

defining its objectives, powers and functions, and for other purposes".

El PRESIDENTE. Al Comité de Empresas Nacionales.

SEGUNDA LECTURA Y CONSIDERACIÓN DEL

S. NO. 21

Senator PRIMICIAS. Mr. President, I ask that we now consider Senate Bill No. 21.

The PRESIDENT. Consideration of Senate Bill No. 21 is in order. The Secretary will please read the bill.

The SECRETARY:

AN ACT TO AMEND ARTICLES THREE HUNDRED AND THIRTY-FIVE AND THREE HUNDRED AND FORTY-FOUR OF THE REVISED PENAL CODE BY IMPOSING THE MAXIMUM PERIOD OF THE CORRESPONDING PENALTY WHEN THE CRIME OF RAPE IS COMMITTED BY TWO OR MORE PERSONS, OR WITH THE USE OF A DEADLY WEAPON, BY PROVIDING THE DEATH PENALTY WHEN THE OFFENDED PARTY IS KILLED BY THE OFFENDER OR OFFENDERS AFTER SHE SHALL HAVE BEEN RAPED OR IS KILLED ON THE OCCASION OF THE RAPE OR OF AN ATTEMPT OR FRUSTRATION THEREOF OR AS A CONSEQUENCE OF THE CRIME, AND BY PROVIDING THAT THE CRIME OF RAPE MAY BE PROSECUTED EVEN WITHOUT THE COMPLAINT OF THE OFFENDED PARTY, HER PARENTS, GRANDPARENTS, OR GUARDIANS, AS THE CASE MAY BE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Article three hundred and thirty-five of the Revised Penal Code is hereby amended to read as follow:

"ART. 335. *When and how rape is committed—Penalty.*—Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the next preceding paragraph shall be present.

The crime of rape shall be punished by *reclusión temporal*.

WHENEVER THE CRIME OF RAPE IS COMMITTED BY TWO OR MORE PERSONS, OR WITH THE USE OF A DEADLY WEAPON, THE PENALTY PROVIDED ABOVE SHALL BE IMPOSED IN ITS MAXIMUM PERIOD UPON ALL THE OFFENDERS FOR AS MANY TIMES AS THE CRIME IS COMMITTED BY THE OFFENDER OR OFFENDERS, IRRESPECTIVE OF WHETHER OR NOT ALL OF THEM HAD ACTUAL CARNAL KNOWLEDGE WITH THE OFFENDED PARTY.

WHEN THE OFFENDED PARTY IS KILLED BY THE OFFENDER OR OFFENDERS AFTER SHE SHALL HAVE BEEN RAPED, OR IS KILLED ON THE OCCASION OF THE RAPE OR OF AN ATTEMPT OR FRUSTRATION THEREOF, OR AS A CONSEQUENCE OF THE CRIME, THE PENALTY TO BE IMPOSED SHALL BE DEATH".

SEC. 2. Article three hundred and forty-four of the Revised Penal Code is hereby amended to read as follows:

"ART. 344. *Prosecution of the crime of adultery, concubinage, seduction, abduction, [rape], and acts of lasciviousness.*—The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, [rape], or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices, and accessories after the fact of the above-mentioned crimes".

SEC. 3. This Act shall take effect upon its approval.

Senator PRIMICIAS. The distinguished Chairman of the Committee on Revision of Laws, the gentleman from Manila, Senator Tolentino, will sponsor the bill.

The PRESIDENT. The gentleman from Manila has the floor.

PONENCIA DEL SEN. TOLENTINO

Senator TOLENTINO. This bill, Mr. President, seeks to amend Article No. 335 of the Revised Penal Code, which defines and penalizes the crime of rape by providing that in case there are two or more persons who committed the offense, then each of the offenders shall be punished for as many times as the crime is committed by the offender and the penalty in each case shall be imposed in the maximum period.

Another feature of the amendment is that when the force or intimidation in committing the crime of rape should be by the use of a deadly weapon, the penalty shall likewise be in the maximum period.

A third feature of the amendment is that if the offended woman is killed after being raped or on the occasion of the rape or during an attempted or frustrated rape or as a result of such rape, then the penalty to be imposed will be the death penalty.

