

I understand that the distinguished gentleman from Cebú does not insist to do any expanding of his manifestations, that he would rather state the details of his manifestations today some other day, so I believe that the statement of the distinguished gentleman from Pangasinán is not in point.

Senator CUENCO. Mr. President, in view of the ruling of the Chair, I would answer the questions propounded by the gentleman from Zamboanga tomorrow.

Senator SABIDO. I think that made it clear, Mr. President.

Senator CUENCO. Mr. President, tomorrow I will make use of the privilege hour. The country must know how this Government is being run, how the public fund is being used, and I am glad that I be given an opportunity to inform the people how public funds are being thrown away.

The PRESIDENT. So, the gentleman from Cebú is agreeable if the Chair will give him the privilege hour tomorrow.

Senator LIM. Mr. President, I rise for a privileged question.

The PRESIDENT. What is the privileged question that the gentleman is referring to?

Senator LIM. On the ground that I believe that my personal integrity as a member of the Senate, taking into account that I was one of the candidates in the last elections could have been affected by the remarks of the gentleman from Cebú a while ago, if I may be granted the floor.

The PRESIDENT. The gentleman from Cebú will speak tomorrow.

Senator LIM. Perhaps I would reserve my right and privilege to answer also the gentleman from Cebú.

The PRESIDENT. Of course, if the gentleman from Cebú talks in general, Your Honor would be allowed to answer him.

CONSIDERACIÓN DEL S. NO. 21  
(Continuación)

Senator SABIDO. Mr. President, I ask now that the Senate proceed to consider Senate Bill No. 21. The gentleman from Rizal is the sponsor of the bill, and I think, if I am not mistaken, we are now in the period of amendments.

The PRESIDENT. Resumption of the consideration of Senate Bill No. 21 is now in order.

Senator PELÁEZ. Mr. President, may I clarify. The distinguished gentleman from Albay was referring to the bill on seduction. Senate Bill No. 21 which is calendared for today refers to amendments to Articles 335 and 334 of the Revised Penal Code regarding the crime of rape, so this is a new bill.

Senator SABIDO. Mr. President, this is not a new bill. This bill has been discussed already.

Senator PELÁEZ. Mr. President, I would like to correct a statement I have just made. This bill has been discussed already and when consideration thereof was suspended, it was in the period of general debate. Briefly, the bill seeks to increase the penalty to be imposed on the crime of rape if it is committed by two or more persons or if it is committed with the use of a deadly weapon. In such a case, the penalty provided, which is *reclusión temporal* shall be imposed in its maximum period upon all the offenders for as many times as the crime was committed by the offender or offenders, irrespective of whether or not all of them had actual carnal knowledge with the offended party. Secondly, if the offended party is killed after she shall have been raped or is killed on the occasion of the rape or an attempt or frustration thereof, the bill will impose the penalty of death. Now, since the consideration of this bill up to the present time, Mr. President, there have been discussions going on among the members, and the distinguished gentleman from Cebú, the author thereof, has accepted a modification of the amendments which he proposed, and that is, to word the amendments as follows: 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.

And instead of imposing the penalty of death in case the offended party is killed, it is proposed that the penalty should be from *reclusión perpetua* to death. Now, it is also proposed that not only in the death of the offended party, but in homicide which may be committed on the occasion of the rape should it be punishable by *reclusión perpetua* to death, and if the rape is frustrated or attempted a homicide is committed, the penalty shall be *reclusión perpetua*. I would like to state for the records that these amendments were suggested by the gentleman from Pangasinán, Senator Padilla, and if there are no further remarks, I would ask that we proceed to the period of amendments.

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

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

Senator PELÁEZ. Willingly.

Senator LIM. From that paragraph found in lines 12 to 16 of this bill, it would appear that even those who did not have actual carnal knowledge with the woman would be penalized as if they were principals, is that right?

Senator PELÁEZ. Yes.

