

RAPE IN PHILIPPINE JURISPRUDENCE

On 30 September 1997, the Philippine Congress, under pressure from the feminist movement of the Philippines, passed the ANTI-RAPE LAW OF 1997, which expanded the definition of the crime of rape and re-classified it as a crime against persons. Previously, it was classified

added. Third, rape now also includes acts other than penile penetration of the vaginal orifice, such that, an act of sexual assault can be effected by inserting a penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice, of another person. Fourth, and this is a consequence of the third innovation, a woman may now be charged of raping another person and may now be committed against men in the form of sexual assault. Fifth, any physical overt act manifesting resistance against the rape in any degree from the victim is admissible as evidence of lack of consent. Tenacious resistance, hence, is no longer required. Neither is a determined and persistent physical struggle on the part of the victim necessary. In drafting the new law, the legislators agreed that Article 266-D is intended to soften the jurisprudence of the 1970 when resistance to rape was required to be tenacious. The lawmakers took note of the fact that rape victims cannot mount a physical struggle in cases where they were gripped by overpowering fear or subjugated by moral authority. Article 266-D tempered the case law requirement of physical struggle by the victim with the victim's fear of the rapist or incapacity to give valid consent. Thus, the law now provides that resistance may be proved by any physical overt act in any degree from the offended party.

Incidentally, the _____ should be considered with R.A. 8505 (Rape Victim and Assistance Act of 1998), which provides for a rape shield. This simply means that in rape, evidence of a complainant's past sexual conduct, opinion thereof or of his/her reputation shall not be admitted unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.

The main criticism against the re-classification, however, is that crimes against persons involve the criminal intent to do harm. The intent of the rapist is totally different. It is sexual in nature. Thus, a torturer who, for example, inserts a blunt instrument into the anus of a victim, is guilty of the crime of physical injuries. Under the re-classification, his act might be construed to constitute rape as sexual assault.

An act of rape is not always violent, although it often is. The Code itself, even the amendment, acknowledges this. Hence, it categorizes four ways in which it may be committed, only one of which is violent: (i.) either by means of force, threat or intimidation; (ii.) when the offended party is deprived of reason or otherwise unconscious; (iii.) by means of fraudulent machination or grave abuse of authority; or (iv.) when the offended party is under twelve (12) years old or is demented. By so doing, it concedes that rape may be committed non-violently.

It is only when force is used that the crime becomes violent. The other means involve the threat of force, the use of deceit or similar machinations. Indeed, the common denominator of all acts of rape is not that violence was used, but that it was against the will of the victim, which could have been secured by non-violent means.

The re-classification gravely offends the sound logic of our Revised Penal Code, which traces its origins to the Spanish Penal Code of 1870. Indeed, we share together with the other Spanish-speaking countries, the same legacy. None of the other Spanish colonies however have saw fit to re-classify the crime of rape as one against persons.

Indeed, when I attended a law conference in Bilbao, Spain last November 2004, I happened to mention to a few of the delegates the re-classification. They were greatly amused, to say

This good faith belief, however, can be interpreted either subjectively or objectively. Given the impossibility of determining an agent's subjective mental states, objective belief is the wiser option. Philippine jurisprudence has not clearly decided between the two. Objective belief means that the facts or conditions of the sexual congress must be such that it is reasonable for the agent to believe that the woman was consenting to the act. If he did not subjectively believe this, then he should have known that this was so based on the standard of the reasonable man.

There is, however, a rape case in which Philippine jurisprudence implicitly adopted the objective doctrine and that was in terms of knowledge of mental retardation.

