

the Secretary and of course by unanimous consent, we can have it immediately considered.

Senator TAÑADA. Mr. President, with that remark made by our distinguished Majority Floor Leader in order not to waste time, may I ask the Floor Leader whether it is understood that we are now going to proceed with the business of the Senate with the understanding that during the consideration of the bills now pending, the resolution could be drafted and after it has been drafted, it could be acted upon by the Senate?

Senator PRIMICIAS. Yes, subject to unanimous consent of the Senate.

Senator TAÑADA. That is precisely why I am asking for the suspension of the rules.

Senator PRIMICIAS. Well, we will ask for unanimous consent at the proper time.

Senator TAÑADA. Thank you.

CONSIDERACIÓN DEL S. NO. 21

(Continuación)

Senator PRIMICIAS. Mr. President, I ask that we now resume consideration of Senate Bill No. 21. The distinguished Chairman of the Committee on Revision of Laws, Senator Tolentino, will resume sponsoring the bill.

The PRESIDENT. Resumption of the consideration of Senate Bill No. 21 is now in order. The gentleman from Manila has the floor.

PONENCIA DEL SEN. TOLENTINO

(Continuación)

Senator TOLENTINO. Mr. President, when we suspended consideration of this bill, we were already in the period of amendments and I understand that an amendment has already been introduced to delete lines 12 to 20 on page 1 of the bill and substitute the amendment that has been read into the record. But we have not yet voted on the amendment as introduced. That is the stage, Mr. President, in which this bill is at present.

In order to refresh the minds of the gentlemen of the Senate, I would just like to read the amendment as introduced, that in lieu of lines 12 to 20 on page 1 of the bill, insert the following:

"WHENEVER THE CRIME OF RAPE IS COMMITTED WITH THE USE OF A DEADLY WEAPON OR BY TWO OR MORE PERSONS, THE PENALTY SHALL BE IMPOSED IN ITS MAXIMUM PERIOD.

"WHEN BY REASON OR ON THE OCCASION OF THE RAPE, A HOMICIDE IS COMMITTED THE PENALTY SHALL BE RECLUSION PERPETUA TO DEATH.

"WHEN THE RAPE IS FRUSTRATED OR ATTEMPTED AND A HOMICIDE IS COMMITTED BY REASON OR ON THE OCCASION THEREOF, THE PENALTY SHALL BE RECLUSION PERPETUA.

"WHEN BY REASON OR ON THE OCCASION OF THE RAPE THE VICTIM HAS BECOME INSANE THE PENALTY SHALL BE LIKEWISE RECLUSION PERPETUA."

That is the amendment, Mr. President.

OBSERVACIONES DEL SEN. PELÁEZ

Senator PELÁEZ. Mr. President, I simply would like to make a statement in connection with that amendment.

Some of our colleagues have called my attention to an opinion expressed that there is no such crime as frustrated rape. I would like to state for the record that in the case of *People vs. Eriña* which appears in Volume 50 of the Philippine Reports, the Supreme Court convicted the accused of the crime of frustrated rape. I agree that there can be two schools of thought whether rape could be frustrated because even in that decision, there was a dissenting opinion stating that rape can be only attempted or consummated. But since the Supreme Court has categorically stated in that case that the particular crime was frustrated rape, we have deemed it reasonable to include in the amendment a provision on attempted or frustrated rape. I simply make that statement for the record.

Senator LIM. Mr. President, will the sponsor yield?

The PRESIDENT. The sponsor may yield, if he so desires.

Senator TOLENTINO. Gladly.

Senator LIM. As read by the gentleman from Manila, the amendment is silent as to whether or not carnal knowledge is necessary in order that a person may be accused or penalized as co-principal. I would only like to be clarified on this point. If the participant in the commission of the crime of rape has not had carnal knowledge, is he going to be penalized as co-principal?

Senator TOLENTINO. If the participation of the accused who has not had carnal knowledge of the offended party would make him co-principal under the definition of principal of the Revised Penal Code, he can be penalized as co-principal.

