

Monitoring the Philippine Rape Laws: The Policy and the Myths

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Townsville International Women's Conference - AUSTRALIA



3 - 7 July 2002 ~ James Cook University
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In 1997, the Philippine Congress passed RA 8353, the new anti-Rape Law. Filipino women's rights advocates hailed the passage of the law as a major policy change. After seventy years, the state changed its view on rape from a crime against chastity, to a crime against persons.

In this paper I shall present the results of a monitoring study on the implementation of RA 8353 three years after its passage.¹ Case studies of women who filed rape complaints were made, tracing their experiences in accessing justice from the police and the judiciary.

Our findings show that myths on rape continued to be entrenched in the minds of members of the judiciary, the police, the medical people, and within the community. Policy change is only one battle in the war against VAW. Implementation of the law requires shattering the prevailing myths on rape and violence against women (VAW).

Three brave women

What do Kim, a 42-year old businesswoman with two children, Christina, a 28-year-old teacher of Christian Living in an elite private school, and Rio, a 16-year-old elementary school drop out with separated parents have in common - aside from being women?

They are all rape survivors in the Philippines, and their cases were all dismissed at the stage of preliminary investigation; meaning to say that, in the eyes of the state prosecutors, their stories of rape were not worth a day in court.

Figure 1 shows the process that a rape survivor in the Philippines has to undergo if she decides to seek justice and healing, by approaching the police and medical system. I term this the "maze" that every rape survivor in the

¹ The members of the research team are Atty Soliman M. Santos Jr., Mr. Roberto Ador, and myself. The book was published as "Justice and Healing: Twin Imperatives for the Twin Laws Against Rape", published by the Philippine Legislators' Committee for Population and Development (PLCPD) with funding support from the Ford Foundation in 2001.

Philippines faces. If the rate of reporting of rape cases in the Philippines is estimated to be 20 % of prevalence rate or probably much lower, we can probably understand why, by looking at what the victim must undergo in her quest for justice and healing. For victims who come from remote rural areas, going through the process will require travelling to the city or town where the institutions are located. Indigenous women and women in situations of armed conflict, which also constitute a big population in the Philippines are most marginalized; having virtually no access to all of the institutions shown in Figure 1.

Now let us go back to the cases of our three brave women who filed charges against their rapists, and see the rape mythologies at work:

Kim's case was dismissed because the prosecutor did not find her story of rape credible; the prosecutor said: "*complainant is a career woman, married above 40, highly educated and exposed to people considering her job and background.*"

On appeal, the dismissal was overturned and Kim's case is now undergoing trial in court that Kim has termed as "being raped all over again, this time in public."

Christina's case is a classic acquaintance rape; she agonized for eight months before filing a complaint because the perpetrator was a police officer who professed love for her. Due to this the prosecutor said, in his dismissal statement:

"... where the complainant remained silent for eight months after she has lost her virginity, such conduct runs counter to the reaction of an outraged maiden despoiled of her honor".

Upon review, the dismissal was overturned by the Military Ombudsman, and up to now, the trial is ongoing.

Rio was 16 when she was gang-raped during a training seminar by 16 men, all well-connected males in their town. Since her parents were separated; her father worked abroad, she and her guardians took three months to decide the filing of the case.

The State Prosecutor dismissed her case, saying that her "*behavior (after the rape) is simply irrational and is quite unusual for a woman who has been raped,*" among other things he said as he doubted the veracity of her story.

Upon appeal by the Task Force on Child Protection, the dismissal was upheld by the Secretary of the DOJ. His statements are instructive of the mindsets about rape, even among judges:

“ Rape is a very emotional word and the natural human reactions to it are categorical, but judges ... must free themselves of the natural tendency to be overprotective of every woman decrying her having been sexually abused... It should be realized, however, that when a man is haled to court in a criminal charge, it brings in its wake problems not only for the accused but for his family as well.”

Rio is now a distressed young lady of 20. Her appeals have been dismissed twice, though her lawyers have filed a third appeal, which is her last chance to get her day in court.

It is obvious that the rape survivors are engaged in a battle not only against the rapist, but against the whole set of misconceptions about rape that are ingrained in the minds of lawyers and judges. Throughout the years, sexist beliefs about women and myths about rape have been crystallized as judicial dogma which are so deeply embedded in the minds of lawyers and judges, just as gender biases prevail among the public, both men and women. This goes on despite the passage of the new Anti-Rape law in 1997.