“However considering that Therese was not his girl friend, that he never courted her, and that after knowing her for two or three weeks, he was able to have sexual congress with her two times, we cannot believe his pretension that he did not know that Therese was mentally handicapped or was subnormal. Anyone who conversed with Therese would not fail to notice that she has some mental deficiency. The Constabulary medico-legal officer, who examined her, concluded that she was “feeble-minded” although he did not give her any psychometric tests.”³

Although Philippine jurisprudence adopts in general the doctrine of *viada*, it has not decided its cases explicitly in terms of the subjective or objective doctrine. In a 1907 case, *Viada* was quoted in stating: “Should the records disclose that some hesitation was shown by the woman or that she had contributed in some way to realization of the act, this will perhaps constitute an offense very different from that of rape.”⁴

Hence, such hesitation as shown by the woman or a contribution to the realization of the act would be construed as manifesting to the accused that the woman was willing to engage in copulation. For it would be reasonable for him to believe, given such hesitation or contribution, that the woman had consented.

This doctrine was explained more elaborately thus:

“More specifically, where the offense charged is rape through force, there must be a showing of compulsion being resorted to and coercion being employed. The element of voluntariness must be lacking. If there be an indication of willingness, even if half-hearted, the complaint must be dismissed. ‘It is well-settled,’ according to Chief Justice Moran in *People v. ...* (84 Phil. 118 (1949)) ‘that when “some hesitation was shown by the woman, or that she had contributed in some way to the realization of the act,” there is no rape.’ (5 *...*, 121) That is a doctrine that goes back to *...*, (8 Phil. 279) a 1907 decision. Justice Torres, who penned the opinion, made use of the above formulation of *Viada* as to the presence of some hesitation on the part of the complainant or her contributing in some way to the realization of the act. In addition, he cited Pacheco, whom he referred to as a ‘learned commentator.’⁷ Thus: ‘The crime of rape is not to be presumed; consent and not physical force is the common origin of acts

³ *...*, 28 february 1979, G.R. No. L-41819

⁴ *...*, 2 August 1907, G.R. No. L-3574; *...*, 11 December 1913, G.R. No. L-9014; *...*, 25 August 1978, G.R No. L-46697;

between man and woman. Strong evidence and indications of great weight will alone support such a presumption.’ (. Cf. People v. Alvarez, Jan. 17, 1974, 55 SCRA 81 and People v. Reyes, L-36874-76, Sept. 30, 1974, 60 SCRA 126)⁵

The Joven decision appears to have gone farther as it has included half-hearted indication of willingness as manifesting consent. It also provided an example of a case where consent was manifested due to a lack of resistance on the part of the woman.

“The Supreme Court reversed the conviction of defendant for rape under Art. 335 of the RPC because the most careful scrutiny of the records of this case failed to reveal the existence of that kind of evidence that would suffice to overcome the presumption of innocence. The man had no weapon with which to intimidate the girl. There were no intimations that there was opposition on her part. She did not yell or scream. The two witnesses on either side of the room, separated only by a thin plywood partition, certainly would have been aware of any shouts of protest. One of them testified to having heard heavy breathing. That certainly was not indicative of rape. Moreover, to repeat, the defendant stayed until dawn. Even early the next morning, they were seen together.”⁶

The explanation for this rather one-sided application of the doctrine is probably due to the concept of the Maria Clara as the essence of Philippine femininity.⁷ A Filipino woman is expected to be demure and shy, such that she must say “No” to the sexual act even if she desired the sex. In other words, “No” means “Yes.”

This doctrine gradually changed. Sometime in the 70s, any physical overt act manifesting resistance against the rape in any degree from the victim is admissible as evidence of lack of consent. This was due, perhaps, to the fact that since the woman was being intimidated, she would feign willingness so as to avoid the violence that would ensue had she resisted. Hence, cases were decided thus:

“Case law has it that the failure of the victim to shout or offer tenacious resistance does not make voluntary the victim’s submission to the criminal acts of the accused. (, G.R. Nos. 147650-52, October 16, 2003) Resistance is not an element of rape and the absence thereof is not tantamount to consent. (367 SCRA 417 (2001)) The law does not impose upon a rape victim the burden of proving resistance. (, G.R. Nos. 150983-84, November 21, 2003) In fact, physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist’s lust because of fear for life or personal safety. (G.R. Nos. 146862-64, April 30, 2003) Indeed, it has been said that, in rape cases, it is not necessary that the victim should have resisted unto death or sustained injuries in the hands of the rapist. It suffices that intercourse takes place against her will or

⁵ , 22 May 1975, G.R. No. L-36022.

