PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERWIN AGRESOR, ACCUSED-APPELLANT.

G.R. Nos. 119837-39. December 09, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Appellant Erwin Agresor, then 19, was charged before the Regional Trial Court (RTC) of Laoag City with three (3) counts of rape under three separate informations all allegedly committed against his second cousin, Ritchie Calaustro, then 13 years old. The informations are quoted hereunder:

> In Criminal Case No. 7018:
>
> That on or about February 1, 1994 at nighttime in Brgy. Alsem, municipality of Vintar, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused thru force, violence and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with the undersigned against her will and consent.
>
> In Criminal Case No. 7017:
>
> That on or about February 12, 1994 at nighttime in Brgy. Alsem, municipality of Vintar, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused thru force, violence and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with the undersigned against her will and consent.
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> In Criminal Case No. 7016:
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> That subsequent to the second incident of rape committed on or about February 12, 1994 at nighttime on the same date, in Brgy. Alsem, municipality of Vintar, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused thru force, violence and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with the undersigned against her will and consent.[1]

Upon arraignment, appellant pleaded not guilty to these charges. The RTC, thus, proceeded with the consolidated trial of the three rape cases.

Appellant's alleged victim, Ritchie Calaustro testified that at about 10:00 in the morning of February 11, 1994, just after taking her snacks near the market, she was joined by her classmates Chuchi, Hermie and Lothelyn in walking back to school, the Vintar Academy at Vintar, Ilocos Norte. Suddenly, Erwin Agresor pulled Ritchie into a tricycle by grabbing both her hands. "If you do not follow me, I will kill you," he warned. Ritchie cried for help but her classmates, in fear, did not respond to her cries.

The tricycle, which was driven by Ciano Viernes, sped away through Margaay Road and on to Barangay Alsem, passing through three other barangays. The tricycle stopped at around a quarter to two in the afternoon upon reaching Alsem. Appellant then paid Viernes, who proceeded back home.

Appellant pulled Ritchie towards a hut around thirty (30) to forty (40) meters from where the tricycle had stopped. There were no other houses around the hut. "If you will not follow me, I will kill you," he threatened her.

Appellant forced Ritchie into the hut and ordered her to undress. "If you do not want, I will kill you," he said. Ritchie removed her black denim pants and white T-shirt. He commanded her to lie down as he repeated his threat, "If you do not want, I will kill you, including your mother and father." Appellant brandished a knife around 10 1/4 inches long.

Ritchie was still wearing her sando and panty when appellant put himself on top of her. He kissed her breast as he held her hands with his left hand and pointed the knife at her neck. Ritchie resisted as appellant pulled down her panty. He kissed her neck, lips and private part for about an hour. Appellant then "took advantage of (her) womanhood" by inserting his penis into her private part and making "push and pull movements." Ritchie felt pain. Appellant's penis remained in her vagina for a "short time only" or for "less than one hour."

Ritchie stayed in the hut with, appellant the whole night. Because of appellant's threats, Ritchie did not escape.

The next morning, or on February 12, 1994, Jose Ubay came to the hut to fetch Ritchie and appellant. Ritchie knew Ubay as a barkada of appellant, having seen them together on previous occasions. According to Ritchie, Ubay learned that they were in the hut after appellant told two men who went fishing in the river to inform Ubay about their presence: While these two men were in the hut, Ritchie cried for help but they did not heed her plea.

When Ubay arrived, Ritchie told him about what appellant had done to her but he said nothing. Ritchie was forced to sit on Ubay's motorcycle between appellant and Ubay, who drove the vehicle to his house.

The three arrived at Ubay's residence, which was fifty (50) to eighty (80) meters from the hut, at around 8:00 in the morning. Ubay, his three children, and a woman who lent Ritchie clothes were the only occupants of the house. (Ubay's wife was abroad.) Ubay served breakfast but Ritchie could only eat a little.

After a while, appellant's barkada, namely, Marlon, Boy, Bobby and Ruveno arrived on a jeep. The boys sat in the sala and drank gin. Ritchie, Erwin and Jose Ubay joined them while they drank. Ritchie asked appellant's barkada to help her because appellant "took" her. The men, who would stay in Ubay's house until the police came to her rescue, ignored her pleas. The men stopped drinking at about 5:00 in the afternoon. All the time they were drinking, Ritchie sat by herself. Ritchie wanted to escape but did not know where to go because it was her first time to be in that place.

At around 7:00 in the evening, appellant ordered Ritchie to enter one of the rooms. Once they were inside, appellant locked the door. "Help me to go out of this room!" Ritchie cried, as appellant removed his clothes. No one came to Ritchie's aid. After undressing himself, appellant removed Ritchie's clothes. She struggled but appellant held her hands and pointed a knife at her. He removed her T-shirt and kissed her breast for "less than an hour." He kissed her as he removed her pants, panty and sando. Appellant forced Ritchie to lie down, and placed himself on top of her. "If you resist I will kill you," he threatened, pointing the knife at her. He then inserted his penis into her vagina and made push and pull movements. Ritchie felt pain during the intercourse, which lasted less than an hour.