The purpose of these amendments is very obvious, Mr. President, and that is to inject more fear in the hearts of perpetrators of this dastardly offense. The offense of rape is in many cases more heinous even than the offense of homicide or of killing another person, and so this bill seeks to increase the penalties provided by our law under the circumstances that I have already mentioned in

order to deter to this extent the commission of these crimes. Lately, quite a number of these crimes have been committed and we believe that with the enactment of this bill, we may increase the deterrent effect of the law on rape.

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

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

Senator TOLENTINO. Willingly.

Senator LIM. I am not definitely sure, Your Honor, but I have this impression, that as it is, our Supreme Court has already decided that the crime of rape is not what we call a "continuous crime", that is, that for every act of rape committed on the same woman and by the same person, the accused can be prosecuted for as many times, and if that is so, there would therefore be no need for these provisions making it as many times as the crime may have been committed.

Senator TOLENTINO. It seems to me that the gentleman is talking of a case wherein the offense may have had an appreciable interval of time that it can be considered as separate acts, but where the rape is committed in such a way that we can consider the crime as just one, but where two or three insertions have been made, we have to use the actual language that we find in decisions when there are three offenses in that case, but actually now, I believe that will be considered as a single offense.

Senator LIM. I recall about two months ago I read a decision of the Supreme Court that even for example in the case of adultery, before the impression was, and I think our jurisprudence say so, before that latest decision, that a man having carnal knowledge with a woman, even though for several times, he can be accused only once of adultery, but it seems the Supreme Court now has become more strict and now, unless I am badly mistaken, that is still my impression about the case I read two months ago, that as many times as the man lies with a woman with whom he commits adultery, so that if he lies with the woman and uses her three or four times during that night, he can be accused three or four times of the crime of adultery.

Senator TOLENTINO. I do not think that is so.

Senator LIM. At least that is my impression. It would seem that it is something like that. Now, if that is so, just in case I happen to be correct, it would be more so in the case of rape. The Supreme Court would consider it not as a continuous crime but the accused can be charged for as many times as he had carnal knowledge, under any or all of the three circumstances provided for by the

Revised Penal Code in the commission of the crime of rape, and if that is so, there would be no need for this provision. I just want to be sure.

Senator TOLENTINO. Well, I cannot assure the gentleman about the decision on rape. I would be very glad to be enlightened on that. But I am sure about, the decision in connection with adultery, I do not think it is the way the gentleman has stated it. I understand the decision to mean that if a man and a woman commit adultery, even if they cover, let us say, a whole period of one year, if they meet each other let us say once a week, then each meeting would constitute an adultery, but in one meeting where they may be several acts of coition, not every act will be considered as a crime.

Senator LIM. I will agree with Your Honor, but let us say once a week as Your Honor stated then, Your Honor may be right. My impression probably is exaggerated when I mentioned a while ago if in one evening the man lies with the woman and uses her three times, he can be accused three times, I would rather agree with the gentleman at the present moment that that would not be so. But if the gentleman said that if a man lies with the same married woman, he can be accused for as many times, let us say within one month or two months, he lies with her four times a month, and he can be accused of four different charges of adultery, my point is that I believe that rape is not a continuous crime, so that every individual act of rape is a distinct and separate crime by itself, and, if this is so, then there is no need for this provision that he can be accused for as many times as he rapes a woman.

Senator TOLENTINO. As I said, my impression is, if on a single occasion a man is able forcibly to have coition two or three times with a married woman, that, under the present law, would be considered as a single offense. But under this bill, it is going to be as many offenses as the coition is committed.

Senator LIM. Well, Your Honor, I respect your opinion . . .

Senator TOLENTINO. That is my impression. I would be very glad to be enlightened.

Senator LIM. . . . although my humble opinion is that if, let us say, in one case or in any case, if in one evening, or it can be during the day or at dawn, or in the afternoon or noontime, if in one occasion the rapist succeeds to rape a woman three times, each and every time he does it is a separate and distinct crime by itself, and three separate informations can be filed against him. That is my humble opinion. Well, I respect the opinion of the

gentleman, but I would like to make it of record that that is my humble opinion.

