her close friends, one of them being Glenda.

"Besides, said letter (Exh. 4) dated April 24, 1978 was written after the incident on April 7, 1978. It does not show prior close relationship between complainant and the accused." (Decision, pp. 6-7.)

In the light of the foregoing, We hold that the errors attributed to the trial court are not justified.

WHEREFORE, the judgment of the court a quo is affirmed in toto. Costs against the appellant. SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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