

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL CHARLES HERRICK Y BECK, ACCUSED-APPELLANT.

G.R. No. 85137. July 12, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Rape is a very emotional word, and the natural human reactions to it are categorical: admiration and sympathy for the courageous female publicly seeking retribution for her outrageous violation, and condemnation of the rapist.

However, being interpreters of the law and dispensers of justice, we must look at a rape charge without those proclivities, and deal with it with extreme caution and circumspection.

First, we must free ourselves of the natural tendency to be overprotective of every woman decrying her having been sexually abused, and demanding punishment for the abuser. We are cognizant of the anguish and humiliation the rape victim goes through as she demands justice, but our responsibility is to render justice based on the law.

Second is the other side of the coin, wherein the culpability of the accused must be examined with utmost objectivity. While the Court has held that it takes a woman with remarkable courage to report to the authorities, and inevitably, bring to public knowledge, her violation, we must also look upon the accused as we must in all cases where men are criminally charged, that is, as innocent until proven otherwise. This is so because a charge of rape perforce throws the accused into the status of a pariah to be feared and avoided like the plague; such a state is not dissimilar to an actual finding of the accused as guilty of the crime in which case he is officially removed from public and social circulation for life--reclusion perpetua. Hence, the evidence for the prosecution must be so strong as to prove the accused guilty beyond reasonable doubt. On the other hand, it is not required that the evidence presented by the defense must be so convincing as to absolve the accused of the crime charged. Simply put, what is decisive is the strength of the prosecution's case as shown by its proof; that of the accused is of little moment, if at all.

Because of the horrendous nature and consequence of the charge of rape, the victim must show that indeed she has been bodily violated, forcibly and against her will, and has brought the matter to the authorities out of righteous indignation. A charge of rape cannot be a fanciful whimsy as its consequences compel the courts to examine, analyze, and evaluate painstakingly, the facts of the case, and come away with the conviction that the victim has been telling the truth.

In this case now before us, an appeal from the decision of the Regional Trial Court of Manila, Branch XXV,[1] convicting the accused of rape under Article 335, paragraph 1 of the Revised Penal Code, "by means of force, violence and intimidation," sentencing him to suffer the penalty of reclusion perpetua, and requiring him to indemnify the complainant in the sum of P20,000 as "consolidated damages," we are tasked with weighing the evidence against the accused to see if he indeed should be put away for life.

The complainant is Czarina Santos, who in March 1983 was 17 years old and a graduating student at Christian

Hope High School in Malabon, Metro Manila.[2] Santos filed a complaint of rape against Michael Herrick, 38, an American citizen, divorced, an importer by occupation, living in this country since December 13, 1975, and who at the time he was charged, had taken up residence at 102 Osmeña Street, Lapu-Lapu, Mactan Island.[3]

Examining meticulously the records of the case, we have tried to see if Czarina Santos' complaint can stand the scrutiny of factual evaluation. Had she evidenced the natural behavior of a victim of rape? Or, had her actuations been such that her claim to having been violated becomes subject to doubt as to its truth and correctness? Had she shown genuine grief, tried to flee from the scene of her violation, shunned her violator? Or, could it have been out of pique, on her part or on her family, that impelled her to cry "rape"?

The reported ravishment of the complainant did not take place only once, but purportedly four times. And yet, strangely, she has accused the appellant of only one crime of rape--just the first. Czarina is seeking vindication for only one abuse. She has chosen to ignore altogether three succeeding defilements she allegedly suffered three nights in a row in Lapu-Lapu City.

The first rape was supposed to have been committed at 2:00 o'clock in the morning of March 26, 1983, in a private room of the Las Palmas Hotel in Ermita, Manila.[4] The alleged first rape had been committed on the fourth time the complainant met the accused. Their first meeting had been on February 15, 1983[5] when she was interviewed by the accused for possible employment, the latter having plans to open an outlet at the Pistahang Pilipino,[6] a commercial complex specializing in Philippine handicrafts located just diagonally across the street from the Las Palmas Hotel. The complainant was supposedly asked to report back to the accused after her high school graduation, on March 23, 1983.