Senator LIM. I do not know if I am mistaken, I may be, but in my humble opinion, the accomplices, or rather those who participated in the crime of rape but did not have actual carnal knowledge or attempt or frustration thereof with the woman cannot, under our present law on rape, be punished as co-principals but only as accomplices on the ground that the crime of rape specifies the phrase "carnal knowledge". Now, if it is so, if it is true, if my humble opinion is correct, namely, that under the present law on rape, a participant who did not have any carnal knowledge, no matter how he participated, can only be punished as an accomplice but not as a co-principal, then an acceptance of this amendment from lines 12 to 16 would disrupt the whole philosophy of the crime of rape which provides that there must be carnal knowledge of the victim or the offended party, or an attempt or frustration thereof.

Senator PELÁEZ. Your Honor is correct in stating that under the present law, those who helped may be punished as accomplices. Precisely the purpose of the bill is to punish the guilty or those who took part. For instance, even if a person has no carnal knowledge of the woman, but he holds the girl down so that the other fellow may have carnal knowledge of her, his guilt is as grave as that of the man who had carnal knowledge. Therefore he participates. And where there is a conspiracy, the active co-participants in subduing the woman so that one of them may have carnal knowledge of the woman are equally guilty with the one who had carnal knowledge. And therefore, the amendment precisely imposes the same penalty when two or more persons conspire to subdue a woman so that one or both of them may commit rape against her.

Senator LIM. But I am only worried that we may be disrupting the whole philosophy of the crime, because the fellow who enjoys carnal knowledge actually should be given more penalty than those who did not.

Senator PELÁEZ. Well, it is precisely to discourage others from helping.

Senator LIM. Well, just the same, I would like to say that I am for increasing the penalty for the perpetrators of such a heinous crime of rape. But I was just thinking that we might disbalance the whole theory of punishment in this particular case in the sense that the fellow who enjoyed carnal knowledge would be given the same penalty as the one who only held the woman's hands.

Senator PELÁEZ. I do not think that the criterion should be the pleasure of any one but the moral guilt of the person.

Senator LIM. Because the philosophy of rape is carnal knowledge.

Senator PELÁEZ. But we must look at it precisely from the point of view of moral guilt.

Senator LIM. Well, these are just temporary thoughts, because in this particular case, I feel that the fellow who had carnal knowledge should be given a bigger penalty than the others. I agree with Your Honor. Let us increase the penalty.

Senator PELÁEZ. We are increasing the penalty for the one who had carnal knowledge and also those who might help him. So, we are increasing both penalties, and I do not think there is anything philosophically wrong in imposing a penalty which recognizes the grave moral guilt of the one who helped the other. I believe that morally he is as guilty as the one who actually had carnal knowledge with the woman.

Senator LIM. Well, the way these lines from line 12 to 16 read, it would appear that the one who had carnal knowledge will receive only the same penalty, namely, the maximum of the penalty provided for, as those who did not have carnal knowledge. So, I was just thinking that perhaps it is good to provide for the penalty that Your Honor has in mind in this bill for those who merely cooperated, but let us at the same time increase the penalty of those who had actual carnal knowledge of the woman.

Senator PELÁEZ. Well, in that case, 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, provided that in the case of the persons who actually had carnal knowledge of the woman, the penalty would be *reclusión perpetua*.

Senator LIM. Yes, the next higher in degree. That is my intention.

Senator PELÁEZ. How about this? When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be *reclusión perpetua* to death.

Senator LIM. That is all right as it is.

Senator PELÁEZ. Well, then, I would ask the distinguished gentleman from Zamboanga del Sur to present his amendment during the period of amendments.

Senator LIM. I will do that.

Senator SABIDO. Mr. President, let us now proceed to the period of amendments.

The PRESIDENT. We are now in the period of amendments.

## ENMIENDA DEL COMITÉ

Senator PELÁEZ. Mr. President, the Committee presents the following amendments: Delete all of lines 12 to 20 on page 1, and in lieu thereof 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."

Senator SABIDO. Mr. President, as regards the last amendment which reads "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*," I wonder if the sponsor would have any objection to amending this amendment in the sense of including a case where the victim has suffered by reason of the attempted or frustrated rape perpetual incapacity or insanity?