Senator LIM. I beg to dissent. It is true that in the commission ordinarily, or in general, those who induce or use force or those who participate actively by committing other acts without which the particular crime could not have been committed may also be guilty as co-principals. But it is not so as in the case of rape, not so in the case of adultery, not so in the case of seduction. I do believe that in these three particular crimes carnal knowledge is necessary in order that a participant can be guilty as a co-principal. Our Supreme Court has not yet decided categorically on the point, but I do say that by the very nature of those crimes which are private in nature and, especially, the law in those three particular crimes state in black and white

that carnal knowledge, the phrase "carnal knowledge"—I do believe that we cannot accuse a participant in the crime of rape and convict him as a co-principal unless he has had carnal knowledge. That is my humble opinion and I would like to be shown authorities and decisions of the Supreme Court, that one in the case of rape who did not have carnal knowledge with the woman or offended party can be penalized as co-principal. I do maintain that he can only be sentenced as an accomplice but never as co-principal unless he had carnal knowledge with the woman.

Senator TOLENTINO. Mr. President, although the amendment as introduced does not touch upon the question that the gentleman has raised, and although he is perfectly entitled to his opinion on this legal question, I would like to read from some decisions of our Supreme Court and from which I believe that a person can be convicted of rape as a co-principal without having actually performed the carnal act.

In the case of *People vs. Bernardo* in which the principle of multiple rape is laid down in the sense that every accused is responsible for as many offenses as the crime of rape has been committed by the co-participants in the act, the situation is as follows: If there are four accused and each one of them commits the carnal act, in contemplation of the law, there would be four criminal offenses committed by each offender, and each accused can be sentenced four times. In other words, while one is committing the carnal act and the other three are simply, perhaps, holding down the offended woman or helping in some way to enable that one to commit the carnal act, yet the other three are convicted for the offense of the one who committed the carnal act. That is why in this case each accused is held liable for as many crimes of rape or acts in which he has participated by direct specific act without which the act or crime could not have been committed.

Then in the case of *People vs. Corpus*, a similar pronouncement was made. In the case of *People vs. Corpus*, one of the participants was convicted only as an accomplice, and this is what the Supreme Court said in convicting him as an accomplice:

"* * * as regards the participation of appellant Eulogio Molina in the commission of the crimes of rape perpetrated on Esperanza Gonzales by each of his three co-accused, we have come to the conclusion that inasmuch as such participation did not reach the category of that of a principal, but that of an accomplice only, because he did not take a direct part in the execution of each of the three other acts of rape, did not force or induce his co-defendants to commit them, nor did cooperate in their commission by

another act without which it would not have been accomplished * * *"

In other words, it is very clear that the Supreme Court admits the possibility of a co-principal in the crime of rape where such co-principal did not commit the carnal act and yet is considered to have committed the crime of rape under the definition of the Revised Penal Code.

I have cited these cases just to satisfy the gentleman from Zamboanga, but as I said, that point is not actually covered by the amendments sought to be passed by the Senate.

Senator LIM. I respect Your Honor not only as a lawmaker but as a lawyer. But I do say those two cases cited do not prove otherwise. But in the case of *People vs. Bernardo*, all the four had carnal knowledge. The element of carnal knowledge is present in each and everyone of the four. That is why they were held responsible for the crime of multiple rape.

In the case of *People vs. Molina*, that is why the accused was sentenced as an accomplice. I do believe that in spite of the statements placed there, the Supreme Court has not categorically decided the question. I have also consulted authorities on criminal law in this country, among them, Judge Guillermo Guevara. He told me in the case of seduction, adultery, or rape, the participant who did not have carnal knowledge is not guilty as co-principal. I consulted him after I had delivered or expressed my opinion here one morning, and I am glad that he confirmed it, because, Your Honor, in these cases of rape, seduction and adultery, these are private crimes. Carnal knowledge in the case of rape, for example, is the very psychological foundation of the crime where a man enjoys sexual desires by force and when the girl is below 12 years of age or when she is in a state of unconsciousness.

That example of adultery, it says there, when a married woman who lies with a man is guilty of adultery, and when a man lying with a woman knowing that she is married is guilty as co-principal. But let us say, for example, one who did not participate in the crime of adultery, can Your Honor punish him as co-principal? For example, there is a married woman; she is in the room alone with a man, and it happens that another man ties the hands of the woman's husband, and because of that he is able to lie with her lover. Is Your Honor going to punish that one who ties the hands of the husband as co-principal since he did not have carnal knowledge with the woman when the law says that he should have carnal knowledge? The words

"carnal knowledge" are there. So, I believe these two cases of Bernardo and Molina do not disprove my humble contention.