⁶

⁷ Maria Clara is a character in Jose Rizal’s, the national hero’s, novels, and .

that she yields because of a genuine apprehension of great harm. (People v. Dagami, G.R. No. 136397, November 11, 2003)”⁸

“Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As has been held, the failure to shout or offer tenuous resistance does not make voluntary the victims submission to the criminal acts of the accused. (
 , G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428.) Intimidation is addressed to the mind of the victim and is, therefore, subjective. (
 , G.R. No. 172691, August 10, 2007, 529 SCRA 800, 809-810; citing
 , G.R. Nos. 152683-84, December 11, 2003, 418 SCRA 391) (PEOPLE V. ACHAS, 4 AUGUST 2009, G.R. No. 185712)”

II. FILING BY THE OFFENDED PARTY OR HER GUARDIANS

There have been three cases in which a rape case that has been filed has been dismissed by the Supreme Court on the ground that it was not filed by the offended party or her guardians. This was done in
 , 24 March 1933, G.R. No.L-38344,
 , 20 February 1934, G.R. No. L-39882,
 , 29 June 1957, G.R. No. L-8520. Two other cases were filed but the validity of the complaint was upheld.

In any case, the complainant was not prejudiced by the dismissal. In the
 case, the case was dismissed without prejudice to filing a formal complaint. Hence, if the complainant were determined to seek justice, she should simply affix her signature in the Complaint. Although the accused was convicted in the invalidated complaint which reversed the decision for lack of jurisdiction, the
 case showed no impediment to the refilling of the Complaint, this time with the proper guardian’s or complainant’s signature. The same goes for the
 case. Hence, the requirement did not present a sufficient procedural obstacle to the conviction of a rapist.

There is no telling whether more cases for rape would be filed without the victim’s cooperation or whether these cases would be dismissed or the accused acquitted due to her non-participation. Hence, I am of the belief that this change in the law did not help the feminist cause any. However, if the feminists are determined to get rid of the procedural requirement that rape be initiated by a complaint by the offended party or her guardians, there was no need to go to such extremes as to reclassify rape. A simple deletion in Art. 344 would have sufficed.

II. THE VICTIM’S TESTIMONY AND CREDIBILITY

The extant doctrine of Philippine jurisprudence, with respect to the sufficiency of the victim’s testimony, is that it was, if credible, sufficient to convict the accused. What was said in the first reported case on rape,
 (1 Phil. 81 (1901), referred to by the lower court, has relevance: "When a woman testifies that she has been raped she says, in effect, that all that is necessary to constitute the commission of this crime has been committed. It is merely a question then, whether or not this court accepts her statement." (
 , 82) That was in 1901. That has been the rule since then. Only two years ago, in People v. Royeras (L-

⁸
 , 27 May 2004, G.R. No. 128363.

31886, April 29, 1974, 56 SCRA 666), it was reiterated in well-nigh identical language.”⁹
(, 30 June 1976, G.R. No. L-37148)

(19 SEPTEMBER 1933, G.R. NO. 37310) phrased it thus:
“Where the testimony of the prosecutrix is not inherently improbable or contradictory, it is not essential to a conviction that there be corroboration.” (Day . State, 232 Pac., 122;
People . Tanilloso, G. R. No. 33514, not reported, promulgated February 4, 1931;
People . King, 205 Pac., 703; State . Jones, 245 Pac., 101.)

The rationale for the doctrine was stated as follows: “We have said that the lone testimony of an offend party in a crime of rape, if credible, is sufficient to sustain the conviction of the accused. This is so because owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. (People v. Selfaison, 110 Phil. 839; People v. Macaya and Gagawaran, 85 Phil. 540; People v. Ganal, 85 Phil. 743; People v. Ariarte, 60 Phil. 326; People v. Dazo, 58 Phil. 420).”