At around 8:00 that same evening, as Ritchie was putting on her clothes, appellant ordered her to undress and lie down again. For the third time, he inserted his penis into her private part and repeated the push and pull movements. Ritchie felt pain, and blood came out of her. Appellant then disengaged himself from Ritchie, and changed his clothes. He locked the door as he left. Ritchie cried and put on her clothes.

Ritchie did not see appellant the rest of the night.

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The following day, on February 13, 1994, at around 6:00 in the morning, appellant opened the door and told her to eat. She ate with Ubay and his children after which appellant ordered her to enter the room again, and locked the door.

Ritchie was locked inside the room for the duration of her captivity; she was allowed to go out only during mealtime. She could not escape because the room was supposedly guarded by appellant's friends, Boy, Marlon and Bobby.

On February 16, 1994, five days after Ritchie was taken by appellant, appellant informed her that the police were looking for her. She wanted to run to the police but appellant brought her to the mountains, about eighty (80) meters south of Ubay's house. Big trees and thick foliage hid them from view. They stayed there until 4:00 that afternoon then they went back to Ubay's house where she spent the night in the same room. Appellant locked the door and went away.

At 6:00 the following morning, appellant arrived and told her the police were in the area. Appellant dragged Ritchie from the room and again took her to the mountains. At about 8:00 that morning, the police found the two but appellant managed to escape. She told the police that appellant had taken advantage of her womanhood three times.[2]

SPO1 Tomas Jose, Jr. of the Vintar Philippine National Police testified that they received a report at around 10:00 in the morning of February 11, 1994 from Ely Calaustro, Ritchie's father, that appellant had taken her away. A few days later, Ritchie's father reported that Ritchie and appellant were in Barangay Alsem. Apparently, the father and SPO4 Edgar Norienton went to Barangay Cabayo, where appellant's parents resided, to inquire as to the whereabouts of appellant.

Upon learning that appellant had taken Ritchie to Alsem, the police on February 17, 1994 set out for Ubay's house, where appellant was reported to be hiding. They arrived there at around 8:00 in the morning but Ubay told them that neither appellant nor Ritchie was around.

The police, thus, conducted a meeting with the barangay officials to seek their help. One of the barangay councilmen informed them that the two were hiding near the barangay water tank. The police then proceeded to the location of the water tank where they saw, from a distance of about forty (40) meters, appellant pulling Ritchie by the hand. Appellant dragged her for around twenty (20) meters. As the police chased the two, narrowing the distance to about fifteen (15) meters, appellant released Ritchie and ran away. The police chased appellant but they failed to catch him in the thick forest.

SPO1 Jose asked Ritchie what happened. "He forced me to go away," she replied.[3]

Hermie Albano, Ritchie's classmate, corroborated Ritchie's story on how she was taken by appellant. Between 9:00 and 10:00 in the morning of February 11, 1994, Hermie and Ritchie together with classmates Argentina Tunac, Lothelyn Matute, Chuchi Aghayani and Maris Vivid, were on their way to school after taking their snacks. They saw a tricycle parked near the gate of the Vintar Academy but they did not mind it. Suddenly, appellant pulled Ritchie's left wrist with his two hands and immediately put her inside the tricycle. Ritchie struggled and cried but the tricycle quickly drove away. Hermie and her classmates reported the incident to Porfirio Pascua, Ritchie's uncle and a teacher at the Vintar Academy.[4]

On March 1, 1994, Ritchie was brought to the Gov. Roque Ablan, Sr. Memorial Hospital where she was examined by Dr. Lorna Castillo. The certification[5] ssued by Dr. Castillo reveals that Ritchie had lacerations at the 3 and 9 o'clock positions of her hymen and a fresh superficial laceration 0.5 cm. in length at the fourchette.

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In his defense, appellant Erwin Agresor claimed that he and Ritchie were sweethearts, and their sexual intercourse consensual.

Appellant testified that he and Ritchie were neighbors. Their houses in Barangay 1, San Roque, Vintar, llocos Norte stood beside each other. Back in 1993, complainant would go to appellant's house, and they would take care of the baby together. At first, they were merely "gangmates" but feelings of love later developed between them. According to appellant, he started courting complainant on March 3, 1993 when he was 19 and when complainant "must have been 13." Although she was young, he was interested in her because she was beautiful. On January 31, 1994, the, two went to Balacad, Laoag City where they spent the night. That night, she allowed him "to take advantage of her."