Senator TOLENTINO. As I said the gentleman is entitled to his opinion on this legal point, but I believe personally that the decisions I have cited recognize the possibility of the crime of rape being committed without actually committing the carnal act so long as the accused has committed one of those acts making him a co-principal as defined in the Revised Penal Code. Precisely, the principle of multiple rape is based on that. There can be no crime of multiple rape unless we admit that a person without himself performing the carnal act becomes a co-principal in the crime.

Senator LIM. So, why don't we avoid this? Why don't we make a categorical statement that those principals are to be considered as guilty of the law, and it will serve our purpose better. Just put up one sentence there.

Senator TOLENTINO. What sentence?

Senator LIM. That the participant although he did not have carnal knowledge, shall be punished as co-principal.

Senator TOLENTINO. We have to consider the act because the act may not amount to making the person as co-principal. So, we should leave that to the tribunal to determine whether the act makes the accused a co-principal or he may be only an accomplice.

Senator LIM. No, eliminate that doubt whether he can be convicted or sentenced as co-principal. The matter of his guilt will depend, of course, upon his participation. If he does not fall within the two categories as co-principal, he should not be punished as such. But I want to put a statement there which would make it clear that he shall be punished as co-principal. We are not going to say that he will be considered as a co-principal, we are going to say that he will be punished as a co-principal, to make it clear once and for all, since this is a mooted question in our courts.

Senator TOLENTINO. If the gentleman will introduce that kind of amendment, that will be just returning to the original bill, and I understand that this amendment was introduced eliminating precisely the phraseology of the original bill, because it has been considered that the crime of multiple rape is already punishable under the doctrine of the Supreme Court that it was not necessary to retain that provision "for as many times as the crime is committed by the offenders irrespective of whether or not all of them have actual carnal knowledge". In the discussion here, it was considered that we

would only be repeating what is already in our jurisprudence.

Senator LIM. I believe that that jurisprudence cited, "People vs. Bernardo" and "People vs. Corpus" are not categorical *dicta* by our Supreme Court. I do believe, precisely, that in the case of "People vs. Bernardo," they were punished as co-principals because all of them had carnal knowledge. The element of carnal knowledge is present.

Senator TOLENTINO. But each of the four was convicted four times, although each one had only one carnal act. Therefore, with one carnal act by each accused there were four penalties meted out to him; each of those persons was punished four times not for a single act but also for carnal act of the other parties.

Senator LIM. But they had carnal knowledge with the same woman on one occasion, that is true, so that the element of carnal knowledge is present in each and everyone of them. Suppose one of them did not have carnal knowledge, is there a decision of the Supreme Court which says he can be punished as co-principal? In the case of "People vs. Bernardo" each and everyone of the four had carnal knowledge. I think we can clarify and make the bill more categorical. There are many lawyers in this country who believe in my humble opinion also, and there is no direct decision of the Supreme Court on this point.

Senator TOLENTINO. If that is the belief of the gentleman from Zamboanga, why don't we just leave it to the Supreme Court to settle the point? If these decisions which we have mentioned here do not actually rule on that point, perhaps a clearer statement that will satisfy Your Honor may be made by the Supreme Court on the same issue that may come up in the future.

Senator LIM. Yes, but if Your Honor's purpose is to discourage the crime of rape, we should make a categorical statement on this point. There is no categorical decision of the Supreme Court yet on this point, and I would not like the Supreme Court to sustain my opinion that anybody who helped in the commission of rape, even though he had no carnal knowledge himself, can not be punished as a co-principal. My point here is precisely not to give a leeway to the Supreme Court in interpreting the law, if we want this bill to serve the purpose of our law.

Senator TOLENTINO. Yes, but as I have stated the proposal as made, and if the gentleman from Zamboanga wants to introduce an amendment to the amendment, we may perhaps consider the proposal concretely.

Senator LIM. If Your Honor will give me one minute, I will frame the amendment.

Senator TOLENTINO. I have no objection to waiting for the gentleman for one minute.

Senator PRIMICIAS. Mr. President, will the gentleman yield to one or two questions?

The PRESIDENT. The gentleman may yield, if he pleases.

Senator TOLENTINO. Gladly.

Senator PRIMICIAS. Will the gentleman from Manila inform this Senate whether these decisions in the cases of Bernardo and Corpus were unanimous?

