

OPINION & FEATURES

The romance of rape

It is tempting to describe the decision of the Court of Appeals acquitting Lance Cpl. Daniel Smith of the crime of rape, promulgated by the all-female 11th special division, as the revenge of the "manangs". The decision certainly seems to have been written by a conspiracy of spinsters, in vigorous denial of reality, and sustained by fantasies of chivalry (in favor of the American serviceman) and chastity (against the woman we all call "Nicole").

"This court finds [as] deceptively pos-turing Nicole's portrayal of herself as a demure provinciana lass," the CA ruled, contrary to the unflattering characterization, sometimes using colors supplied by the victim herself, that the trial painted of flirty, hard-drinking Nicole. "On hindsight, we see this protestation of decency as a protective shield against her own indecorous behavior."

GUEST EDITORIAL

You can almost visualize the three (married) justices crinkling

their noses, at the effrontery of an indecent woman protesting rape. After all, only decorously behaved women can be raped, right? And what happened in Subic was merely the "unfolding of a spontaneous, unplanned romantic episode."

It would be tempting to mock the justices, especially because this approach allows us to point

to the ludicrousness of some of the assumptions that went into the decision. Can't a brazen city girl (to propose an alternative to the special division's unfair description) fall victim to rape too?

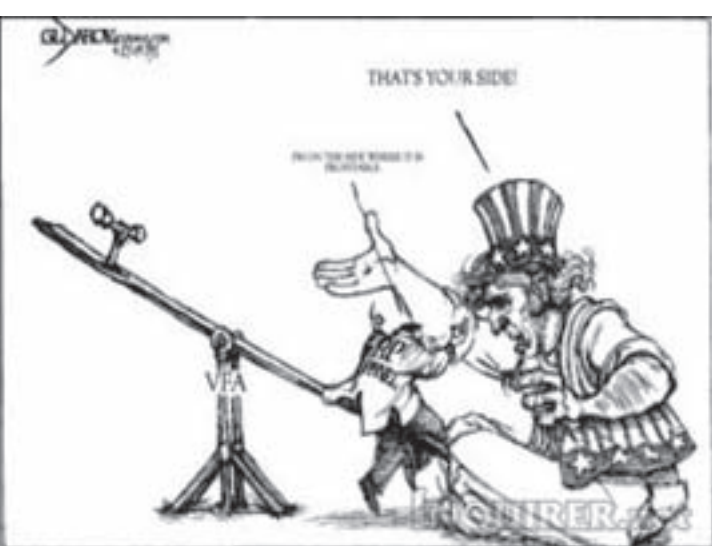


Photo courtesy of Inquirer.net

But the prudery behind the decision masks a deeper flaw. The ruling pushes the jurisprudence on rape back to the 20th century; after all this time, the special di-

vision still understands rape as essentially a private crime, as a crime against chastity.

This, truly, is unfortunate. We assail the CA's reasoning, but we really have no quarrel with the judiciary's role in the resolution of the Subic rape case. By and large, it did its part in the administration of justice—which is far more than you could say about

the Executive, which served as either lawyer to or co-dependent of the Americans. We are deeply disturbed, however, that the acquittal is based on grounds that overturn a decade's worth of gains in women's rights.

A key passage (crucial, but not the most offensive) in the CA's decision reads thus: "No evidence was introduced to show force, threat and intimidation applied by the accused [Smith] upon Nicole, even as the prosecution vainly tried to highlight her supposed intoxication and alleged unconsciousness at the time of the sexual act."

This finding suggests that only the presence of force, threat or intimidation can affect a woman's capacity to give consent to sex; it also intimates that women of "audacity and reckless abandon" (the language of the CA's special division, describing Nicole's behavior) cannot ever plead that their capacity for consent has been compromised.

The finding negates the breakthrough made in the original ruling of Makati Regional Trial Court Judge Benjamin Pozon, which emphasized that intoxication can rob a woman of the ca-

capacity to give consent. Pozon's emphasis is in accord with the liberalizing tendency that led to the (hard-fought) victory in Congress redefining rape as a crime against persons—and is in keeping with the trend in law that grants greater recognition to the dignity of women.