Phrased differently, “That the offended party’s testimony is uncorroborated is of little moment. The crime of rape is, as a rule, committed without anybody else being present — with the exception of the rapist and the victim. To say that because no witness corroborated the testimony of the latter, the same should be deemed insufficient to prove the crime would make it impossible to convict any person charged with such offense.” (, 30 October 1970, G.R. No. L-29144)

The doctrine was applied with more certitude if the victim were of a young and tender age: “Moreover, if there is anything apparent from our past decision on rape cases, with the offended parties being young and immature girls from the ages of twelve to sixteen (Some of the decisions where the offended party was twelve years of age follow: United States v. Javier, 31 Phil. 235 (1915); United States v. Andaya, 34 Phil. 690 (1916); People v. Obaldo, L-13976, April 29, 1961, 1 SCRA 1197. These are some of the decisions involving victims from thirteen to fifteen years of age: People v. Modelo, L-29144, October 30, 1970, 35 SCRA 639; People v. De Guzman, 51 Phil. 105 (1927); People v. Alqueza, 51 Phil. 817 (1928); People v. Soriano, L-29057, Oct 30, 1970, 35 SCRA 633; People v. Gan, L-33446, August 18, 1972, 46 SCRA 667; United States v. Rojo, 10 Phil. 369 (1908); People v. Apiado, 53 Phil. 325 (1929); People v. Lomibao, 55 Phil. 616 (1931); De los Santos v. People, 69 Phil. 321 (1940). In these cases, the offended party was sixteen: United States v. Soto, 14 Phil. 384 (1909); People v. Alfaro, 91 Phil. 404 (1952); People v. Bacsa, 104 Phil. 136 (1958); People v. Selfaison, 110 Phil. 839 (1961); People v. Amit, L-30102, February 27, 1971, 37 SCRA 793), it is that there is considerable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a gruelling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control. In the appropriate language of Justice Antonio, speaking for this Court in (L-33446, August 18, 1972, 46 SCRA 667): “It is undisputed that the victim of the heinous offense was only a young girl of 14 years, a virgin, innocent and unsophisticated, and as a student of a religious school, there is no reason for her

⁹ “When a woman testifies that she has been raped, she says in effect all that is necessary to show that rape has been committed. If the testimony is not improbable, the defendant may be convicted on the basis of such uncorroborated testimony (U. S. vs. Ramos, 1 Phil. 81; People vs. Dazo and Tingzon 58 Phil. 420).

clear and must be corroborated (U.S. . Mamintud, August 16, 1906), otherwise it fails to satisfy beyond a reasonable doubt, as required by U. S. . Dacotan (1 Phil., Rep., 669).”

In _____, the testimonies of the daughter and the father were not enough to convict the defendant, given that there were two other witnesses who could have corroborated their testimony. Hence, the Supreme Court observed:

“It should be particularly noted () that although it is alleged that two disinterested witnesses, namely, Sotera Baltazar and Ponciano Mallari, saw the accused leap from the house and flee, they have not been presented as witnesses for the prosecution; and that the little boy, although presented by the prosecution as a witness against the accused, was not permitted to testify for the reason that, in the judgment of the court, he did not display sufficient intelligence to make him a competent witness.

It thus appears that the only evidence against the accused is that produced by the complainant and her father. While evidence of this character would generally be sufficient, everything else being equal, nevertheless, under the circumstances of this particular case, we do not regard the case made by it as satisfactory. The failure of the prosecution to present the two disinterested witnesses abovementioned seriously weakens its case against the accused.”

The doctrine was cited in dissent in _____ (10 September 1931, G.R. No. 35235). Justice Imperial ruled: “I said that the testimony of the complaining witness, the only direct evidence of the prosecution, cannot be the basis of a conviction for so serious a crime as it imputed to the appellant, because it is not corroborated by any other direct and positive evidence; and it may be added that still less probative value can be attached to such testimony, when it appears, as in this case, to be vitiated by the advice of an individual who has frankly admitted that he hates the appellant. ‘A conviction for rape can not be had upon the uncorroborated and contradicted testimony of the complaint alone.’ (U.S. . Flores, 6 Phil., 420.)”