Erwin also claimed that Ritchie used to send letters through his friend Cherry Anne Alcaraz and his aunt, Imelda Balaan. In a letter she sent through Cherry Anne on the first week of February 1994, Ritchie wrote that she was being forced to abort the baby she was carrying and that she wanted to go away. The lovers thus agreed to meet in one of the stores in the supermarket and leave together. After talking in the store, Erwin got his clothes from the house of one of his barkada. He also instructed Marciano Viernes, a tricycle driver, to fetch Ritchie from the store at around 10:00 that same morning. He and complainant then rode to Barangay 24, Alsem, Vintar in the tricycle.

They reached Alsem at noon and proceeded, to a bahay kubo where they stayed the night and did what was "usual for sweethearts," kissing and "satisfying" their "mutual feelings" by performing the "sexual act" twice.

The next day, Jose Ubay fetched them in his motorcycle. The three went to Ubay's house, where they stayed for the rest of the week. According to Erwin, Ubay had two children who stayed in the house with him. While they were in Ubay's house, they "did what husband and wife do."

During the week, appellant went thrice to the river for a picnic with his barkada, and a girl companion. They usually meet there at about 10:00 in the morning and returned at 3:00 in the afternoon. On February 17, 1994, while Erwin was out fishing with his barkadas the police arrived in Ubay's house. When he and his barkada returned to the house, Ritchie was no longer around. People in Alsem told him that she had been taken by the police. He and his barkada then had a "drinking spree." Thereafter, they went around downtown and went back to Alsem about three hours later.

Erwin denied that he grabbed Ritchie and put her in the tricycle, claiming that he was not in the tricycle when the tricycle picked her up. Neither did he point a knife at her neck when they had sexual intercourse in the hut. He claimed that she consented to the sexual act. In Ubay's house, she was free to leave had she wanted to since the "house was open." However, he conceded that the only means of transportation to the poblacion was Ubay's jeep.

Appellant admitted that the hut where he first took Ritchie was isolated, the houses very far apart. Had she shouted, however, her shouts would echo from the river.[6]

Cherry Ann Alcaraz, Ritchie's neighbor and schoolmate, corroborated appellant's claim that he and Ritchie were sweethearts. Cherry Ann declared that she knew of such fact since she and Ritchie were still in the Sixth Grade. Cherry Ann had also seen Erwin accompany Ritchie to school many times. On the first week of February 1994, complainant pleaded with Cherry Ann to deliver two (2) letters to appellant. Cherry Ann acceded to the request and delivered the letters to Erwin. She saw Erwin read the letter, fold it, and place it in his pocket.[7]

Imelda Balaan, 24 years old, is appellant's aunt, being married to the brother of appellant's mother. She claimed that Ritchie's mother and her husband are cousins since Ritchie's grandmother and her husband's father are siblings. She said she knew that Ritchie and Erwin were sweethearts since Ritchie was thirteen and Erwin was twenty-one, because Ritchie told her so. Living with appellant in the house of her in-laws, she had seen Erwin and

Ritchie putting their hands on each other's shoulders several times. At another time, she saw the two kissing in Erwin's room. As Erwin and Ritchie were relatives, Imelda admonished them that it was not proper for them to be sweethearts.

Imelda delivered more than five of Ritchie's letters to appellant. On one occasion, she delivered to him a letter regarding her baon to a field trip.[8]

Jose Ubay, a jeepney driver, testified that he had known the accused for more than three years prior to February 11, 1994. He said that he was introduced to Ritchie by Erwin as his sweetheart about a year before the alleged rape. On February 11, 1994, Jose Ubay saw Erwin and Ritchie in a hut at the boundary of Borangabong and Alsem when he visited his fishpond. The two looked happy together. Upon being re-introduced to Jose Ubay, Ritchie asked Ubay if she could go to his house, about two (2) kilometers away. He agreed, and Ubay brought them home on his motorcycle. Ritchie sat behind appellant, who in turn sat behind Ubay. Upon arriving at Ubay's house, appellant and Ritchie sat in the living room as Ubay prepared lunch. After lunch, Ritchie and Erwin entered one of the rooms. Ubay did not hear any noise from the room. Ubay then went out to converse with a neighbor. When he returned two hours later at about 3:00 p.m., the two were still in the room.

In the course of the week, Jose Ubay's barkada came to the house and stayed there for two days. At times, they would go out on a picnic and Ubay would bring Erwin with him, leaving Ritchie alone in the house.

Between February 11 and 17, 1994, Ubay went out to drive his jeep. As the children were in school, Ritchie and Erwin were left in the house. Ritchie would clean the house while Erwin would sometimes cook. During their stay in Ubay's house, Ubay observed that they were both happy.

Ubay denied that Ritchie asked him to take her home. He also claimed that he never prevented her from leaving the house.