The complainant and the accused met the second time when the accused attended her graduation, after which both were invited by the mother of the complainant's best friend and classmate, Gerosa Jordan, 18, to a "blow-out" dinner at a Chinese restaurant in Ongpin, Binondo.[7] Her father and mother did not attend Czarina's high school graduation.[8]

The accused undoubtedly showed some interest in Czarina when he again attended her Citizen's Army Training (C.A.T.) closing rites two days later, on March 25, 1983: his presence at the rites and their having lunch at the Jordan family residence in Bacood, Sta. Mesa thereafter was their third time to be together. Czarina went home at 7:00 o'clock that evening, and was given a tongue-lashing by her mother who did not approve of her going out with Gerosa. The scolding culminated in the slapping of Czarina by her mother. Czarina left her house and called up Gerosa who agreed to meet her at the Las Palmas Hotel. It was at the lobby of the hotel[9] that Czarina and Herrick met for the fourth time. When she entered the lobby, she saw him and his secretary, Mildred Caoile, who forthwith took her to Room 618 where Gerosa was waiting. Left to themselves, Czarina told her best friend of her having run away from home; of her parents' belief that she had not been chaste, and of their decision not to send her to college. Gerosa comforted her and assured that Michael Herrick might help her out of her predicament as he was a generous man and one who could be easily trusted.[10] After a while, when her feelings had been assuaged, Czarina went out with Gerosa and Gerosa's brothers, Mildred, Michael Herrick, and two other girls, to dance at the Galactica Disco at the V.V. Soliven Building at Epifanio de los Santos Avenue (EDSA).[11]

At about midnight, Mildred and Czarina were at the Manila Domestic Airport to buy Czarina a plane ticket for Cebu City.[12] After buying the ticket, the two returned to the hotel. It was at the hotel that Czarina was allegedly raped for the first time.

On cross-examination, Czarina testified that at about 2:00 o'clock in the morning of March 26, 1983, she was awakened "because I felt that somebody was on top of me, kissing me...I opened my eyes, and I saw Michael on top of me...I pushed him...I wiggled my body and pleaded to him not to do anything...I shouted but he covered my

mouth and even my nose...with his hand...He told me not to resist anymore or else he is going to kill me...Because I felt very weak and very nervous, I did not do anything anymore...He took off my underwear...My panty...He placed his penis on top of my vagina...Suddenly, I felt a searing pain...I lost consciousness...(I regained consciousness) in the morning... I saw Michael still hugging me... I cried and tried to free myself and I tried to stand up but I can't... I felt the pain all over my body, my legs, my back... I grabbed a blanket and covered my body with it...Michael woke up...He found me crying and told me that I can do nothing anymore. I don't have to worry because he was going to take care of everything...After that, he ordered me to get dressed...Yes, sir (I got dressed)."[13] It must be noted that the complainant testified that the accused, who threatened to kill her if she mentioned the incident to anybody, was not armed with a deadly weapon.[14]

What baffles us is that the complainant put on her clothes under the direction of her supposed rapist, then, along with Mildred, accompanied the same rapist to the domestic airport, where he took the 8:00 o'clock morning flight to Mactan in Cebu. After Michael Herrick's departure, Czarina waited at the airport for the 11:00 o'clock flight for the same city, boarded it, and upon arrival at the southern airport, was met by Josephine "Gigi" Egot, a secretary of Michael Herrick, who then took her to Michael Herrick's apartment in Lapu-Lapu City.[15] In the evening, Czarina went disco-dancing with the accused and some companions, and during the four nights that she stayed in Lapu-Lapu City, she was allegedly raped again by the accused three times.[16]

