

SECOND DIVISION

[G.R. Nos. 120437-41, July 16, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO ALVARIO, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

Is there fear so great as to mute a victim of sexual assault and blunt her natural instinct for self-preservation?

On January 21, 1993, Esterlina Quintero, a 29-year old single mother of a two-year old child,^[1] took time off her job as a housekeeper at Pasong Tirad, Makati, to look for another place of employment. For this purpose, she sought the help of a certain Aling Soling who accompanied her to a friend's house at nearby San Miguel Village. While there was no vacancy at the latter's residence, they learned from a neighbor's maid that someone in Bel-Air Subdivision was looking for a house helper. After the usual introductions, Esterlina agreed to cook for and do the laundry of accused-appellant Armando Alvario for a monthly salary of P800.00. He told her that she could begin that very day, then took her to a big two-story house where the only other occupant was another maid by the name of Alma Barliso, who ushered Esterlina into her designated quarters near the kitchen at the ground floor.^[2] Alvario was a mere caretaker of the house.^[3]

On her first day of employment, Esterlina went to bed on an empty stomach apparently because Alvario did not allow her to eat. The following day, she went through the motions of regular housework by preparing Alvario's meals, washing his clothes and doing other household chores, despite having been allowed to eat a mere two spoonful of leftover food.^[4] Before leaving for work at seven o'clock in the morning, Alvario gave strict instructions that Esterlina should not leave the house. He went home for lunch, returned to the office at one o'clock leaving his new maid with the same directive not to leave the house, and arrived home at five o'clock in the afternoon.^[5] As far as Esterlina could remember, this was his routine^[6] for the rest of her lonely sojourn in that house; lonely, because commencing that day and almost everyday for the next six days, by eight or nine o'clock in the evening, when she had already retired, Alvario would barge into her room and force himself upon her.

His routine was simple: He would enter her room with a gun in his hand, order her to remove her clothes or take them off himself, and rape her for approximately five minutes.^[7] Esterlina did not make any outcry; neither did she struggle to protect her virtue.^[8] She did not relate her harrowing experience to the other maid, Alma.^[9] In fact, they did not speak to each other at all because that was Alvario's instruction. It did not cross her mind to use the telephone in the house to call up her

sister,^[10] or to escape while he was at work because he apparently locked the gate and all the doors, or to even arm herself after the initial assault.^[11] She was numb with fear and shame because Alvario constantly threatened to "file a case against her."^[12]

Finally mustering enough courage, she rang her sister Merlyn who resided in Malabon on January 28th,^[13] and the latter managed to come to her older sister's succor. With the help of her own employer, Merlyn informed the Makati Police that her sister was being held captive at No. 6 Hercules St., Bel-Air, Makati by a man who supposedly raped her. In coordination with the Bel-Air security guard, the police went to the said address and pretended that they found a wallet belonging to Esterlina. When Alvario and Esterlina opened the door, she immediately pointed to him as the man who raped her. Alvario was arrested right then and there without a warrant of arrest by the police,^[14] and was later charged with five counts of rape allegedly committed on January 22, 23, 25, 27 and 28, 1993.^[15]

Alvario expectedly told a different story. According to him, Esterlina was an aggressive woman who was generous in granting sexual favors in exchange for financial aid. Esterlina was introduced to him by a certain Dang who knew that his employer, Atty. Rogelio San Luis, was looking for a maid for the latter's house at Bel-Air. He gave her the address and when he arrived home in the afternoon, Esterlina was already there with her things. When she learned that he was the caretaker of the house, she immediately asked if she could get a two-month advance on her stipulated monthly salary of P1,000.00, patting his thighs as she did so. He promised to take the matter up with his boss.^[16]

Atty. San Luis did not, however, report for work the following day, but Alvario still gave Esterlina the P2,000.00 she wanted and let her know it came from his own pocket.^[17] Moved by such generosity and kindness, Esterlina knocked at his door at around ten o'clock that evening. Wearing nothing underneath her strapped lingerie,^[18] she offered him a cup of coffee. She lay the cup on the night table, held his hand, pressed his thighs, embraced him, then kissed him twice. Only then did Alvario respond by kissing back. She caressed his manhood, then ordered him to remove his pants and even assisted him in doing so. They kissed while he fondled her breasts and she groped for his organ. Noticing that he was fully aroused, she mounted and lowered herself upon him. Alvario asked her to slow down because he had hernia. They then shifted positions. After resting awhile, Esterlina engaged in foreplay to arouse him in preparation for their second round of sex. He slept well and when he woke up in the morning, she was no longer beside him.^[19] This episode was repeated regularly every night for the next six days.^[20]