I would like to go to another point, Your Honor. I understand that the bill seeks to convert the private crime of rape into a public crime. Last night, I was listening to the rebroadcast of a bill in the Lower House of similar nature. The bill was sponsored by the congressman from Manila, Mr. Roces. I understand that originally the bill is of the same tenor—to make rape a public crime. But later on, they sort of amended it. Now, they want to make rape a public crime only in the third case among the three cases in the commission of rape, that is, when the girl is below 12. That is the only case where they would want to convert the private crime of rape into a public crime in the sense that the fiscal alone may file the case or complaint or information without the offended party or her parent, grandparent or legal guardian. Now, in either case, I for one am opposed to convert this crime into a public crime for the following reasons. First of all, in all these crimes against chastity, such as acts of lasciviousness, seduction, abduction and rape, and even such crimes as adultery and concubinage, which are now prosecuted as private crimes in the sense that without the complaint of the offended party, the court cannot acquire jurisdiction over the case, I would like to say that the law as it is, has its basic fundamental philosophic reason for requiring the offended party or her parent or guardian, in the case of rape particularly, to file the complaint, otherwise the court would not acquire jurisdiction. There have been cases where a woman who has been raped may perhaps wish, and that is for her to choose, to cover the infamy done on her person. When I was fiscal of my province, there were three sisters who were raped, and this is of my own personal knowledge. The eldest of these three sisters who were raped went to my house and begged me almost on bended knees not to file a case against the perpetrators of the heinous crime, who by the way posed as *guerrilleros* when in fact they were nothing but bandits. The three sisters came to my house two or three days later, begging me not to file the case. They said that they were afraid they would bear the shame forever. After all, they said they were raped in an uninhabited place where very few people ever knew about it. They had been denying to their neighbors that they were raped every time their neighbors asked them whether it was true or not. They admitted to me that they were raped in tears, but they were begging me not to file the case.

The other day, I went to that movie, "Peyton Place", and I think many of us have seen it. The girl, Salina, was raped by her stepfather. I understand that in that picture, it appeared that she was raped only once, but in the book, in the novel, she was raped several times by her stepfather. And you know very well, those of you who saw that film "Peyton Place" how Salina refused to cooperate with the prosecution. She was afraid of her neighbors, especially of her sweetheart whom she loved very much, and she was afraid he may not marry her anymore. She had to beg the doctor who helped her in aborting the baby not to reveal the fact that she was raped by her own stepfather. So, why should we be more "papista" than the "Papa"? If a woman really for valid reasons would like to keep this secret, why are we going to allow the fiscal to file the information. Why don't we wait for the offended party to decide whether or not she likes the criminal prosecuted? And I was reading hurriedly some commentaries by Groizzard, De la Serna and Pacheco. They say that the philosophy precisely of making this crime a private crime is based precisely on the fact that many an offended woman might rather or would rather bear the infamy than to be walking along the streets and pointed to as a victim of rape. Well, of course, if she really wants to file the case, and I believe every woman should, then all right, let her file the case with the fiscal. Suppose she does not want to. After all, for practical purposes, Your Honor, if the first witness of the prosecution will not testify, I cannot conceive of any case of rape that will prosper, Your Honor. My question is, could Your Honor conceive of a case of rape which would prosper in any court if the fiscal will not be able to present the offended party herself?

Senator TOLENTINO. Well, of course, if the offended party herself cannot be presented as a witness, if she is the only eyewitness for instance, it would be practically impossible to prove the offense, but that does not mean the offense cannot be proved by other witnesses. However, that long argumentation of the gentleman from Zamboanga del Sur was all to the point and I agree with him. Your Honor did not have to convince me. I was going over this bill after the Committee report, and I notice that there was a part of the bill which was not changed at all, and that is that the marriage of the offended party with the offender extinguishes the crime. And if it is made a public crime, that would be inconsistent totally, because how would the prosecution file the information without the complaint of the offended woman and

the offended woman later on marries the offender and extinguishes the offense. I think there is reason there, gentleman from Zamboanga del Sur. Now, whether we should qualify that when the offender is below 12, it will be a public offense, I think we could form or make a uniform rule to preserve the law as it was before.

Senator LIM. Yes, I would rather have that.

Senator SABIDO. Mr. President, will the gentleman yield to some questions?

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

Senator TOLENTINO. Gladly.