Senator PELÁEZ. Well, this particular paragraph provides for an increased penalty only if homicide is committed by reason or on the occasion of rape. Now, if Your Honor would like to add a new paragraph for a heavier penalty if the offended party suffers such an illness as insanity as a result of rape, the Committee would be glad to consider such an amendment. But I would suggest that it should not be tacked to that paragraph on homicide.

Senator SABIDO. I am amenable to the suggestion, Mr. President.

## SUSPENSIÓN DE LA SESIÓN

Senator PELÁEZ. Mr. President, may we ask for a few minutes' suspension so that we may write out the amendments?

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

*Eran las 12:05 p.m.*

## REANUDACIÓN DE LA SESIÓN

*Se reanuda la sesión a las 12:15 p.m.*

The PRESIDENT. The session is resumed.

The gentleman from Misamis Oriental has the floor.

Senator RODRIGO. Mr. President, will the gentleman from Misamis Oriental yield?

The PRESIDENT. The gentleman from Misamis Oriental may yield, if he so desires.

Senator PELÁEZ. With pleasure.

Senator RODRIGO. I just want to ask a few questions for clarification of paragraph 1 of the amendment. Paragraph 1 states that the penalty will be imposed in its maximum period if the rape is committed by two or more persons. Now, I would like to ask this question for the record to help the implementing agencies of our Government in the interpretation of that provision. Now, it is possible that two persons commit rape, but only one of these two had carnal knowledge with the woman and the other participated as co-principal without himself having carnal knowledge with the woman, would that come under paragraph one of the amendment?

Senator PELÁEZ. That is precisely the case as contemplated in paragraph 1.

Senator RODRIGO. So that both the one who had carnal knowledge and the other who participated as co-principal but without having carnal knowledge will be penalized in the maximum period.

Senator PELÁEZ. Yes, Your Honor.

Senator RODRIGO. Another question. Suppose two persons commit the crime of rape and one of them had carnal knowledge, and therefore, he is the principal, and the other participated only as an accomplice. Will the penalty be imposed on the principal in the maximum period and also on the accomplice in the maximum period?

Senator PELÁEZ. That is correct. The accomplice will get penalty in the lower degree but in the maximum period.

Senator RODRIGO. But in the maximum period.

Senator PELÁEZ. Mr. President, I would like to add the following amendment of the Committee which is a result of the suggestion offered by the distinguished gentleman from Albay as follows: Add a last paragraph to the amendment:

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

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

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

Senator PELÁEZ. With pleasure.

Senator LIM. When I was interpellating, Your Honor made a statement which to me would be satisfactory in the matter of inserting my proposed amendment. I think those words mentioned a while ago would be acceptable to me. If the gentleman would kindly re-state that statement, I would like to submit that as my amendment.

Senator PELÁEZ. I wish to say that I tried to put into specific words the thought of the distinguished gentleman from Zamboanga and I asked him whether a proviso added to the first paragraph of the proposed amendment would be in order, to the effect: "Provided in the latter case when two or more persons are co-principals the one who had carnal knowledge with the offended party shall suffer a penalty of *reclusión perpetua*."

I would have made that statement, but I have consulted the other Members of the Committee and they believe that would be unnecessary because they want to base the penalty on the moral guilt of the persons participating as co-principals, and they believe that as long as one is a co-principal, that is, his participation is essential to the commission of the crime, without which the other could not have raped the woman, he is as guilty as the one who had raped the woman.

Senator LIM. But in that particular case of rape, in my humble opinion, one cannot be convicted as co-principal unless he has carnal knowledge of the woman. I would like to speak in favor of my amendment, Your Honor.

Senator PELÁEZ. I respect the opinion of the distinguished gentleman from Zamboanga, but as far as I am concerned and as far as I remember my law, there have been cases here where courts have convicted two or more persons of the crime of rape as co-principals even if only one has committed the actual act of rape.