Senator TOLENTINO. I do not have the original decisions right now, and I regret I cannot inform the gentleman on that point. I am just reading excerpts of the decision from one of the books on the Revised Penal Code.

Senator PRIMICIAS. At any rate, the gentleman must admit that sometime in the future, not necessarily imminent, the Supreme Court might change its mind and reverse itself. There is a possibility of that, is there not?

Senator TOLENTINO. Certainly, Your Honor.

Senator PRIMICIAS. As the amendment now is drafted, may the Supreme Court still reverse its own decision on the cases of Bernardo and Corpus?

Senator TOLENTINO. I think so, yes, because the provision will now read simply that whenever a rape is committed by two or more persons, the penalty imposed shall be on its maximum period. It is possible that the Supreme Court, if it so decides, may change its mind later on and eliminate the concept of multiple rape.

Senator PRIMICIAS. If we adopt the original text, there will be no more room for the defense before the Supreme Court as to the responsibility of the accused persons who have not had actual carnal knowledge of the woman.

Senator TOLENTINO. That is right, Your Honor.

Senator PRIMICIAS. That is all I want to know, because precisely I wanted to preserve the elasticity of the law in order that we may give room for the defense of a felony in our jurisprudence.

SUSPENSIÓN DE LA SESIÓN

Mr. President, I move to suspend the session for a few minutes.

The PRESIDENT. The session is suspended for a few minutes if there is no objection. *(There was none.)*

Eran las 7:05 p.m.

REANUDACIÓN DE LA SESIÓN

Se reanuda la sesión a las 7:10 p.m.

El PRESIDENTE. Se reanuda la sesión.

Senator PRIMICIAS. Mr. President, I ask that we now resume consideration of Senate Bill No. 21.

The PRESIDENT. Resumption of the consideration of Senate Bill No. 21 is in order. The gentleman from Zamboanga is recognized.

Senator LIM. Mr. President, in view of the fact that the worthy sponsor of the bill has explained to me the meaning of this proposed amendment, I will not insist on my amendment. I will only say, however, that for the purpose of the record, in my humble opinion, I do believe that no one can be penalized as a co-principal in the crime of rape unless he has carnal knowledge, no matter how he participated in the commission of the crime.

Senator TOLENTINO. Mr. President, I would like to ask that we vote on this amendment of the Committee which I will restate now: On page 1, delete lines 12 to 20 and in lieu thereof, insert the following paragraphs:

"WHENEVER THE CRIME OF RAPE IS COMMITTED WITH THE USE OF A DEADLY WEAPON OR BY TWO OR MORE PERSONS, THE PENALTY SHALL BE IMPOSED IN ITS MAXIMUM PERIOD.

"WHEN BY REASON OR ON THE OCCASION OF THE RAPE, A HOMICIDE IS COMMITTED THE PENALTY SHALL BE RECLUSIÓN PERPETUA TO DEATH.

"WHEN THE RAPE IS FRUSTRATED OR ATTEMPTED AND A HOMICIDE IS COMMITTED BY REASON OR ON THE OCCASION THEREOF, THE PENALTY SHALL BE RECLUSIÓN PERPETUA"

"WHEN BY REASON OR ON THE OCCASION OF THE RAPE THE VICTIM HAS BECOME INSANE THE PENALTY SHALL BE LIKEWISE RECLUSIÓN PERPETUA."

The PRESIDENT. Is there any objection to the amendment? *(Silence.)* The Chair hears none. Approved.

Senator TOLENTINO. Mr. President, on page 2 of the bill, delete everything from lines 1 to 20. These lines constitute a proposed amendment to Article 344 of the Revised Penal Code. The proposed amendment would make the crime of rape into a public offense, and we are eliminating this portion of the bill so that the crime of rape will continue to be a private crime.

The PRESIDENT. Is there any objection? *(Silence.)* The Chair hears none. Approved.

Senator TOLENTINO. Mr. President, as a consequence of that amendment, I move that that Section on line 21 be numbered "Sec. 2."

The PRESIDENT. If there is no objection, the amendment is approved. *(There was none.)*

Senator TOLENTINO. Mr. President, I move to amend the title so as to read: "AN ACT TO AMEND ARTICLE THREE HUNDRED AND THIRTY-FIVE OF THE REVISED PENAL CODE . . ."