Ubay noticed that Ritchie had a bag when she arrived at his house. The same bag was left in the house when the police took Ritchie. Appellant then took the bag after Ritchie was taken by the police.[9]

Marciano Viernes, the tricycle driver who drove the couple to Alsem, was Erwin's classmate in elementary school. On February 11, 1994, Erwin hired him to fetch complainant at the carinderia in the market. Marciano drove appellant to Margaay where appellant alighted, and proceeded to fetch Ritchie. Upon reaching the carinderia, Marciano asked who was Ritchie from Ritchie herself. He did not know Ritchie until that day. He began to tell her that "Erwin said that she would come," and had yet to finish his statement when Ritchie boarded the tricycle. Ritchie had a bag with her. The tricycle then picked up Erwin who was waiting in Margaay, and proceeded to a river near Alsem. The two went down near the river, and Marciano went home.[10]

Appellant's brother, Edgar Agresor, confirmed that Ritchie is their second cousin since Ritchie's grandmother and Edgar's grandfather are sibling. He recounted that on January 31, 1994 at around 7:00 in the evening, Erwin and Ritchie arrived at his house in Balacad, Laoag City and told him that they had eloped and that they were afraid to go home. Edgar offered to accompany them but they told him that Ritchie's father would beat her up if they did.

After taking their supper, Edgar informed the couple that they would sleep downstairs. Erwin was to occupy a bench while complainant was supposed to sleep on a bed. At around 2:00 in the morning, Edgar went down to answer the call of nature, and saw the two on the bed embracing each other. Edgar felt embarrassed, and did not bother them.

The following day, Edgar Laurento, a policeman-uncle of complainant, the latter's wife, and a driver, came and forced complainant to go home. Ritchie did not want to go home but they pulled her away. Appellant was not

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around at that time because he had gone to Vintar to get their clothes.[11]

On rebuttal, Ritchie denied that she and appellant were sweethearts. Nor did she go voluntarily with Marciano Viernes, the tricycle driver. She denied knowing Imelda Balaan or Edgar Agresor, appellant's brother. She alleged that she had never gone to Balacad, Laoag City with Edwin.

Confronted with the letters offered as evidence by the defense, Ritchie denied having written them. She said that that was not how she wrote and that "the letters were different" from her handwriting.

Ritchie also explained that she could not have escaped from Ubay's house because she was not familiar with the place. Alsem was around fourteen (14) kilometers away from her barangay. One time when she was alone, she went out and ran but the place was "far" and there was only one vehicle plying the area. She managed to negotiate only a little distance and, tired, she returned. Ritchie asked someone "to help [her] go out of the place" but instead of acceding to her plea, that person brought her back to Ubay's house. That person turned out to be a relative of Ubay's.[12]

Appellant, on sur-rebuttal reiterated his defense that he and the complainant were sweethearts.[13]

After trial, the RTC rendered judgment finding the accused guilty of all three counts of rape, thus:

> WHEREFORE, accused Erwin Agresor is hereby found GUILTY beyond reasonable doubt of three (3) counts of rape and is hereby sentenced to suffer the penalty of imprisonment of FORTY (40) YEARS of reclusion perpetua in each of the cases or a total of ONE HUNDRED TWENTY (120) YEARS, plus all the accessory penalties provided by law, and to pay private complainant Ritchie Calaustro the amount of FIFTY THOUSAND PESOS (P50,000.00) in each of the cases or a total of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) without subsidiary imprisonment in case of insolvency.
>
> Costs against the accused.
>
> SO ORDERED.[14]

Appellant now asserts his innocence before this Court.

We reverse appellant's conviction. The following circumstances give credence to appellant's defense and raise reasonable doubts as to his guilt:

First, the undated letters[15] iven by complainant to appellant establish that they were indeed lovers.

Thus, in Exhibit "2," complainant swears her undying love for appellant:

> Dearest Erwin,
>
> I hope you're fine reading upon reading my letter. Even we far each other. 1 always Love you. I always think of you. Umasa kang hindi ako magbabago dahil ipinangako ko sa sarili ko ikaw lang ang mamahalin at dina ako iibig pa ngayon at kailanman.
>
> Just always remembered this:
> You are the only one who own my heart. I had never loved anyone but only you.
> I always Love you:
>
> I need you
>
> I miss you
>
> Sana huwag kang magbabago
> Sana ako lang ang mamahalin mo.

Sana tayong dalawa na ngayon at kainlanman.

Love
Ritchie

Exhibit "3" consists of two pieces of paper where complainant confesses that she is pregnant and that appellant is the father of the child she is carrying. She asks appellant to take her away.