Senator LIM. I doubt that, Your Honor. In case that is so, we know that many courts have always reversed their decision. In my humble practice of law, in this particular case of rape, I have observed that you cannot convict anybody as co-principal even though he did not have carnal knowledge of a woman, but you can only convict him as accomplice.

Senator PADILLA. Mr. President, with the permission of the gentlemen, may I have the floor on this point?

Senator PELÁEZ. Mr. President, the distinguished gentleman from Pangasinán, Senator Padilla, has asked for the floor and I gladly yield to him for a statement.

The PRESIDENT. The gentleman from Pangasinán is recognized.

Senator PADILLA. Mr. President, I was the one who suggested these amendments and regarding paragraph 1 of this amendment and the observations of our distinguished colleague from Zamboanga del Sur, I wish to state that according to

our settled law and repeated jurisprudence in this country, when rape is committed by more than one person, the others who have acted as principals, under Article 17, can become principals by direct participation, by inducement and by indispensable cooperation and therefore if two or more persons conspired to commit rape and only one of them has carnal knowledge with the offended girl, all of them are liable for rape regardless of and independent of the fact that the others have not had carnal knowledge. Why? Because a crime of rape has been committed and all of them cooperated as co-principals. Now, if after one of the conspirators has had carnal knowledge of the offended girl, another or others should successively have carnal knowledge with the offended girl, then there is the case of multiple rape. There is as many offense of rape committed as there is carnal knowledge committed by each and everyone and all the rest are considered as co-principals. Therefore, Mr. President, gentlewoman and gentlemen of the Senate, it is, I think, erroneous to say that when two or more persons conspired to commit rape and actively participate or indispensably cooperate in the commission of rape that for the others to be guilty of rape that they should also have carnal knowledge with the woman. That is not the law because if the others should have carnal knowledge, then we will have only one felony of rape, and there should be as many rapes as there are carnal knowledge committed by the co-conspirators.

Senator LIM. Mr. President, with due respect to the opinion of the distinguished gentleman from Pangasinán, I wish to dissent. It is true that in a general sense, in almost all crimes there are three ways by which one can be convicted as co-principal under Article 17, by direct participation, by inducement or cooperation, and by committing another act without which another crime could not have been committed. It is so in robbery or theft; it is so in murder. But in this particular case of rape where the law says and uses the phrase "who should have carnal knowledge of the woman," I believe we can only accuse a co-perpetrator or conspirator in case of rape as an accomplice if he did not have carnal knowledge of the woman. It is only the one who had actual carnal knowledge with the woman who can be considered as principal in the case of rape. However, I am only a small town lawyer, and I want to be shown the decisions of the court on this case and like what the gentleman from Camarines Sur said, I will take my seat and be happy about it.

Senator PADILLA. There are many decisions on multiple rape, and if our distinguished colleague will just take a little trouble in seeing my annotations in the Revised Penal Code, he would be fully satisfied, because the law and jurisprudence are very clear on this matter.

Senator LIM. I am not talking of multiple rape. If there are ten men who had separate carnal knowledge of the girl, each one of them is guilty of rape. In the case of multiple rape, each and everyone of them had carnal knowledge, but in this particular case, you will punish a man as co-principal even though he has no carnal knowledge. I beg to dissent with the opinion of the gentleman from Pangasinán. In all humility, I may be wrong, but if Your Honor can show me the law and jurisprudence, I will be happy.

Senator PELÁEZ. I would like to quote from the case of "People vs. Bernardo, 38 Off. Gaz. 3479." In this case, four defendants took turns in abusing the victim and they were all convicted of multiple rape. It says: "Where defendant and four others took turns in abusing the victim, each one of the multiple rapes committed by each accused is independent of the others, because the essence of the crime of rape consist in carrying out the carnal act of the offender with a woman against her will and each carnal access that is consummated is a complete attack on the honor, person and liberty of the offended woman, which requires a separate penalty for each of the defendants." Now, here is the key sentence that would answer the doubts of the gentleman from Zamboanga: "Each accused is held liable for as many crimes of rape as acts in which he has participated, by direct execution, or by acts without which the crimes would not have been committed." Now, that second part answers the question of the gentleman from Zamboanga. You can commit the crime of rape as co-principal by direct execution or by participation in an action without which the crime could not have been committed.