Senator SABIDO. Fundamentally, I am in favor of the purpose of the bill, except perhaps, in regard to that point which has already been discussed. But I have my doubts concerning the first amendment, which reads as follows:

"Whenever the crime of rape is committed by two or more persons, or with the use of deadly weapon, the penalty provided above shall be imposed in its maximum period upon all the offenders for as many times as the crime is committed by the offender or offenders, irrespective of whether or not all of them had actual carnal knowledge with the offended party."

Does not the gentleman believe that the words: "IRRESPECTIVE OF WHETHER OR NOT ALL OF THEM HAD ACTUAL CARNAL KNOWLEDGE WITH THE OFFENDED PARTY" are a surplusage? Because if they have actually committed the crime, there is no need of qualifying. If they did not commit the crime either through direct action or by inducement or by performing an act without which the crime would not have been committed in the absence of conspiracy, I don't believe there is any way of convicting them justly for the crime of rape.

Senator TOLENTINO. Well, I view this amendment, Your Honor, on the assumption that this implies a case of concerted action, or a case of conspiracy, between the offenders, and that portion which was referred to by Your Honor, "IRRESPECTIVE OF WHETHER OR NOT ALL OF THEM HAD ACTUAL CARNAL KNOWLEDGE WITH THE OFFENDED PARTY" is more of a clarification than anything else, or emphasis.

Senator SABIDO. Would not your Honor agree that the provision would be clearer if we omit that last portion?

Senator TOLENTINO. I think it serves to make it very clear or more emphatic.

Senator SABIDO. No, because the provision might be misconstrued in the sense that even if a person has not actually committed, or even if there is no conspiracy or evidence thereof, if he happens to

be present, "irrespective of whether or not he had actual carnal knowledge with the offended party," he is punishable.

Senator TOLENTINO. No, I think there must be some conspiracy there.

Senator SABIDO. We eliminate that in the last provision to avoid any misconstruction of the amendment.

Senator TOLENTINO. I do not agree with Your Honor that this will avoid a misconstruction. I rather feel it would make it clearer, because the first part says: "WHENEVER THE CRIME OF RAPE IS COMMITTED BY TWO OR MORE PERSONS." That phrase might give rise to the implication that two or more persons must have actually committed or performed the act of rape, or that every one must have performed the act of rape, and to me that last portion is placed there to clarify and to emphasize the fact that it is not necessary that all the offenders should have performed the act of rape, but it is enough that they are convicted of rape and each one must be punished for as many times as the crime is committed.

Senator SABIDO. Without having performed it directly through inducement or because of the existence of conspiracy, or because he performed and act without which the crime could not have been committed. If that is the case, there is no need of inserting those last words, because as I said, the insertion of those words might give rise to the construction that even if one cannot be considered as the author, under Section 17 of our Revised Penal Code, he can be punished.

Senator TOLENTINO. No, that is inconceivable, that one who is not an author must be punished. This means that one is guilty. This implies that each offender is guilty and, therefore, must be punished, although he may not have committed the direct act of having carnal knowledge.

Senator SABIDO. Then if that is the construction that the gentleman gives to the word "committed", let us eliminate that portion as a surplusage.

Senator TOLENTINO. I am precisely explaining that by the use of that phrase, "Whenever the crime of rape is committed", in the first part of the amendatory part, that may give rise to the implication that this means "committed through the actual carnal knowledge" and in order to avoid that possible interpretation, this clarification is made in the last part of the paragraph.

Senator SABIDO. But does not Section 17 provide as to who should be considered as the authors of the crime, or co-principals of the crime?

Senator TOLENTINO. But the last portion is consistent with the definition of who are the principals in the offense. There is nothing that may contradict it.

Senator SABIDO. "Whenever the crime of rape is committed by two or more persons." Now, in the absence of the last words, would Your Honor construe the word "committed" otherwise, as meaning that those persons should be considered as co-principals by inducement or because of conspiracy or because of the performance of an act without which the crime could not have been committed?

Senator TOLENTINO. As I said, the gentleman is correct if in referring to this, it is governed by the rules of conspiracy. We cannot convict two or more persons of this offense under this provision, unless there is some kind of conspiracy, but what I was saying is: this last portion being mentioned by Your Honor does not in any way detract from the intention of the amendatory provision, but instead it clarifies or emphasizes the fact that whether the actual carnal knowledge has been committed by some of the offenders or not, they will still be liable under this provision for as many times as the crime is committed.