Dearest Erwin,

I hope you're fine condition upon reading my simple letter. Napakasakit tanggapin ang nangyari sa atin dalawa kung masakit sa iyo mas masakit sa akin. Hindi ko naman kagustuhan ang nangyari sa atin. Kung alam mo lang ang nararamdaman ko noon parang gusto ko nang mamatay. Mahal na mahal kita kahit buhay ko para lang sa iyo. Pangako sa iyo. Kung talagang mahal mo ako ipaglalaban mo ang ating pag-ibig. Di ba nagsumpaan tayo na mamatay lang paraan para maghiwalay tayo. Ilayo mo ako kung talagang mahal mo ako ipaglalaban mo ang karapatan mo. Alam mo ba ang karapatan mo dahil isa ka nang ama. Alam mo ba buntis ako isang buwan na. Hindi ko alam na buntis ako pero dinala ako sa doktor at inaksemen nila ako at don ko nalaman ang katotohanan:

Paano na ako ang magiging anak mo. Ayokong ipalaglag kung pilitin nila na ipalaglag mabuti umalis na lang ako. Alam mo naguguluhang ako ngayon at sinabi nila ilalayo nila ako pupunta daw ako sa Maynila. Ayokong maghiwalay tayo. Mahal na mahad kita ngunit kung nagbago na ang desisyon mo wala akong magawa ngunit sa akin ang tatanongin mo wala akong masasabi ngunit ang tandaan mo hindi ako magbabago dahil ama ka ng dinadala ko. Ipaglalaban ko hanggang kamatayan. Pangako Sa iyo.

Love always
Ritchie

P.S.

At sinasabi ko una ka naging akin una kang na umangkin sa akin katawan. Ano man ang mangyayari hindi kita iiwan. Ipaglalaban ko hanggan kamatayan:

At the back of the second leaf, complainant wrote:

Happy Valentines: I Love you
I miss you I need you
Huwag kang mag-alala dahil ipaglalaban ko Ikaw lang ang mamahalin hanggang wakas. Take care co 'z I care kung mawawala ka sa buhay ko mamabuti kung mamatay na lang ako.

In Exhibit "4," complainant wishes appellant a "Belated happy, happy birthday." The letter also reveals that their relationship had gone sour. Complainant nevertheless reiterated her love for appellant.

Dearest Erwin,

I hope you're fine condition upon reaching my simple letter. I want to greet you a Belated happy, happy birthday. Sana tanggapin mo ang munting regalo para sa iyo.

Alam mo parang hindi ko matanggap ang nangyari sa atin. Parang gusto ko nang mamatay. Parang akong baliw na palaging umiiyak wala na akong ganang kumain. Hindi ko na mai-concentrate ang aking pag-aaral.

Alam mo hindi ko naman kagustuhan ang nangyari sa atin. Hindi ako makatulog sa kaiisip ko ang nangyari sa atin at sinasabi ko sa sarili bakit nangyari sa atin ng ganito. Bakit nagkakanito ang ating relasyon? Wala naman alam kung bakit nagkaganito ang ating relasyon. Bakit nagkulang ba ako sa iyo? Sabihin mo.

Siguro baliw ang sabi mo sa akin kung sasabihin ko pa rin na mahal kita. Oo mahal pa rin kita kahit

nagkaganito tayo. Kahit na ipagpalit mo pa ako. Kahit na hindi mo na ako mahal.

Oo mahirap malimutan ang isang katulad mo.

Paano ba kita

Malilimutan Mahal ko? At sinasabi ko sarili ko bakit nagkaganito akala ko tayo na habang buhay. Mahirap malimutan ang isang katulad mo na nagbigay kulay sa buhay ko, nagbigay aya. Ako'y iyong-iyo habang buhay.

Complainant promises to fight for their love in Exhibit "7," her parents' disapproval notwithstanding.

Dearest Erwin,

Bago sa lahat nais ko sanang batihin ka nang maganday araw mo diyan habang binabasa mo ang sulat ko.

Matagal na tayong hindi nagkita miss na miss kita. Palaging nasa isip ko. Alam mo pagdating ng gabi, hinahanap ko ang mga yakap mong kaysarap at ang matamis mong mga halik. Sana huwag mo akong ipagpalit kanino man. Sana tayong dalawa na habang buhay. Sana wala akong karibal o kaagaw. Sana ako lang ang nasa puso and isipan mo. Ikaw lang ang aking inspirasyon ko upang matupad ko ang mga pangarap ko.

At ako naman huwag kang mag-alala hindi kita ipagpalit kanino man. Ikaw lang ang nagbigay kulay at saya sa buhay ko. Kung hindi ikaw huwag na lang. Umasa kang hindi kita ipagpalit hanggang mamatay ako kahit katumbas nito y kasawian. Kung ayaw man ang mga magulang ko hanggang dumating man ang tamang edad ko at tayo pa rin. Ipag lalaban ko kahit mamatay ako ganyan ang pagmamahal ko sa iyo. Mahal na mahal kita walang hahadlang sa akin. Maging sino ka man. Mamatay lang maging paraan upang magkahiwalay tayo. Kahit palaging hindi tayo nagkikita umasa kang ikaw pa rin ang pinakamamahal ko.