In the meantime, Czarina's parents were very upset by their daughter's disappearance since the slapping incident in the evening of March 25, 1983. On March 28, 1983, they went to the Malabon Western Police District, to report that their daughter was missing.[17] The search for Czarina led to a phone call from Manila made by Mildred to Herrick in Cebu saying that Czarina had run away from home.[18] When Herrick confronted Czarina, the latter admitted that she had indeed flown the coop and said she was afraid to go back because of what her father might do to her. Her father, however, insisted that she return home, and bought a plane ticket for her. Czarina was not able to use that ticket as Josephine had borrowed money from someone for the purchase of two tickets--one for Czarina and another for herself. After the confrontation, Michael Herrick flew back to Manila on March 29, 1983. The following day, Czarina and Josephine took the early 6:00 A.M. PAL flight bound for Manila. When Czarina and Josephine arrived at the Manila Domestic Airport, they were met by Aviation Security Command (AVSECOM) personnel who brought them to the police precinct on United Nations Avenue. When Czarina saw her parents, she broke down.[19]

The next day, the medico-legal officer of the Western Police District examined Czarina for physical injuries and vaginal lacerations. His findings were that the examinee's "hymen (was) relatively thick, circular in shape with deep old lacerations at 3:00 and past 6:00 o'clock positions with rounding of edges." [20] Explaining these findings in laymen's terms, Dr. Marcial G. Cenido testified that "(T)hese are lacerations of the hymen which are the result of a previous sexual intercourse prior...or the introduction of the penis into the vagina prior to the incident of the alleged rape" (on March 26, 1983).[21]

Having examined the evidence of the prosecution, we now turn to that of the defense whose witnesses corroborate one another's testimonies. Those testimonies essentially point to the weakness of the evidence, as well as to its paucity, presented by the prosecution.

To begin with, defense witness Mildred Caoile, 29, married, and Michael Herrick's secretary,[22] testified that she and Czarina slept at the Romansa Lodge on Monica Street, Ermita, Manila, on March 26, 1983, and not at the Las Palmas Hotel, as claimed by Czarina. They checked in just after 2:00 o'clock that morning and checked out after 5:00 o'clock, or more than three hours later. Caoile's statement was corroborated by Andres E. Baltazar, receiving clerk at the lodge, who testified that the two stayed at the lodge from 2:25 A.M. up to 5:45 A.M.[23]

Curiously, after the alleged rape, Czarina dressed up, went with Mildred to the Las Palmas Hotel, and accompanied the accused to the Manila Domestic Airport. Herrick took the 8:00 o'clock flight but Czarina could not join her because she was not able to get a ticket for that flight which was fully booked. After Herrick's departure, Czarina, Mildred, and Juliet Navarro, a civilian AVSECOM employee, went back to Las Palmas Hotel where they had breakfast at the hotel restaurant. Later, Mildred took from the hotel a luggage of Herrick to be brought to her home for safekeeping while Herrick was in Cebu. After breakfast, Juliet accompanied Czarina back to the MIA. While waiting for her 12:00 o'clock noon flight for Cebu City, she chatted with Juliet and other friends of Mildred, namely, Sergeant Carpio and Sergeant Villamin, also of the AVSECOM: all the three were at that time assigned for security purposes at the Manila Domestic Airport. When Czarina's flight was announced, she got on board alone, and arrived in Cebu at 1:30 in the afternoon of March 26, 1983. At the Mactan airport she was met by Josephine "Gigi" Egot, 21, single, and a secretary at MR Exporters, which was managed by Michael Herrick. Josephine brought her to Michael's apartment at Osmeña Street in Lapu-Lapu City.[24] After resting, Czarina went out with one of Michael's housekeepers to Marigondon Beach: that evening, she went to dinner and to a discotheque with Michael and Josephine. The following two evenings also found her at the disco house in the same company.

In her testimony, Josephine Egot claimed that in one of her conversations with Czarina, the latter asked how she could win Michael's love, and whether she could do that by "gayuma" or "muscle control." [25] Josephine said she stopped this kind of conversation, showing her disapproval.

Czarina arrived together with Josephine at the Manila Domestic Airport on March 30, 1983, and upon seeing her parents, she broke down and cried. Only then did she make the "confession" that she had been raped by the accused-appellant.