The special division took issue with the RTC's assertion that Nicole was too drunk to give her consent—"When a woman is drunk, she can hardly rise, much more stand up and dance, or she would just drop. This is a common experience among Filipino girls." This blithe and too-pat assumption runs counter to the eyewitness accounts heard in the trial court, about Smith carrying a woman on his back to the van, and about an almost unconscious woman being dumped outside the van (after the "romantic" deed was done).

Worst of all, the decision trivializes the "No" of the drunk Nicole. "Resistance by words of mouth [sic] does not suffice to establish that she indeed did not give her consent to the sexual intercourse," the court said.

What did they expect? A memo? (*Inquirer.net*)

On transplanting a business

SOME Manila businessmen friends, visiting us in the San Francisco Bay Area, have expressed interest in expanding to the United States, targeting the Filipino market, for starters. In this connection, I have been asked for advice on how to avoid the pitfalls and how not to experience the horror stories that even the biggest and most successful Philippine companies have had to deal with in this market.

I recall one very successful fastfood chain asking for our advice on breaking into the US market a decade ago. Believing that they already had the Filipino consumer market "in their pockets," they wanted to go after the American mainstream.

Our suggestion was for them to first concentrate on their logical market base. They didn't listen and went ahead with their mainstream marketing foray. They lost millions.

The lesson they learned was that they could not simply transplant a business model that was successful in the Philippines, to the US and expect the same kind of success.

Like any organ transplant, certain preparatory steps need to be taken and certain conditions need to be met to ensure that the market will not reject the foreign business concept, the way a transplanted part is rejected by the body.

The most successful business in Manila will not necessarily succeed in America, even if the primary targets are exactly the same *Pinoy* market that used to patronize it back home—that is, unless due diligence is undertaken.

There are a number of factors that we take for granted in the Philippines that can be a problem in America. The labor factor is one.

Cost of labor, needless to say, is much higher in the US. Thus, a business that prides itself in serving the customers hand and foot and at lightning speed will have to cut back on that approach if it wants to keep its labor cost under control.

But labor cost is not the only critical issue. There is the problem of availability of personnel with the right kind of qualifications. Even in a market like California, where unemployment is at a record high, that can be a headache.

Several years ago, one of the most successful fastfood chains in the Philippines decided to establish a beachhead in Los Angeles. Its positioning—one that worked very well in its home territory—was "tasty, fresh-cooked, reasonably priced food in an instant."

That, of course, was possible because of the low cost of labor in the Philippines and the availability of ample space for a kitchen where several orders could be prepared at the same time, virtually from scratch.

Expectedly, the same operation transplanted to LA resulted in heavy overhead. But once the kitchen and counter crews were reduced to an affordable level, service waiting time for customers increased. It fresh-cooked food in people had to wait orders.

When management the crew had to do by resorting to shortcuts that resulted in inconspicuously, the res- image of "un-tasty Customers began to patronage dwindled. And the business fell to the brink of collapse.

Fortunately, a US-based group that understood the market took over. After a year of reconfiguring operations and cost factors, the new group gave the business a fresh start. Today, it no longer promises "fresh-cooked food" but it does offer "tasty food in an instant." The servings, incidentally, look "freshly-cooked" and piping hot and, as far as customers are concerned, that is good enough.

Another problem that transplanted businesses often encounter is dealing with the psyche of the same customers who were once loyal patrons in the Philippines and who have, themselves, been transplanted to America. The mistake is in assuming that they are exactly the same in the US as they were back there. The harsh fact is that they often are not. They often undergo a subtle—or even a dramatic—transformation in terms of attitudes, tastes and lifestyle, as well as a change in buying power.

With more money, they can afford more choices and can also afford to be more demanding and more finicky about quality and service. Exposed to the American lifestyle, they begin to adapt to it and, in the process, tend to discard their former ways.

This is particularly true of young people. Aside from being more

inclined to experiment with new things, they are also under greater peer pressure to assimilate in their new environment. That presents a challenge to the transplanted business. On the other hand, older people are less inclined to accept change. That presents a different kind of challenge for the transplanted business that has already had to make adjustments in its systems.

