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In conclusion, considering that the late filing of defendants' answer was due to excusable negligence and that they appear to have a meritorious defense; that defendants filed an answer before they were declared in default; and that the late filing of the answer did not in any way prejudice or deprive the plaintiff of any substantial right, nor was there intention to unduly delay the case, WE hold that the respondent judge committed an abuse of discretion in declaring the defendants in default and in refusing to set aside the order of default.

WHEREFORE, THE PETITION IS HEREBY GRANTED AND THE ORDERS OF RESPONDENT JUDGE DATED FEBRUARY 25, 1976, MAY 24, 1976, JULY 13, 1976 AND SEPTEMBER 29, 1976 ARE HEREBY SET ASIDE AS NULL AND VOID, WITH COSTS AGAINST RESPONDENT ARSENIO OLIQUINO.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.,* concur.

SECOND DIVISION

[G.R. No. L-49616. August 20, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GENARO MENDIGUARIN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN NOT ESTABLISHED.— There are significant indications in the record that Genaro and Virginia committed simple fornication which is not a crime. The circumstances that Virginia admitted that she and Genaro embraced and kissed each other in a hotel room long before

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the alleged rape, that she did not tenaciously resist the alleged ravishment, that there were no external injuries on her body to show that actual physical violence was used against her, that she did not shout, that she did not run or escape, that she continued to have sexual intercourse with Genaro in the house where his wife was staying and that she did not want to leave that house when her father fetched her, point to the conclusion that their sexual intercourse was induced by the chemistry and electricity of mutual attraction and desire.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE TESTIMONY OF THE OFFENDED WOMAN SHOULD NOT BE RECEIVED WITH PRECIPITATE CREDULITY.**— This Court already observed that the books disclose many instances of trumped-up charges of rape. In rape cases the testimony of the offended woman should not be received with precipitate credulity. Her uncorroborated testimony should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matters of this kind.

3. **ID.; ID.; ID.; WHEN VICTIM'S TESTIMONY NOT CONVINCING.**— In this case, the uncorroborated testimony of the complainant as to the rape is not convincing and trustworthy. Her behavior after the alleged rape was not that of a woman who had suffered a shameful and grievous outrage.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Rufino V. Merrera for the accused-appellant.

D E C I S I O N

AQUINO, *J.*:

Genaro Mendiguarin appealed from the decision of the Court of First Instance of Pangasinan, Lingayen Branch I, finding him guilty of rape, sentencing him to *reclusion perpetua* and ordering him to pay Virginia Oliveros an indemnity of twelve thousand pesos (Criminal Case No. L-1055).

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Instead of filing a brief, the Solicitor General submitted a manifestation recommending the acquittal of the accused on the ground that his guilt was not proven beyond reasonable doubt.

Complainant Virginia Oliveros, 21, an elementary school graduate, testified that on November 20, 1973 the spouses Genaro Mendiguarin and Teodora Fernandez went to her parents' house located at Barrio Caloocan Sur, Binmaley, Pangasinan. They hired her as a helper to sell glassware in their store located at Santa Cruz, Zambales at a salary of one hundred pesos a month with free board and lodging.

As a helper, she used to accompany Genaro in selling glassware in Palauig, Masinloc and other towns in Zambales. She admitted that on one occasion or on December 3 or 17, 1973, after selling glassware, she and Genaro stayed in a room of the Holy Family Hotel at Masinloc where Genaro tried to embrace her but she allegedly pushed him. They dallied in that room for fifteen minutes (45-47 tsn November 29, 1978). However, at the preliminary investigation, she admitted that she was embraced and kissed by Genaro inside the hotel room where they stayed for thirty minutes (70-72 tsn Feb. 12, 1975, Exh. F).

On September 12, 1974, Virginia allegedly accompanied Genaro and his wife to the house of his father located at Barrio Pallas, Binmaley, arriving there at three o'clock in the afternoon. Genaro's father and wife left the house. Virginia and Genaro found themselves alone in the house like Adam and Eve in the garden of Eden.

Genaro was resting in the room upstairs. Virginia (Bebing) was in the sala. Genaro called Virginia: "*Bebing, gala pa ta oala so ibagat od sika*" or "Bebing, come over and I will tell you something" (19 tsn Dec. 26, 1974, Exh. F). Upon entering the room in answer to his call, he pulled her, grabbed the collar of her dress and told her to lie down on the floor.

She resisted, kicked Genaro and pushed him away but she did not shout. As she was trying to get up, Genaro, who was unarmed, boxed her on the thighs and abdomen several times. He threatened to kill her. He stripped her of her bikini-type

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panty over her resistance. He removed his brief, went on top of her and inserted his penis into her vagina.

According to Virginia's version, by that time, she was already weak and no longer able to resist him. He was able to consummate the sexual intercourse. She allegedly felt pain and she cried. After about half an hour, she told Genaro that he was a beast. He retorted that she should not shout because the deed was already accomplished. She told Genaro's wife that he had raped her but his wife did not say anything.

On the following day, Virginia, Genaro, his wife and his father consulted a lawyer in the town of Binmaley and inquired whether Virginia and Genaro could get married. The lawyer said that they could not get married because Genaro was already married.

Virginia did not attempt to escape or leave the house although her parents lived in Barrio Caloocan Sur in the same municipality of Binmaley. From the place where she was allegedly raped, she could go to her barrio by means of a calesa or tricycle which passed on the road near the house of Genaro's father. She explained that Genaro allegedly guarded her or was always following her.