Alam mo kapag ako'y nag-iisa aking nadarama kalungkutan sa buhay ko at sa panaginip ko'y ikaw pa rin hindi magawang limutin ka. Ikaw ang lahat sa akin. Mahal kita pag-ibig ko'y tanging sa iyo. Ikaw at ako sana'y laging makapiling. Ako'y iyong-iyo ngayon at kailanman. Kahit hindi tayo nagkikita, kahit minsan lang kitang makita ang magpakailanman tayong dalawa.

Take care co'z I care

I Love you Always,
I miss you
I need you Ritchie
Ingat ka mahal kita

In Exhibit "8," complainant admits that she has another suitor but she did not mind him. Complainant reminded appellant how much she loves him.

Dearest Erwin,

Bago sa lahat nais ko sanang batihin ka nang magandang araw po diyan habang binabasa mo ang sulat ko. Nakapagsulat ako dahil gusto ko sanang magpaliwanang sa iyo. Yong sinasabi mo na kasama ko sa plasa ay totoong nanliligaw sa akin ngunit paano ko sasagutin dahil may boyfriend na ako walang iba kundi ikaw. Alamomo sinabi ko na walang siyang pag-asa. Ngunit palaging naman siyang sumusunod sa akin. Alam mo naman na ikaw lang ang Mahal ko at wala nang iba. Alam ang Diyos na ikaw long at walang nang iba. Ngunit kong ayaw mong maniwala wala akong magawa. Ngunit laging tandaan mo na ikaw lang ang Mahal ko at walang nang iba. Hindi ko kayang mawala ka sa akin. Dahil Mahal kita pag-ibig ko'y alay sa iyo at dina iibig pa.

Just always remember there's someone who loves you very much.

And cares for you.

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I love you and take care of yourself.

Sorry kong nasaktan ka man hindi ko sinasadya. I promise na iiwasan ko na siya.

Sana'y huwag kang magbago.

I love you

I miss you

I need you

I will always love you.

Ang pangalan ng lalaki ay Roque Viernes at taga Diaton.

Love and care
Ritchie

I love you a millions

I love you from the deepest chamber of my heart.

At the left margin of the letter, written horizontally, complainant asks for appellant's forgiveness.

Sana'y mapatawad mo ako
Ngunit kong hindi Diyos na lang ang bahala.

Complainant however denied authorship of these letters. Comparing the handwriting in the letters with that in her notebook, which was introduced in evidence as specimens, the trial court concluded that:

> ... the Court has seen material differences in the two sets of writings. True, at first blush one can be deceived into believing that the two sets of writings were written by only one (1) person. This is not unexpected as the forger would always strive to write in the manner the person with whom he would like to pass on the writing as his. However, a meticulous scrutiny shows material difference which are as follows: 1) the letters in the genuine writings are uniform in sizes and shapes (round) unlike in the love letters wherein some letters are larger than the others and/or slimmer than the others; and 2) the letters in the genuine writings show a uniform slant to the left unlike in the love letters wherein some letters stand erect notably the signature Ritchie in Exhibit "4".[16]

We fail to see any difference between the two sets of writings that can be described as material. The size and proportions of letters do not have much significance in the identification of handwriting for the simple reason that they can be appreciably changed according to the circumstances.[17] And while there are portions in the love letters written in an erect manner, the handwriting in these letters, in general, like the handwriting in the notebook is slanted to the left.

Moreover, the differences noted by the trial court may be due to variations that invariably occur since the hand does not move in a mechanical manner and cannot always produce characters exactly alike.[18]

The mood and the relative importance of the document may also unconsciously affect the handwriting,[19] and may account for the variations therein. The handwriting in the notebook was obviously produced in school where students are given a limited time to take down notes. They are subject to scrutiny by both teachers and classmates. Love letters, on the other hand, are usually written in a more relaxed environment and in a more leisurely manner, with much time for contemplation. They are usually meant only for the eyes of letter-writer's lover.

In any case, the test of genuineness ought to be the resemblance, not the formation of letters in some other

specimens but to the general character of writing, which is impressed on it as the involuntary and unconscious result of constitution, habit or other permanent course, and is, therefore, itself permanent.[20] The identification of handwriting should not rest, therefore, on the apparent similarity or dissimilarity of one feature but should be based on the examination of all the basic characteristics of the handwriting under study.[21]

Our own examination of the love letters reveals that they are devoid of any unusual pen pauses, pen lifts, tremors and retouchings that characterize forgeries. Indeed, the writing appears to flow naturally, not conscious, hesitant or studied. The writers of both sets of writing write with a consistent heavy pressure. There are no pronounced variations in the formation of the letters.