Over a decade ago, my ad agency conducted a focus group discussion among Filipino-Americans on their televiewing habits and preferences. An ethnic TV network needed insights to guide it in formulating its programming for the Fil-Am market.

Was it okay to simply import popular Manila programs to the US? Would the high-rating soap operas, musical variety shows, action serials and sportscasts be as acceptable? The results were just as we had theorized before conducting the FGD.

The older respondents were generally more receptive to the transplanted programming. In fact, many of the female panelists found the soap operas more appealing than they had been in the Philippines. The older male respondents, who used to avidly follow the year-long PBA tournaments in Manila were a bit more jaded, having been exposed to high-calibre NBA games. But they still appreciated Philippine-style basketball because they knew the players, almost like old friends.

On the other hand, the younger respondents were very critical of the Manila programs, describing the action as "cheesy," the soap operas as "corny" and the PBA as "a poor imitation of the NBA."

Said one college-age respondent who was a recent immigrant, "Funny, I used to like those shows back in the Philippines."

Another young man had a ready quip for that: "At five-foot-five, I used to be considered tall in Manila. But here, they call me Shortie." In other words, he said, the points of reference were different and so were the standards.

And yet, there were TV shows that did rate very well in Manila and which the young respondents found interesting and appealing. Among them were features that reinforced their self-esteem as a minority group in America.

In sum, transplanting an overseas business to America needs special marketing insights, the same way an organ transplant requires specialist skills. Without those skills, in either of the procedures, the business or the patient could die. (*gregmacabenta@hotmail.com*)



STREET TALK
Greg B. Macabenta

Saving the world from a pandemic potential

THE swine flu epidemic in various parts of the world, with Mexico City as its epicenter, is bound to aggravate the global economic crisis at a time when there are faint signs that the world economy is beginning to turn a page. In Mexico City alone, over 3,500 venues have closed, including restaurants, churches and schools, for fear that this combination of avian, swine and human flu would worsen in human gatherings. Travel to countries with known cases of swine flu is discouraged, affecting hotels, shopping malls, airlines, the food industry, etc. We pray that the alert 4 epidemic abates instead of worsening into the pandemic alert 6, and that it spares our shores.

By the way, Agriculture Secretary Arthur Yap stresses that eating pork is not harmful, but health authorities caution that it should be cooked well.

Sen. Joker Arroyo lamented that the Supreme Court, in decreeing an additional 32 party-list seats which will cost at least P2.5 billion, had indulged in

"judicial legislation." He decried that the SC substituted a formula instead of waiting for Congress to "correct" the system, and without conducting hearings, it ordered the ruling to be immediately executory. But if the Court usurped Congress' power here, the latter has only itself to blame, since it has been

consumed by investigations and ill-timed moves to change the Constitution instead of refining RA 7941, the enabling law governing the party-list system, enacted 14 years ago.

For instance, it was obvious that the term "marginalized and underrepresented sectors" as stated by RA 7941 was being abused in many cases, to include even Forbes Park residents (to quote one pundit), but nothing has been done about it. It's easy to define "marginalized," but "underrepresented" is more nebulous. Associate Justice Eduardo Nachura asserted in his concurring opinion to the ponencia of Justice Antonio Carpio that the 2-percent threshold in deciding the winning party-list groups required "a far bigger congressional

composition to make sense." But the House hasn't acted fast enough in expanding its membership to represent demographic realities. In fact, it was only last January that Iloilo Rep. Raul Gonzalez Jr. filed a bill seeking to raise the current House membership from 250 to 300.

I too am puzzled as to why the Court ruled on this issue at this time. One guess is that it wanted to open the door to more party-list representatives in the May 2010 elections, in fulfillment of the Constitutional provision for 20 percent representation in the House. Another and perhaps more plausible reason, given Carpio's bias against Charter change, may be to make Cha-cha more difficult inasmuch as the increase in House membership to 254 from 236 makes it more difficult to come up with a three-fourths vote for an amendment. With this new composition, Charter change is deemed dead in the water up to May 2010.

From Court sources, I learned that the campaign for increased party-list members began two years ago, with lawyers Salvador Britannico, former Ilo-

POLITICAL TIDBITS

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