The New Philippine Rape Laws

After more than five years of untiring work of advocates for women's rights, the Congress, the policy-making body of the Philippines, passed RA 8353, The Anti-Rape Law of 1997². In 1998, the twin law, RA 8505, the Rape Assistance and Protection Act³, was also enacted.

Although the women did not get all the provisions that they wanted, they considered the passage of the law a victory because a major policy change had occurred in the way the state viewed rape.

Major provisions

Most of the basic features of a women-sensitive anti-rape law⁴ are provided in RA 8353: First, is the reclassification of rape from a crime against chastity to a crime against persons (Sec. 2 of RA 8353). The significance of this is the policy change in the way the state views rape: no longer as a sexual crime but as a violation of women's human rights.

² On July 28, 1997, then Pres. Fidel V. Ramos signed into law RA 8353: "An Act Expanding The Definition Of The Crime Of Rape, Reclassifying The Same As A Crime Against Persons, Amending For The Same Purpose Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code, And For Other Purposes".

³ RA 8505, passed on February 13, 1998, is entitled "An Act Providing Assistance And Protection For Rape Victims, Establishing For The Purpose A Rape Crisis Center In Every Province And City, Authorizing The Appropriation Of Funds Therefore, And For Other Purposes."

⁴ Women's Legal Bureau, Inc., *A Legislative Advocacy Manual for Women* (Quezon City: Women's Legal Bureau, Inc., January 1997), 64-65.

Second, the definition of the crime of rape has been expanded to include acts other than penile penetration of the vaginal orifice. In addition to the classic definition is added a non-traditional category of rape (Art. 266-A-2 of the Revised Penal Code) “by any person” who, under any of the circumstances (e.g. through force, threat, or intimidation, etc.) of classic rape, “commits an act of sexual assault by inserting:”

1. “his penis into another person’s mouth or anal orifice, or”
2. “any instrument or object, into the genital or anal orifice of another person.”

Third, marital rape has been criminalized, albeit implicitly. (Second paragraph, Art. 266-C of the RPC) stated this way: “In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty.” Considering that the proposal for express criminalization of marital rape was the most contentious issue of the congressional debate, even posing a threat to the final approval of the bill on third reading, the final provision should still be seen as a gain.

The twin law of RA 8353, RA 8505 has provisions which were part of the original rape bill filed by the women’s groups. These include a rape shield ruling out the sexual history of the offended party as an issue, and protective measures for rape survivors.

Main findings of the monitoring study

In evaluating the implementation of the twin laws against rape more or less three years after their effectivity it might be said that there was not much to report on. Atty. Soliman Santos looked at the Supreme Court decisions during the three years after the approval of RA 8353, and found that there was only one significant SC decision applying it, particularly the important evidentiary presumptions therein bearing on resistance or consent. There was also the first marital rape conviction under RA 8353 by a Regional Trial Court, which is now in the process of being appealed.

But those early gains as well as other potential gains will be negated by at least two judicial factors. First are the existing and continuing judicial doctrines, foremost being the three fundamental guiding principles in the review of rape cases, which perpetuate the various rape myths. And these are carried down the line of the pillars of the criminal justice system, from the SC to the lower courts and judges, to the DOJ and its public prosecutors, and to the PNP – the very implementers of the law. Second is the court ordeal, the “second victimization,” that continues to be experienced by rape complainants. This is perhaps the single biggest institutional factor that militates against reporting and especially filing. It is a trauma not limited to rape complainants but one which extends to and is also felt by police officers and even psychiatrists who testify in court.

In this paper, I am focusing on the rape mythology which provides blocks to the implementation of the new anti-rape laws.

Rape Mythology

Though there are no R.A. No. 8353 cases during the three-year period after its approval (October 1997 to September 2000), there are many SC decisions which state and restate what it considers as the three fundamental guiding principles in the review of rape cases. In other words, three years of the new anti-rape law has so far had no appreciable impact on a rethinking of these principles. Because of the crucial role these principles play in deciding rape cases, the study focused on them with a view to legislative and judicial reforms that the new anti-rape law has not (yet) brought about.

