

IN NOVEMBER of 2005, a 22-year-old Filipina (who would be known to the public as “Nicole”) filed rape charges against four US Marines who were part of the US-Philippines Joint-Military Exercise. Nicole accused US Marine Lance

The Subic rape case and the Smith custody

THE ONE THAT GOT AWAY

Corporal Daniel Smith of raping her inside a moving van in the Subic Bay Free Port while his three companions, Lance Corporals Keith Silkwood and Dominic Duplantis and Staff Sergeant Chad Carpentier, cheered him on. None of those involved could have imagined the extent of political and international implications of the case.

According to eye witnesses, Nicole was carried out from the Neptune Bar by an American soldier before midnight of November 1, 2005. Expert witnesses testified that she was too drunk to have consented to go voluntarily, much less engage in consensual sex. The next day, witnesses saw her being carried out of a van by said soldiers who dumped her on the pavement with her pants and panties down.

When the details of the incident came to public knowledge, Nicole’s credibility was questioned. She was accused of being a “loose” woman, a “flirt” and a prostitute. She was accused of going to Subic in order to catch an American husband so she could go to the US.

This is all part of victim

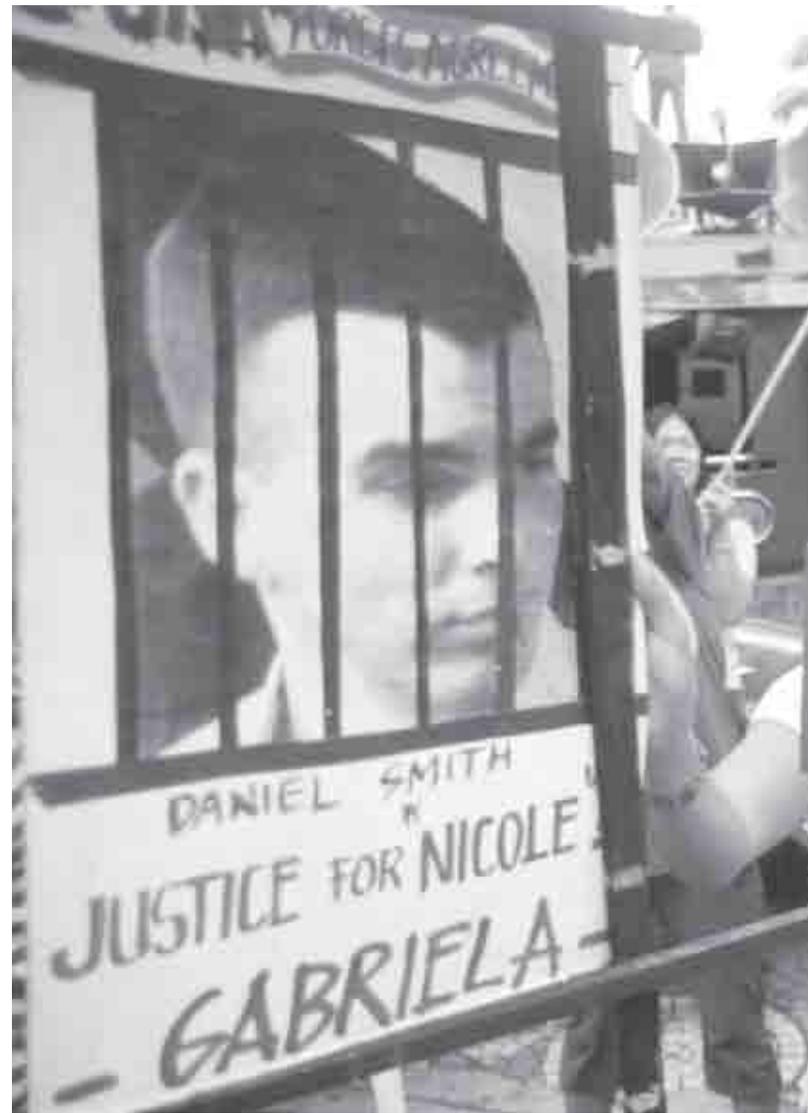
blaming.

In reality, rape can happen to any woman regardless of the way she dresses, where she is, who she is with, or how she acts. It is never a woman’s fault if she is raped.

There is no excuse for rape. Every woman has the human right to be free from rape and violence.

Rape and the VFA

The accused soldiers Smith, Carpentier, Duplantis and Silkwood were part of the visiting US troops who came to Subic for rest and recreation. Their presence in the Philippines is part of the privileges granted to US troops under the Visiting Forces Agreement (VFA) between the United States of America and the Philippines. The case is the first to be filed





Ang hatol: Mga aktibistang kababaihang sumuporta kay Nicole.