From the foregoing, we make the following observations:

1. We are convinced that the complainant did not seriously resist the alleged sexual advances of the accused-appellant. The medical examination of Czarina conducted on March 31, 1983, a day after her arrival from Cebu, showed not a scintilla of extra-genital injuries although there were indications of "deep old lacerations" of the hymen resulting from intercourse before her alleged rape (first) on March 26, 1983. Furthermore, the doctor found no fresh hymenal lacerations.[26] The absence of indications of a recent rape when ordinarily there should have been signs of new lacerations, and of external injuries on any part of the complainant's body that would have shown her violent struggle to preserve her chastity, considering that she claimed she had been raped four times (once in Manila and thrice in Cebu), compel us to seriously question the probability of the complainant's accusation.[27]

2. The evidentiary rule is that "in crimes against chastity the testimony of the injured woman must not be received with precipitate credulity; and when the conviction depends at any vital point upon her uncorroborated testimony. It should not be accepted unless her sincerity and candor are free from suspicion." [28]

We find it hard to believe that the "stinging pain" caused by her violation knocked her unconscious for four hours--from 2:00 o'clock to 7:00 o'clock in the morning. If she had been unconscious for that long, she would have ended up in the hospital. Corollary to this point, why would Michael tarry by her side after the rape? It is not the natural tendency of a man to remain for long by the side of the woman he had raped.[29]

Similarly, we are intrigued by Czarina's behavior after her alleged rape. A woman's conduct immediately after the assault is of utmost importance in the resolution of a rape case.[30] In the case of Czarina, she failed to contact her parents, or tell her best friend Gerosa, about her defloration by Herrick. Nor did she leave the hotel room where she had supposedly been raped. A rape victim's natural reaction upon regaining consciousness and

discovering that she was naked and that she had been violated, would be to put on her clothes, and rush out to seek help. Czarina did none of these.

3. We find even more incredible the idea of a victim of rape voluntarily accompanying her violator to the domestic airport, and later flying in the next plane to join him in a faraway city. How can a victim of rape agree to a rendezvous with her alleged abuser? While she was waiting for her flight, she chatted with people (some military personnel at that), although showing some uneasiness and looking sleepy,[31] and read the morning papers, but she did nothing to start the process of vindicating her honor--like complaining to the military security persons around her that she had been raped earlier that morning and soliciting their help. Instead, she simply and patiently waited for her flight that would reunite her with her supposed abuser.

4. On cross-examination, she was asked what had transpired between her and Herrick when they were in Cebu, and she said, "He had sex with me for three consecutive nights," during the four nights that she stayed in his apartment. When asked what she did, if she shouted or kept silent when she was being abused, she said, "I just kept silent." [32]

5. The testimony of fatherly affection and concern by Czarina's father is belied by the records. He claimed that he was very strict with his children and took good care of them. But Czarina testified that nobody from her family attended her high school graduation, which is an important watershed in a young person's life. Atty. Santos gave flimsy excuses for his absence at his daughter's graduation: he was very busy with his law practice, that he had to attend to a more important matter on that day, and that the graduation was not a very special occasion as Czarina did not graduate with flying colors.[33]

The decision of the trial court showed pique over the actuations of the accused, whose police record is not exactly spotless, there having been charges lodged against him previously. He had figured in an automobile accident and was charged for reckless imprudence. His landlady in Cebu had filed a case against him for malicious mischief. Mely's Export Trading in Cebu filed one or two cases against him which he won "in the honest fiscal's office over there." [34]

Trial Judge Emeterio C. Cui, now Justice of the Court of Appeals, found Herrick guilty: "Defendant Michael Herrick is an unusually big man--5 feet and 11 inches in height, and 210 pounds in weight. He is divorced and was 39 years old at the time he gave his direct testimony on November 24, 1983. He was petulantly glib as he gave his testimony, noticeably interspersed with pejorative remarks like 'Immigration told me I can buy anything I want,' x x x 'You know Filipinos, maybe yes, maybe no,' x x x 'Mely's Export Trading filed one or two cases in Cebu which I won in the fiscal's office--in the honest fiscal's office over there.' He has a macho inclination towards the erotic, as shown by the suggestive pictures he took in his hotel room of Gerosa Jordan (Exh. F, F-1, F-2 and F-3)." [35]