Senator SABIDO. What the gentleman from Manila said is already implied in the word "committed."

Senator TOLENTINO. But this serves to emphasize or to clarify.

Senator SABIDO. In my opinion, it leads to confusion.

Senator TOLENTINO. I am afraid I do not agree with Your Honor.

Senator SABIDO. Will the gentleman agree to an amendment eliminating those last words in order to avoid misconstruction or confusion, considering that we have in Section 17 of our Revised Penal Code a definite and clear definition as to who should be considered as co-principals in the commission of the crime and what is considered as conspiracy?

Senator TOLENTINO. Well, as I said before, I feel that that is more for clarification and emphasis, and I would have an open mind during the period of amendments.

Senator RODRIGO. Mr. President, will the gentleman yield to some questions for clarification?

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

Senator TOLENTINO. Very gladly.

Senator RODRIGO. My questions are based on that same amendment discussed by the gentleman from Albay. According to our Revised Penal Code,

there are three gradations of criminals. They are: the principals, accomplices, and accessories. Now, I suppose in this crime of rape, we can refer only to principals and accomplices. Is the meaning of this amendment that anybody in the group who committed the crime of rape, even if the rape is committed only by two or some of them but not by all will be punished as principals? Will all be punished as principals?

Senator TOLENTINO. Well, so long as they are all principals, they shall be punished.

Senator RODRIGO. Supposing the crime is committed by five persons. Of these five persons, only two actually committed the criminal act and the three were present and their participation in the crime was of different degrees. Will the distinction between co-principals and accomplices apply?

Senator TOLENTINO. I think so. I believe that this amendatory provision should be construed as referring to principals because the provisions of the law defining offenses and then providing for penalty actually refer to the principals in the punishment provided, because when the penalty is computed for the accomplice, then we have a different provision in the code for determining the penalty of the accomplice. So, this penalty is considered as imposed on principals. I am sure of that because that is the pattern of the Revised Penal Code, and this being an amendment to the Revised Penal Code, it must be considered in accordance with that principle.

Senator RODRIGO. In that case, I am inclined to agree with the gentleman from Albay that that last clause should be eliminated because it may lead to misunderstanding. As a matter of fact, the way I understand it all in that group, whether they commit the act or not or no matter what their participation is, will be imposed the maximum penalty. Now, if according to the gentleman the general rule on principals and accomplices will apply, then there is no need for that clause.

Senator TOLENTINO. As the gentleman said, it may be considered as a surplusage, but I believe it serves to emphasize the intention of the amendment. But we cannot interpret it to such an extent as to include all types of offenders as principals, accomplices and accessories, because the pattern of the code is to provide penalty for principals only and compute the penalty for accessories and accomplices according to the rules.

Senator RODRIGO. I would like to go a little bit farther than the gentleman from Albay. It is not only a surplusage but it will lead to misunderstanding as I understand that provision before the gentleman from Manila clarified it. But anyway,

think the gentleman will agree to certain amendments.

Senator TOLENTINO. As I said, I am open minded that and that is only a matter of form and will not affect the substance.

Senator PADILLA. Mr. President, will the distinguished sponsor answer a few questions?

The PRESIDENT. The sponsor may answer if he pleases.

Senator TOLENTINO. Gladly.

Senator PADILLA. I agree with the observations of the distinguished gentleman from Albay that the phrase "irrespective of whether or not all of them had actual carnal knowledge with the offended party" is a surplusage because this matter is actually covered under Article 17. I will go farther and say that the phrase "upon all the offenders for as many times as the crime is committed" is also a surplusage, because this matter is already covered by our jurisprudence on what is known as multiple rape. In other words, if, for example, A, B, and C by common agreement assault a girl and A has carnal relation with the help of B and C to tie the girl down or put her down or to intimidate her, or for any reason to diminish her physical resistance, for that act of A the crime of rape is committed not only by A but also by B and C. If after carnal relation by A, B in turn has carnal relation with the girl, with the active cooperation of A and C, there is also another crime of rape committed by A and C; and similarly if C again has carnal relation with the active cooperation of A and B, there is also committed a crime of rape by A and B. So, it seems to me that the phrase "for as many times as the crime is committed by the offender or offenders" is also a surplusage, because there are as many crimes as there are acts of carnal knowledge and the others are liable if they participated as co-principals.