Photos by PJR/LITO OCAMPO against US personnel under the VFA. It will be the litmus test of the VFA.

The VFA is an agreement entered into by the Philippines and the United States on February 10, 1998. It was ratified by the Philippine Senate in 1999, despite fierce public protests. The VFA provides participating American soldiers and civilian contingents with special rights and privileges.¹ Among these special rights and privileges are the exemption of US troops and civilians from the following rules and regulations: passport or visa, driver's license, car registration and custom duties and taxes. The VFA also provides US personnel unrestricted movement within the country and unlimited duration of stay.

VANNIE

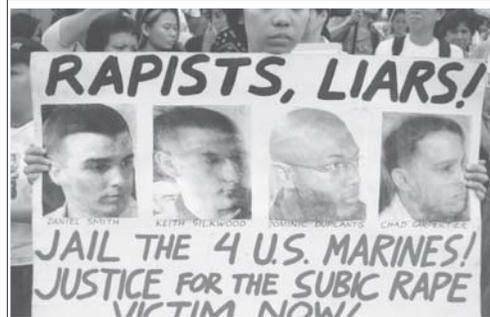
SARILAYA volunteer

NANG MAPANOOD ko ang balita tungkol sa Pilipinang si Nicole na ginahasa ng sundalong Amerikano na si Daniel Smith, naitanong ko sa aking sarili: paano kung ako si Nicole? Paano ko haharapin ang mga batikos, paninisi at insulto ng karamihan, lalo na ng gobyernong inaasahan kong magtatanggol sa aking karapatan bilang babae na nilapastangan ng mga dayuhan sa sariling bayan?

Setyembre 2006 nang nag-umpisa akong sumama sa mga *meeting, forum* at mga kilos protesta ng TFSR upang isigaw ang katarungan para kay Nicole na pilot hinahadlangan ng mga taong nasa gobyerno dahil sa usapin sa Visiting Forces Agreement (VFA).

Kung minsan ay tumutulong ako sa paggawa ng mga *slogans* at *effigy* na gagamitin para sa pagkilos. "Gusto kong makatulong kay Nicole, kahit sa maliit na paraan", ito ang aking nasa isip. Gusto kong makisimpatya kay Nicole at sa marami pang kababaihan na naging biktima ng mga sundalong Amerikano na wala nang ginawa kundi pagsamantalahan ang kahinaan, kahirapan at kamangmangan ng kanilang biktima. Ang mga isiping ito ang nag-udyok sa akin upang sumama sa mga grupo na nakikibaka upang makamtan ni Nicole ang hustisya at tuluyang maibasura ang VFA.

Sa wakas, nagkaroon ng saysay ang hirap, pagod at panahon na ibinigay ng TFSR at ni Atty. Evalyn Ursua upang manalo sa kaso. Salamat at mayroon pa ring mga tao na gaya ni Judge



Benjamin Pozon na nanindigan para sa hustisya at katarungan.

Nakalulungkot lang isipin na sa kabila ng pagkapanalo ni Nicole sa kaso, ang hustisyang nakamit ay hindi naging ganap dahil sa lihim na paglilipat kay Smith noong Disyembre 29 sa kustodiya ng Embahada ng Amerika. Sinamantala ng mga taong nasa likod ni Smith at ng administrasyon ang panahong abala ang mga tao sa nalalapit na bagong taon upang ipuslit ang *rapist* na si Smith.

Akala ko ay matutuldukan na ang hirap ni Nicole at ng mga grupong sumuporta sa kanya dahil sa nahatulan na si Smith. Hindi pa pala. Sa halip ay panibagong pakikibaka na naman ang kinakaharap upang mabawi si Smith sa kustodiya ng Amerika at tuluyang maikulong.

Marami akong natutunang bagay bilang babae na hindi ko alam noon. Mga realisasyon na ngayon lang sumagi sa utak ko. Naging madali para sa ilan nating kababayan ang humusga dahil hindi sa kanila o sa kaanak nila nangyari ang nangyari kay Nicole. Naisip ko na walang sinumang babae sa mundo ang gugustuhing maging kasing "popular" ni Nicole sa ganitong paraan.

Hindi pa tapos ang laban ni Nicole. Hindi magiging madali para sa atin ang muling mabawi si Smith dahil na rin sa pakikipagsabwatan ng ilang opisyal ng gobyerno sa mga Amerikano.