It is also significant to add that appellant produced in evidence not only one or two letters to prove his relationship with complainant, but a total of eight letters and notes. The handwriting in all these letters bears a striking similarity to the specimens. The sheer number of the love letters weighs against any suspicions of forgery since it would greatly increase the risk of discovery.

The task of determining the genuineness of the handwriting would have been made easier had an expert witness been employed to aid the court in carrying out this responsibility. The records[22] how that counsel for the accused did ask the court for time to file a motion so that the handwriting may be submitted to the National Bureau of Investigation (NBI) to ascertain its authenticity. Such motion was, however, denied by the court, ruling that "The Court itself can determine whether or not that handwriting is the handwriting of the private complainant."

The trial court should not have simply brushed aside this motion since the accused's defense rests on the theory that he and the victim were sweethearts and the letters were offered precisely to prove such defense. Accordingly, he is entitled to present evidence that the handwriting thereon was genuine, especially in the light of the denial of the alleged victim that the handwriting was hers.

It is true that the opinion of handwriting experts are not necessarily binding upon the courts,[23] the expert's function being to place before the court data upon which the court can form its own opinion.[24] Ultimately, the value of the expert testimony would still have to be weighed by the judge,[25] upon whom the duty of determining the genuineness of the handwriting devolves. Nevertheless, the handwriting expert may afford assistance in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.[26] There is no doubt that superior skills along these lines will often serve to direct the attention of the courts to facts, assent to which is yielded not because of persuasion or argument on the part of the expert, but by their own intrinsic merit and reasonableness.[27]

As there was a dispute regarding the genuineness of the handwriting, it would have been more prudent if the trial court allowed the presentation of a handwriting expert by the defense. The denial of the request for time to file a motion to have the handwriting examined in effect rendered the right of the accused to have compulsory process to secure the production of evidence in his behalf[28] nugatory.[29]

Second, the contents of complainant's bag reveals that she and appellant were indeed eloping. The bag contained, among others, a belt, seven (7) brassieres, five (5) panties,[30] and three (3) shirts.[31]

In explaining the presence of these items in her bag, complainant admitted ownership of the articles but claimed that she discovered that they were missing from her cabinet after she was rescued by the police. She suspected that appellant took them from her cabinet.

The trial court believed complainant's explanation:

> ... for about two (2) years, before February 11, 1994, the private complainant had been staying in the house of his uncle. The one-storey house of her uncle is adjacent to the house where the accused was staying. The two houses share the same yard and the same gate with only a cemented wall separating the two houses. The doors of these houses are beside each other. This was not rebutted by the defense.
>
> This unexpected revelation conclusively shows that the private complainant's suspicion that the accused stole her personal belongings is well-founded. Significantly, the accused was not arrested on February 17, 1994 when the police officers rescued the private complainant. He eluded arrest by running into a thick forest as testified to by prosecution witness SPO1 Tomas Jose, Jr. These cases were filed on May 26, 1994. By virtue of a warrant of arrest issued on May 27, 1994, the accused was arrested on June 1, 1994. From February 17, 1994 to June 1, 1994, he had sufficient time to think of his defense to exculpate himself from the charges against him. He had a very strong motive to steal the personal belongings of the private complainant. In this regard, the private complainant testified that during the day, no one would be left in her uncle's house since her cousins, the children of her uncle, would be all in school while his (sic) uncle would also be out. Hence, the accused could have easily entered the house and stole the personal belongings of the private complainant.[32]

We are not as inclined as the trial court to accept such explanation. The conclusion that appellant stole complainant's clothes to support his defense that he and complainant eloped is based on mere speculation and surmise. The circumstances noted by the trial court in arriving at such conclusion do not constitute proof to that effect. The presence of complainant's clothes in her bag could just as well mean that appellant and complainant were planning to elope. Doctrinally, where the inculpatory facts and circumstances are capable of two or more explanations one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[33]

Finally, this Court has reversed judgments of conviction and acquitted the accused when there are strong indications pointing to the possibility that the rape charges were merely motivated by some factors except the truth as to their commission.[34] In some cases, the scandal resulting from the relationship of the complainant and the accused impels the complainant or her relatives to file a complaint of rape against the accused.

Thus, in People vs. Lamarroza,[35] a case involving an eighteen-year old woman "intellectually weak and gullible," the Court found that the alleged victim's family was "obviously scandalized and embarrassed by [the victim] Elena's 'unexplained' pregnancy," prompting them to cry "rape." The Court acquitted the accused.

In People vs. Domogoy,[36] private complainant was seen having sexual intercourse in the school premises with appellant therein by the latter's co-accused. "It is thus not farfetched," the Court held, "for complainant to have instituted the complainant for rape against the three to avoid being bruited around as a woman of loose morals."

Similarly, in People vs. Castillon,[37]the Court considered the complainant's agreement to engage in pre-marital sexual intercourse "already a disgrace to her family, what more of her acquiescence to have sexual intercourse on a stage near the vicinity where the JS program was being held and prying eyes and ears abound."