She admitted in her testimony and affidavit that on the night of the following day, September 13, she had voluntary sexual intercourse with Genaro two times in the same house. On the succeeding night of September 14, she consented to have sexual intercourse with him two times (42, 43 and 47 tsn November 29, 1978; 108 tsn. Feb. 13, 1975, Exh. F).

On that same day, September 14, 1974, she signed in the municipal building a statement in English typed by a policeman. In that statement she declared that she had voluntary sexual intercourse with Genaro and that she regarded him as her common-law husband. Roger Salomon, Gil Guarin and Carmelita Guarin signed as witnesses in the said statement (Exh. 1 or D).

September 17, 1974 or five days after the alleged rape, Jose Oliveros, the father of Virginia, accompanied by two policemen and a councilor, fetched Virginia and brought her to their home in Caloocan Sur. Virginia at first did not want to go with her

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father. In fact, she tried to hide behind the kitchen door (150 and 183 tsn Feb. 13, 1975, Exh. 3 and F).

On the following day, September 18, she was examined by the municipal health officer. He found that two fingers could be inserted into her vagina, that her hymen was lacerated at the four and ten o'clock positions, that there was bleeding in her vaginal wall, that there were blood clots near the vaginal orifice and that she complained of chest and epigastric pains.

The local police did not file any complaint for rape most probably because she had already signed a statement on September 14, 1974 admitting that she had voluntary sexual intercourse with Genaro (Exh. 1). So, her father reported alleged rape to the Constabulary detachment of Lingayen, Pangasinan.

She executed a statement before Sergeant N. Galsim wherein she stated that she was allegedly raped by Genaro in the afternoon of September 12, 1974; that his wife told her not to worry because Genaro would marry her; that, however, a lawyer told her that they could not get married because Genaro was already married; that she signed an affidavit wherein she stated that she was willing to live with Genaro as his common-law wife and that she had sexual intercourse with Genaro, twice on September 12, twice on September 13 and twice on September 14, 1974 (Exh. 2).

On October 10, 1974 she filed a complaint for rape against Genaro with the fiscal's office. The information for rape was filed on July 21, 1975. Genaro was arrested only on October 18, 1978 at Iba, Zambales. At his arraignment on November 9, 1978, he pleaded not guilty.

Genaro's defense at the trial was that he and Virginia were sweethearts; that he had sexual intercourse with her on December 17, 1973 at the Holy Family Hotel in Masinloc; that he had several trysts with her in the house of Manuel Aquino at Masinloc whenever they went to that place to sell glassware and that he and Virginia eloped on September 12, 1974 and went to his father's house at Barrio Pallas where they had sexual intercourse daily up to September 16. The chief of police and a policeman testified

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at the preliminary investigation as to the signing by Virginia of her statement regarding her elopement with Genaro (Exh. 3).

Valentin de Vera, a neighbor of Genaro's father, testified at the preliminary investigation that on September 18, 1974 when Virginia and her father returned to the house of Genaro's father to get her clothes, he saw Genaro embracing her (176 and 178 tsn Feb. 13, 975, Exh. 3).

When Virginia testified on November 22, 1978, she was already twenty-five years old; she was residing at Caloocan Sur and she was living with her common-law husband, Guillermo de Guzman, a married man with six children. Virginia had begotten a child with him. They started living together on July 31, 1976.

The issue is whether Virginia Oliveros was raped by Genaro Mendiguarin. We hold that the trial court erred in rendering the judgment of conviction. The rape was not proven beyond reasonable doubt. There are significant indications in the record that Genaro and Virginia committed simple fornication which is not a crime.

The circumstances that Virginia admitted that she and Genaro embraced and kissed each other in a hotel room long before the alleged rape, that she did not tenaciously resist the alleged ravishment, that there were no external injuries on her body to show that actual physical violence was used against her, that she did not shout, that she did not run or escape, that she continued to have sexual intercourse with Genaro in the house where his wife was staying and that she did not want to leave that house when her father fetched her, point to the conclusion that their sexual intercourse was induced by the chemistry and electricity of mutual attraction and desire.

This Court already observed that the books disclose many instances of trumped-up charges of rape. In rape cases the testimony of the offended woman should not be received with precipitate credulity. Her uncorroborated testimony should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value

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in judging matters of this kind (*People vs. Fausto*, 51 Phil. 852; *People vs. Ramos*, 35 Phil. 671, 676).

In this case, the uncorroborated testimony of the complainant as to the rape is not convincing and trustworthy. Her behavior after the alleged rape was not that of a woman who had suffered a shameful and grievous outrage. (See *People vs. Cueto*, L-46697, August 25, 1978, 84 SCRA 774.)

WHEREFORE, the trial court's judgment is reversed. The accused is acquitted because his guilt was not established beyond reasonable doubt. Costs *de oficio*.

SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., and *Guerrero, JJ.*, concur.

Guerrero, J., was designated to sit in the Second Division.

Santos and *Abad Santos, JJ.*, are abroad.

SECOND DIVISION

[G.R. No. L-25346. August 21, 1979]

UNITED PHILIPPINE LINES, INC., *petitioner, vs.* **HON. ARSENIO I. MARTINEZ, EMILIANO C. TABIGNE, AND AMANDO C. BUGAYONG, Judges of the Court of Industrial Relations and UNITED STEEL WORKERS ASSOCIATION OF THE PHILIPPINES,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; APPEAL BY *CERTIORARI*; WHEN MOOT AND ACADEMIC.— When