In _____ (25 July 1969, G.R. No. L-28884), the uncorroborated testimony of the complainant was not enough to sustain a conviction. “Just the same, this case hinges on complainant's testimony — uncorroborated, insofar as the deceit imputed to appellant herein — vis-a-vis the latter's testimony, coupled with the fact that the complaint herein was not filed until almost five (5) months after the alleged rape and immediately after appellant had married another woman. Considering our human fallibility and the gravity of the offense charged, the Court feels it cannot legally declare that appellant's guilt has been established beyond reasonable doubt. This does not imply that complainant's version is false or that we doubt her probity or morals. It simply means that the quantum of evidence required by law to justify conviction for said crime has not been clearly met.”

_____, (29 March 1974, G.R. No. L-30988), perhaps, explained why the uncorroborated testimony of the victim must be scrutinized with great probity before it leads to a conviction: “In crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity. When the conviction depends at any vital point on her uncorroborated testimony, it 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” (_____, 51 Phil. 852). “The books disclose too many instances of false

charges of rape attempted rape and kindred offenses to permit the courts to enter a judgment of conviction of a crime of this nature without having in mind the possibility that the complaining witness may have been actuated by some sinister motive in bringing the charge” , 35 Phil. 671, 677).

Thereafter, there were numerous cases in which the uncorroborated testimony of the complaining witness was sustained because the circumstances of the case fully corroborated the testimony of the complaining witness. According to Justice Abad Santos, “While it is true that, aside from the complaining witness, there were no other witnesses to the commission of the crime, yet the circumstances of the case fully corroborate the testimony of the complaining witness, which is clear and free from any serious contradiction. ‘Where the testimony of the prosecutrix is not inherently improbable or contradictory, it is not essential to a conviction that there be corroboration.’ (Day . State, 232 Pac., 122; People . Tanilloso, G. R. No. 33514, not reported, promulgated February 4, 1931; People . King, 205 Pac., 703; State . Jones, 245 Pac., 101.)”

In , the doctrine was cited but nonetheless it was not applied. According to Justice Hull: “It is true that a conviction can be sustained on the uncorroborated testimony of the offended party. But it should never be done unless the story of the offended party is impeccable and rings true throughout. After a close and painstaking review of the evidence, it is impossible for us to say that the guilt of the accused has been proven beyond a reasonable doubt.”

The reliability of a victim’s testimony is made even more so when it comes from a young and immature lass. In (3 June 2004, G.R. No. 157269), Justice Ynares-Santiago held: “It is culturally instinctive for young and decent Filipinas to protect their honor and obtain justice for the wicked acts committed on them. Thus, it is difficult to believe that rape victims would fabricate a tale of defloration, allow the embarrassing examination of their private parts, reveal the shame to the small rural town where they grew up and permit themselves to be subjected to a humiliating public trial if they had not in fact been really ravished. When the offended parties are young and immature girls from 12 to 16, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the public humiliation to which they would be exposed by court trial if their accusation were not true.”¹⁰

Since then, the uncorroborated testimony of a rape victim, if credible and consistent, has been sufficient to convict the accused of the crime.

IV. CONCLUSION

There has been said to have been two improvements to the Philippine Penal Code by means of the re-classification of the crime of rape. The first was to impress upon the public the violent nature of the crime. The second was to rid the prosecution of the crime of the procedural obstacle of requiring the offended party or her guardian to sign the Complaint.

The first could have been achieved by other means short of reclassification. Perhaps more research can be conducted with respect to its nature and more literature published evidencing its violent character. Perhaps a more thorough description of rape could be included in the Code manifesting these insights. But to make the crime akin to a crime of homicide or

¹⁰ , G.R. Nos. 128159-62, 14 July 2003

physical injuries is simply too radical a step. It confuses the intent to do physical harm with intent arising from lust.

As to the second supposed benefit, a simple deletion of rape in Art. 344, as one of the crimes requiring the signature of the offended party or the guardian in the Complaint will suffice.

In short, too much is lost with the reclassification and rape should once again be reclassified in its rightful place, as a crime of lust.