Meanwhile, on January 26th, Esterlina gave him as tokens of her affection and gratitude, a panty embroidered with the words "ESTER LOVE ARMAN"^[21] and a handkerchief with "ESTER"^[22] sewn on it. The next day, Alvario confronted Esterlina and Alma about their use of the telephone, a subject he pursued till the next day. He also asked them about his missing money and necklace, but the two maids just pointed at each other. Later, Esterlina promised him that she would look for the missing items and warned him to leave because she believed Alma might create trouble.^[23] Bel-Air guards arrived that night and told him about a missing wallet

that apparently belonged to Esterlina. He let them in and asked her to give them coffee. In the meantime, he went out to answer a call of nature. That was when four men who identified themselves as Makati policemen grabbed him from behind and told him that there was a complaint against him. They insisted that he come with them peacefully^[24] even as he kept asking for a warrant of arrest.^[25] At the police station, he learned that he was being detained on charges of rape; the complainant was, however, willing to settle the case for P350,000.00, but he refused to settle.^[26]

Merlyn Quintero corroborated in part Esterlina's story, that is, from the time the latter got in touch with her up to the time the police was accordingly notified.^[27] One of the members of the arresting team, SPO3 Ricardo Reyes, was also called to the witness stand to narrate the events leading to Alvario's arrest and investigation.^[28] The prosecution presented the findings of the National Bureau of Investigation Medico-Legal officer which showed nothing except that there was "no evident sign of extragenital physical injuries."^[29]

On January 27, 1995, Judge Arsenio J. Magpale of the Makati Regional Trial Court, Branch 57, rendered judgment finding Alvario guilty of five counts of rape, viz.:

"WHEREFORE, finding accused ARMANDO ALVARIO guilty of the crime of Rape as charged in the five (5) separate Informations (Crim. Cases Nos. 93-871 to 93-875) beyond reasonable doubt, the Court sentences him to suffer the afflictive (sic) penalty of reclusion perpetua in each of the said Informations and to indemnify the private complainant the amount of P30,000.00 in each of the said Informations as moral damages. The period within which accused was detained shall be credited in his favor. Costs de oficio.

SO ORDERED."

This Court has declared often enough that, in order to sustain the conviction of an accused person, his guilt must be proven beyond reasonable doubt by the State with the prosecution relying on the strength of its evidence and not on the weakness of the defense.^[30] And while it is true that the trial court's conclusions as to the credibility of witnesses deserve respect and even finality on appeal, this rule admits of some exceptions, as in this case where the testimony of the complainant herself casts serious doubts on her sincerity and truthfulness.^[31] "(T)o obviate the danger and impiety of falsehood, and to repel any influence that the story may have been a fabrication, every story of defloration must never be received with precipitate credulity."^[32] After a careful examination of the facts and the evidence in the case at bar, we arrive at the inevitable conclusion that while the defense is not persuasive enough, the prosecution is even less convincing in proving the guilt of Armando Alvario beyond a reasonable doubt. He must, consequently, be exonerated of all the charges against him and be set at liberty.

Rape is penalized in this jurisdiction under Article 335 of the Revised Penal Code (the Code), which states thus:

"ART. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation:

x x x"

In her complaints, Esterlina Quintero claimed that on several occasions in January 1993, she was sexually abused by Armando Alvario with the use of "force, violence and intimidation." The latter's defense was that they had an "understanding" and that what transpired between them was purely voluntary. Did the prosecution successfully prove the presence of force and intimidation, as contemplated by Article 335 of the Code? After scrutinizing the records of this case, we rule in the negative.

The only evidence proffered by the prosecution against Alvario are the testimonies of the victim herself and that of her sister and one of the arresting officers. Merlyn Quintero's testimony merely reiterated Esterlina's statement that the latter called her up on January 28, 1993, and sought her aid in the arrest of a man who allegedly raped her older sister. None of Merlyn's declarations relating to the actual sexual assaults, as narrated by Esterlina, can be accepted by this Court for being purely hearsay. The same is true with the testimony of SPO3 Ricardo Reyes, who merely responded to a radio message that a certain Esterlina Quintero was raped by a man named Armando Alvario and eventually engineered the latter's arrest. The medical report submitted by the prosecution and admitted by both parties reveals nothing that would prove a charge of rape and, in fact, even bolsters the defense's posture of consensual sex because of the finding therein that there was "no evident sign of extragenital physical injuries." Thus, the only remaining piece of evidence upon which a conviction may be sustained is the testimony of the victim herself.

Admittedly, "(r)ape 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, judges must look at a rape charge without those proclivities, and deal with it with extreme caution and circumspection. Judges must free themselves of the natural tendency to be overprotective of every woman decrying her having been sexually abused, and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, judges should equally bear in mind that their responsibility is to render justice based on the law."^[33]

In the case at bar, there are significant circumstances which, when taken together with the conflicting narration of facts of the protagonists, would greatly erode the credibility of the victim.^[34]

First, the only witnesses she presented to corroborate her story were her sister Merlyn and SPO3 Reyes, whose testimonies, as earlier determined, failed to provide the necessary support to her allegations of rape. Although the choice of witnesses to present for trial is a matter of prosecutorial strategy and prerogative, the Court cannot help but wonder why the other maid, Alma Barliso, who by Esterlina's own account was always inside the house while she was allegedly being raped by Alvario, was never utilized as a witness.