The PRESIDENT. If there is no objection, the amendment is approved. *(There was none.)*

APROBACIÓN EN SEGUNDA LECTURA DEL S. NO. 21

Senator PRIMICIAS. Mr. President, if there are no more amendments, I ask that this bill, as amended, be approved on second reading.

The PRESIDENT. As many as are in favor of the bill will please say aye. (*Several Senators: Aye.*) As many as are opposed will please say nay. (*Several Senators: Nay.*) The ayes have it. The bill as amended is approved on second reading.

CONSIDERACIÓN Y APROBACIÓN DEL P. R. S. NO. 13

Senator PRIMICIAS. Mr. President, I ask the unanimous consent to consider immediately Senate Resolution No. 13.

The PRESIDENT. Is there any objection? (*Silence.*) The Chair hears none. Approved. Consideration of Senate Resolution No. 13 is now in order.

The Secretary will please read the resolution.

El SECRETARIO:

RESOLUTION TO DIRECT THE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES TO CONDUCT AN INVESTIGATION OF THE PROBLEM OF THE CLOSING OF PUBLIC RIVERS AND STREAMS AND THE INVASION OF THE COMMUNAL FISHING GROUND ON THE COAST OF MANILA BAY FOR CONVERSION INTO FISHPONDS.

WHEREAS, the attention of the Senate has been called to the very serious problem in the coastal provinces of Manila Bay, particularly Bulacán and Pampanga, involving the closing of public rivers and streams and the construction of fishponds (with stone dikes) in the communal fishing ground of thousands of poor fishermen along the coast of Manila Bay;

WHEREAS, it appears that this problem calls for immediate action on the part of the government;

Be it Resolved, as it is hereby resolved by the Senate of the Philippines, to direct the Committee on Agriculture and Natural Resources to immediately conduct an investigation of this problem, including an ocular inspection of the premises and to recommend to the Senate whatever legislation and/or action is necessary.

The PRESIDENT. The sponsor has the floor.

Senator PRIMICIAS. Mr. President, I will sponsor this resolution.

The PRESIDENT. The gentleman from Pangasinán is recognized.

Senator LIM. Mr. President, I am in favor of the resolution.

PONENCIA DEL SEN. PRIMICIAS

Senator PRIMICIAS. Mr. President, Lady and Gentlemen of the Senate: This resolution is simple in itself. It is a tribute to the Senate that once its attention has been called to its problem, it acts immediately. I do not want to blame anyone if his problems are to remain unsolved during the year. But it has become evident from the remarks of the

gentleman from Bulacán and of the gentleman from Pampanga that when President Magsaysay was the President, he had not neglected this problem. On the contrary he had taken steps to solve it, only death prevented its final solution. But as we know, President Magsaysay died on the fourth year of his term, and it must be presumed that he needed all his time to study this question before he made up his mind. From the remarks of Senator Rodrigo, we would also know that President García has not closed his eyes to the problem. He has assumed office on March 17, 1957 and it might be presumed that he needed time to become informed of this problem before taking a decisive action, and we can scarcely blame him if he has not, until now, reached a final decision considering the fact that he has been President of the Philippines for only a little over a year and in his own right for only three months. At any rate, the obstacles that have come across the path of President García in the solution of this problem as stated by Senator Rodrigo are now only matters of detail. They are very important but I am quite sure that President García will take corresponding action. But this is no reason why the Senate of the Philippines will not take action. Our Committee on Agriculture and Natural Resources headed by the distinguished gentleman from Iloílo, Senator Ledesma, I am quite sure, will take the necessary action to expedite the solution of this problem in order that the thousands and thousands of our countrymen whose livelihood depends on the fishing rights to these waters may be protected. And so I ask that this resolution be approved.

Senator LIM. Mr. President, I am of course in favor of this resolution and I would like to say that perhaps there can even be a more speedy solution to this problem. If, as the gentleman from Pampanga, Senator de la Rosa, has cited, the Supreme Court as early as 1934 has already decided the matter in favor of these small fishermen, I do not see why that judgment has not been executed. If there is that judgment or that decision, perhaps a motion for execution of judgment—although I also doubt its prescriptive period, it might have lapsed already, perhaps—would be in order. So, I would like to say that even if there is this resolution, there may be a more speedy solution, and I would like to invite the attention of the executive department to the fact that the Supreme Court has already decided the matter one way or another, because this Committee may take a long time to make its report and before we approve that report two or three years might have already lapsed. So, I would like to say that the executive department should