The principles are invariably stated as follows:

“(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it;

(2) in view of the intrinsic nature of the crime where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and

(3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.”

Even not counting the third principle which is a general rule for all kinds of criminal cases, the gender bias against rape victims is very clear in these guidelines. And yet they continue to be perpetuated in case after case of SC rape decisions, very much part of the full law on rape.

The rape myths, especially those entrenched in jurisprudence, are those which would undermine whatever gains in the new anti-rape law. It is, therefore, important to be conscious of these myths which persist lest the application and interpretation of the law be tainted by them. The Women’s Legal Bureau (WLB) survey of 478 SC decisions on rape from 1961 to early 1992⁵ sought to validate or disprove at least ten prevalent notions about rape:

1. Rape happens only to young, pretty or desirable women.
2. Rape is a crime of lust or passion.

⁵ Policy Research and Development Program, Women’s Legal Bureau, Inc., *“Making Sense” of Rape: A Review of Presumptions Relied Upon by the Supreme Court in Decisions on Rape*, Occasional Paper No. 1 (Quezon City: Women’s Legal Bureau, Inc., 1995).

3. Rape involves the loss of a woman's most prized possession, her "chastity."
4. Men can have sex freely with women deemed to be of loose morals because these women have nothing to lose.
5. Rape is committed by sex maniacs or perverts.
6. Rape happens in poorly lit or secluded places.
7. Sexy clothes incite men to rape.
8. When a woman's "chastity" is threatened she exerts every effort to protect it, whether by violent resistance, escape attempts, or screams for help.
9. When violated, a woman's first reaction is to tell her family, particularly her menfolk – father, brother, husband – who must be informed of the assault upon the woman's, and thus the family's, honour.
10. Rape charges are fabricated by women seeking to avenge a slight or to extort money

Contrary to these myths and attitudes about rape, the WLB study counterposes the following summary of realities and truths based on the facts about rape:⁶

1. Rape can happen to any woman, any time, at any place.
2. Rape is not a crime of lust or passion but an abuse of power.
3. Rape is not about chastity lost but about personhood, dignity and bodily integrity violated.
4. No woman "deserves" to be raped, even if she happens to have been wearing sexy clothes.
5. Rape can be committed by perverts and by "normal" men.
6. Delay in reporting a rape should not diminish the credibility of the report because, given the usual circumstances of rapes, such delay is, more often than not, excusable.
7. Fabrication of a rape charge is not impossible, but such possibility is negligible and not any more serious than the risk of believing fabrications of other crimes.

A law journal article⁷ also surveyed SC rape decisions from 5 August 1991 to 26 July 1995, updating by three years the WLB study, shows that the myths prevail.

And the experience of women who dare to fight for justice for their cases shows that up to the present, the myths continue.

The study came up with the following recommendations:

⁶ Ibid.

⁷ Josef Leroi L. Garcia, "Raped Woman Talking, Deaf Man Listening: Mythology in the Law on Rape," published in the *Philippine Law Journal*.; as cited in "Justice and Healing..."

With regards to RA 8353, what should be the order of the day is not legislative reform but judicial reform or more precisely reform of the justice system:

1. To reform the judicial doctrines which perpetuate the various rape myths, there could be at least two approaches.

1.1 First is the more conventional and incremental changing of judicial doctrines through purposive efforts by women's legal groups or feminist lawyers in appropriate rape cases before the Supreme Court.

1.2 A second, possibly faster track, would be the holding of symposia and dialogues with members of the Supreme Court, and for that matter other pillars of the criminal justice system, to purposively thresh out the issue of rape myths as reflected in judicial doctrines. This could include the presentation and discussion of legal papers on the matter as well as related studies from other disciplines

In conclusion: setting the minds of men and women free from the rape myths and other myths about women requires long-lasting changes in all institutions: government, schools, churches, media. This herculean task requires the concerted effort of women, and men, from all disciplines, and should directly involve women and men from communities – across all social classes.

Passing gender-sensitive laws is an important step. But we should be vigilant in monitoring what has happened to them so that they will not end up as grandiose words, without funds and support from government and from the people whom they are supposed to serve.

After the passage of the rape laws, the women's work continues.