In, People vs. Bawar,[38] the complainant was caught in flagrante by her sister-in-law engaging in sexual intercourse with the accused, a neighbor. The Court gathered from the complainant's testimony that "she filed the case because she thought it would be better to cry 'rape' and bring suit to salvage and redeem her honor, rather than have her reputation sullied in the community by being bruited around and stigmatized as an adulterous woman."

People vs. Godoy[39]also involved an adulterous relationship between the accused, who was married, and his seventeen-year old student. In acquitting the accused, the Court held:

The Court takes judicial cognizance of the fact that in rural areas in the Philippines, young ladies are strictly

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required to act with circumspection and prudence. Great caution is observed so that their reputations shall remain untainted. Any breath of scandal which brings dishonor to their character humiliates their entire families. It could precisely be that complainant's mother wanted to save face in the community where everybody knows everyone else, and in an effort to conceal her daughter's indiscretion and escape the wagging tongues of their small rural community, she had to weave the scenario of this rape drama.

Here, the elopement of a thirteen-year old with her nineteen-year old second cousin no doubt caused quite a tempest in the otherwise serene community of Vintar, Ilocos Norte. That complainant's parents were against their relationship, as evidenced in one of her letters, makes it more likely that the charges of rape were instigated to salvage the complainant's and her family's honor.

> While the "sweetheart theory" does not often gain favor with this Court, such is not always the case if the hard fact is that the accused and the supposed victim are, in truth, intimately related except that, as is usual in most cases, either the relationship is illicit or the victim's parents are against it. It is not improbable that in some instances, when the relationship is uncovered, the alleged victim or her parents for that matter would take the risk of instituting a criminal action in the hope that the court would take the cudgels for them than for the woman to admit her own acts of indiscretion.[40]

WHEREFORE, the Decision appealed from is REVERSED. Appellant Erwin Agresor is hereby ACQUITTED of the crime of Rape. The Director of Prisons is directed to forthwith cause the release of accused-appellant unless the latter is being lawfully held for another cause and to inform the Court accordingly within ten (10) days from notice.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Records, pp. 120-121.

[2] TSN, June 22, 1994, pp. 2-13.

[3] Id., at 123-136.

[4] TSN, August 17, 1994, pp. 137-153.

[5] Exhibit "A."

[6] TSN, September 2, 1994, pp. 154-182.

[7] Id., at 182-191.

[8] TSN, September 29, 1994, pp. 193-203.

[9] Id., at 203-225.

[10] TSN, September 30, 1994, pp. 225-232.

[11] TSN, November 4, 1994, pp. 233-240.

[12] TSN, November 11, 1994, pp. 244-258.

[13] TSN, December 2, 1994, pp. 260-262.

[14] Rollo, p.68. The Court notes in passing that the penalty imposed by the trial court is erroneous, considering

that reclusion perpetua is an indivisible penalty with a duration of 20 years and 1 day to 40 years. See People vs. Gatward, 267 SCRA 785 (1997).

[15] Exhibits "2"-"9."

[16] Rollo, p. 60.

[17] Mehta, Identification of Handwriting and Cross-Examination of Experts 164 (4[th] ed., 1970).

[18] Id., at 20.

[19] Id., at 87.

[20] Alcos vs. Intermediate Appellate Court, 162 SCRA 823 (1988). See also People vs. Domasian, 219 SCRA 245 (1993), cited in Eduarte vs. Court of Appeals, 253 SCRA 391 (1996).

[21] See note 17, at 191.

[22] TSN, November 11, 1994, p. 258.

[23] Encabo vs. Cebu Portland Cement Company, 18 SCRA 1128 (1996).

[24] People vs. Bustos, 45 Phil. 9 (1913).

[25] See Cebu Shipyard and Engineering Works, Inc. vs. William Lines, Inc. and Prudential Guarantee and Assurance Company, Inc., G.R. No. 132607, May 5, 1999.

[26] People vs. Domasian, supra; Eduarte vs. Court of Appeals, supra. See also United States vs. Kosel, 24 Phil. 594 (1913).

[27] United States vs. Kosel, supra.

[28] Section 14(2), Article III, Constitution.

[29] See Felongco vs. Dictado, 223 SCRA 696 (1993).

[30] All marked as Exhibit "11."

[31] Exhibits "12," "12-A" and "12-B."

[32] Rollo, pp. 58-59.

[33] People vs. Godoy, 250 SCRA 677 (1995).

[34] Ibid.

[35] G.R. No. 126121, November 24, 1998.

[36] G.R. No. 116738, March 22, 1999.

[37] 217 SCRA 76 (1993).

[38] 262 SCRA 325 (1996).

[39] Supra.

[40] People vs. Godoy, supra.

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