Under the agreement, US personnel accused of criminal acts or non-bailable heinous crimes shall be under the custody or authority of the United States. They shall not be required to remain in jail.² This provision completely disregards and shows disrespect for Philippine Laws. Republic Act 8353 or The Anti-Rape Law of 1997 defines rape as a heinous crime and is therefore non-bailable. Thus, the accused should remain in jail in the course of the trial.

The Philippine government, being the ultimate lackey to US interests, refused to secure or press for custody of the accused. They even justified the act as something “noble,” because this would protect US-RP relationship. Thus, throughout the trial, the four accused US marines remained under the US custody and stayed at the US Embassy.

Hollow victory

Despite the lack of support obviously shown by the Department of Justice (DOJ) and majority of the public prosecutors, Daniel Smith was convicted of rape without reasonable doubt by Judge Benjamin Pozon on December 4, 2006 and was sentenced to *reclusion perpetua*. He was ordered to be detained at the Makati City jail. (However, the three other US Marines were acquitted). As expected, Smith’s lawyers and the US Embassy asked that Smith should remain under US custody. According to them, the judicial proceedings have not been completed. But Judge Pozon retained his earlier decision to temporarily detain Smith at the Makati City Jail.

The case was then brought to the Court of Appeals.

On the night of December 29, 2006, even before the Court of Appeals handed out its decision, Daniel Smith was transferred from the Makati City Jail to the US Embassy. The transfer was facilitated by the operatives of the Department of Interior and Local Government (DILG). The transfer, as seen on TV, looked



Photos by PJR/LITO OCAMPO

like a covert operation. It was conducted in the middle of the night when most Filipinos were asleep. It was also done on the last working day of the year and at a time when most Filipinos were occupied with the holiday season. It was one cruel joke. It was a betrayal and an insult to Nicole and to Philippine sovereignty.

Adding insult to injury, DOJ Secretary Raul Gonzales even had the gall to claim that transferring Smith to the US embassy was better than giving him a pardon. Perhaps the Secretary had let on more than he wanted to reveal. Perhaps that was the plan all along: Give Nicole the trial that she wants and provide her with prosecutors. If, despite government’s effort to derail the trial, Smith is convicted, giving him pardon will be an option.

First of all, Nicole – and the Filipino people – should not be forced to choose between two evils: US embassy detention for Smith or outright pardon. Smith committed a crime of rape on Philippine soil. He was found guilty by a Philippine court and was sentenced to *reclusion perpetua*. Therefore, he should serve his sentence in a Philippine jail. The only course for the Philippine government

is to implement the decision of the court. That should be the course of action of every government that respects the rule of law. Choosing between two evils should never be an option.

Second, handing over Smith to US custody in the name of protecting US-RP “special friendship” makes a mockery not only of laws but also of international relations. Friendship among nations is based on equality, trust and respect. The VFA heavily favors and is advantageous to the United States. Their soldiers get special rights and privileges. In exchange for that, what do we get? We receive special combat training against terrorist attacks when they could not even contain the violence in Iraq and Afghanistan. Or maybe additional antiquated military equipment.

The primary responsibility of a government is to protect the human rights of its citizens. If protecting the rights of Filipinos means giving up the “special friendship” with the United States, then so be it. There is no reason to continue the US-RP “special” relationship if that relationship compromises the human rights of Filipinos. Philippine history is full of examples of how we always end

up at the losing end of this relationship with the United States.

DILG Secretary Puno tried to calm the storm of protests by saying that Smith remains in the country and he will be closely monitored by the DILG. Technically, Smith is out of the country. The US embassy is foreign territory. The DILG still has to coordinate with the US embassy if they want to monitor the whereabouts of Smith.

The transfer of Smith is a plain sell-out. It is a betrayal of Philippine sovereignty. It is a clear disregard for the rule of law.

But what of Nicole?

Regardless of the results of the case, it is important for Nicole to heal, to find closure and, hopefully to move on. Her family and friends should also be included in the healing process because they are Nicole’s support system. It is important that they also be healed so they can be strong for Nicole.

This is not to say that the custody issue is not important. It is very important. The resolution of the issue will be helpful for Nicole, her family and friends. But we should not lose sight that Nicole’s well-being is equally important.

Lastly, the transfer of Smith illustrates that we cannot fully rely on the law and the government to protect women from violence. We have to go back to the basics of community education, organizing communities, organizing survivors’ groups and mass mobilizations. For at the end of the day, we have to ask ourselves: how many people have we enlightened? How many of those who were enlightened have been moved into action? It is only when we act collectively and mobilize ourselves, that we can end violence against women.

¹ Rape and VFA. Task Force Subic Rape Briefing Paper.

² Ibid.