"Defendant's physical build equips him with adequate strength to overpower Czarina the way she said he did. And his ingrained petulance and deprecating attitude to things Filipino could have been a decisive leverage in making defendant believe that he could do anything and then walk away from it with a defense strung together by audacious testimonies." [36]

We have taken note, as obviously the lower court had, with contempt, of the arrogance of the accused-appellant, as when, for example, he referred to "the honest fiscal over there," which is like saying there are "dishonest fiscals here." He made references as well to things being easily had in this country if one had money.[37] As a foreigner who earns his livelihood in this country. Herrick should show more respect for the Philippine courts and institutions and raise charges of anomaly or irregularity against erring members of the court or government officials in the proper venue.

Be that as it may, judgment on the accused's culpability must not be colored by one's prejudices and biases against the accused, even if these had actually been inspired by the accused himself. A judge should be able to put his dislike for the accused aside and determine judiciously from the facts presented whether or not the accused is guilty.

It is well to note that despite the pendency of the rape case against the accused, he petitioned for, and was granted, permission to leave the country twice, first on June 3, 1983, returning on June 22, 1983, and again on July 17, 1983, returning just over a month later, on August 29, 1983. He could have elected not to return to this country during those times he was allowed to leave it, yet he chose to return, knowing that the charge of rape slapped on him is unwarranted.

Tested in the light of human nature and experience, we find wanting the credibility of the testimony of the offended party. Therefore, the requirement of moral certainty has not been met.[38]

WHEREFORE, the decision of the trial court dated August 12, 1985 is REVERSED and the appellant is hereby ACQUITTED on reasonable doubt.

Costs de officio.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Judge Emeterio C. Cui, presiding.

[2] T.S.N., May 19, 1983, 3-4.

[3] T.S.N., November 24, 1983, 2-3.

[4] T.S.N., May 19, 1983, 13.

[5] T.S.N., April 3, 1984, 4-5.

[6] T.S.N., May 19, 1983, 5.

[7] Id., 5-6.

[8] T.S.N., April 3, 1984, 17.

[9] T.S.N., May 19, 1983, 9.

[10] Id., 10.

[11] Id., 11.

[12] Id., 11-12.

[13] Id., 16.

[14] T.S.N., May 31, 1983, 23.

[15] T.S.N., October 25, 1983, 4.

[16] T.S.N., May 19, 1983, 17.

[17] T.S.N., May 17, 1983, 3.

- [18] T.S.N., August 4, 1983, 36.
- [19] T.S.N., May 19, 1983, 20.
- [20] T.S.N., June 9, 1983, 10-12.
- [21] T.S.N., May 12, 1983, 6-7.
- [22] T.S.N., August 4, 1983, 4.
- [23] T.S.N., August 4, 1983, 4-7.
- [24] T.S.N., October 25, 1983, 3.
- [25] *Id.*, 8-9.
- [26] T.S.N., June 9, 1983, 10-12.
- [27] *People v. Sunga*, No. 57875, July 5, 1983, 123 SCRA 327; *People v. Francisco*, No. L-43789, July 15, 1981, 105 SCRA 516, 536.
- [28] *People v. Estacio*, No. 54221, January 30, 1982, 111 SCRA 537.
- [29] *People v. dela Cruz*, No. L-39919, October 19, 1982, 117 SCRA 672.
- [30] *People v. Mauro del Pilar*, G.R. No. 75852, August 11, 1988, 164 SCRA 280; citing *People v. Hayag*, No. L-38635, November 17, 1980, 101 SCRA 67, 83.
- [31] T.S.N., August 4, 1983, 25-26.
- [32] T.S.N., June 7, 1983, 10.
- [33] T.S.N., November 15, 1984, 13-14.
- [34] T.S.N., January 17, 1984, 11.
- [35] Decision, Rollo, 30-31.
- [36] *Id.*
- [37] T.S.N., January 17, 1984, 4-5.
- [38] *People v. Estacio*, *supra*; *People v. Francisco*, *supra*; *People v. Quiazon*, No. L-44299, August 31, 1977, 78 SCRA 513, 521

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