Senator LIM. But the case that the gentleman read mentions the case of four men who abused a woman. It does in fact show that each and everyone of them had carnal knowledge. That is not the case I have in mind. The former case refers to the commission of multiple rape where each and everyone of the four men had carnal knowledge. And in this case, I agree with the last sentence. But I would like to see the facts of that case first.

Senator PELÁEZ. I would have no objection to postponing this, but the words of the decision are

clear enough that in the case where there were four accused, they were held liable for each act of rape committed by one of them. Now, in each case, one was co-principal by direct execution, the other three were co-principals by committing acts without which the crime could not have been committed.

Senator LIM. But in this case, each and everyone of the four had carnal knowledge of the woman.

Senator PELÁEZ. Yes, but each and everyone were considered separately, A, B, C and D, there are four rapes, and A had carnal knowledge with the woman, in the first case where he had sexual intercourse and the three merely cooperated, they were equally liable, A committed the act and the other three were liable for committing acts without which A could not have raped the woman, B committed the act and the other three, A, C and D are equally guilty for participating in the commission of the act without which B could not have committed the rape, and so on down to D. The court did not consider this as one single crime but four different acts.

Senator LIM. If it were such that each and everyone had carnal knowledge, then I would sit down and feel convinced. I would like to have time to read the facts of the case, because a digest like that does not necessarily give us the true dictum of the Supreme Court.

Senator SABIDO. Mr. President, will the gentleman yield?

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

Senator PELÁEZ. Willingly.

Senator SABIDO. Would Your Honor place the crime of rape under the same classification of certain special crimes such as the crime of adultery and parricide which can only be committed by certain persons; for instance, in the case of adultery, this is a crime which can only be committed by a married woman? Now, suppose A knowing that B is a married woman enlists the help of C and D to help him commit adultery with B, does Your Honor think that C and D can be properly punished as co-principal in the commission of the crime of adultery?

Senator PELÁEZ. It would all depend upon the degree of the participation of these parties. If they participated and committed acts without which the act of rape could not have been carried out, they would be co-principal.

Senator SABIDO. The act of adultery could not have been committed.

Senator PELÁEZ. I would not classify rape with adultery because the presence of violence in rape is essential and the personal status of the parties does not make a difference.

Senator SABIDO. Would Your Honor classify it also in the same category as the special crime of parricide committed?

Senator PELÁEZ. I would not, because the essential element in rape is force, regardless of the relationship of the parties or the status of the parties. So, I would not classify them as crimes of a similar nature.

Senator SABIDO. I think the doubts expressed by the gentleman from Zamboanga del Sur arose from that differentiation, because the gentleman from Zamboanga del Sur believes that criminalists think with him that the essence of the crime of rape is sexual intercourse.

Senator PELÁEZ. Yes, but he makes no reference to the status of the parties involved. He only believes that rape is limited to the person who had actual sexual intercourse with a woman by force or intimidation.

Senator SABIDO. Mr. President, I share the opinion of the gentleman from Misamis.

#### MOCIÓN DE SUSPENSIÓN

Senator PELÁEZ. Mr. President, in view of the doubts expressed by the gentleman from Zamboanga, if the other Senators have no objection, I would ask for the suspension of the consideration of this bill until tomorrow.

Senator SABIDO. Mr. President, as the Floor Leader is here now, I yield the floor to him.

Senator PELÁEZ. If the Floor Leader has no objection.

Senator PRIMICIAS. Mr. President, I ask that further consideration of this bill be suspended until Thursday, March 27th.

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

#### LEVANTAMIENTO DE LA SESIÓN

Senator PRIMICIAS. Mr. President, I move to adjourn until tomorrow morning at ten o'clock.

El PRESIDENTE. Si no hay objeción, se levanta la sesión hasta mañana, a las diez de la mañana. (*No la hubo.*)

*Eran las 12:35 p.m.*