Senator TOLENTINO. Yes, in the example given by Your Honor, that is correct. But let us go a little farther on the same example. Suppose after A, B and C have successively committed carnal intercourse with the offended party, after A finished she recovers and repeats, how many offenses did she commit? This is the case which is sought to be covered by the law, and that is my interpretation because if that is not the purpose of the law, the amendment will be unnecessary. That, to my mind, is the case sought to be remedied.

Senator PADILLA. If after A's carnal relation, he helps B and C and afterwards repeats the assault, then there is another crime of rape under our juris-

prudence. So that, to my mind, the phrase after the words "maximum period" will really be a surplusage, because that is already the law in this jurisdiction as interpreted by many decisions of our courts. In other words, that is known as multiple rape.

Senator TOLENTINO. The decision on multiple rape, in my recollection, refers to the commission by each and every offender convicted, but I do not recall of cases where there are multiple rapes committed by having two carnal knowledge on the same occasion, and that is what is sought to be punished by this amendment. So that instead of having three crimes of rapes for three offenders, there will be four crimes committed under this amendment.

Senator PADILLA. I think the purpose there is to provide that, if there are, for example, three persons who assaulted the woman, that even if A only committed the act, the crime of rape is also committed by B and C.

Senator TOLENTINO. Well, Your Honor, I do not assume that it is to be presumed that the author of this bill knew of the existing jurisprudence on multiple rape.

Senator PADILLA. Let us go to another point, Your Honor. In the second paragraph, the amendment of the bill provides that when the offended party is killed by the offender or offenders after she shall have been raped or is killed on the occasion of the rape or of an attempt or frustration thereof, or as a consequence of the crime, the penalty to be imposed shall be death. Does not Your Honor believe that we should make a distinction between two situations where the rape is consummated and the rape is only attempted or frustrated even if on both cases the woman should die? I am thinking of similar provisions in the Penal Code regarding robbery. Robbery with homicide is punished under Article 294, paragraph 1. If there is a robbery committed and the person robbed dies on the occasion of the robbery, if the robbery is only attempted or frustrated, the Penal Code provides for a lesser penalty under Article 297. Does not Your Honor believe that following that same pattern in robbery with rape or robbery with homicide, and the attempted or frustrated robbery with homicide, that we should not have the same penalty for both offenses because obviously when the rape is only attempted or frustrated it should not be as grievous as when the rape is consummated?

Senator TOLENTINO. Well, my impression is I am inclined to agree with the observations of the gentleman from Pangasinán, but I was thinking of

this. I was thinking of the fact that there must be no difference in the moral responsibility of the offender when he kills the offended party after the consummation of the rape and when he kills the offended party who resist the rape being committed against her. I think the moral responsibility is the same in the degree in the homicide, the killing there is present, and whether the rape was consummated or not does not, to my mind, affect the degree of the moral responsibility of the offender. That is my reaction.

Senator PADILLA. Well, Your Honor contemplates the situation where the girl is killed before the rape or she is killed after the rape.

Senator TOLENTINO. Yes.

Senator PADILLA. But it seems to me that if we have to be consistent with the similar provisions of the Penal Code regarding robbery with homicide or attempted or frustrated robbery, we should make a distinction. Does not Your Honor believe that if there is, for example, rape and homicide, in other words, the victim is killed on the occasion or by reason of the rape, that we could provide for example a penalty of "*reclusión perpetua* to death", and if the rape is only attempted or frustrated, we could provide for a lesser penalty or "*reclusión perpetua*," for after all, the penalty of rape is only "*reclusión temporal*"? Because I agree with the philosophy and the objective and the purpose of this bill to increase the penalty for rape should the crime be committed by two or more persons, or should it be committed by the use of a deadly weapon, or by reason or on the occasion of the rape, the woman should have been killed or should die. But does not Your Honor believe it would be more reasonable to graduate the penalties? Now, I agree that if the rape is committed and the offended girl dies, the culprit may be sentenced to death, but instead of providing for death only, does not Your Honor believe that it may be more reasonable to provide for "*reclusión perpetua* to death," just like the penalty for robbery with homicide?

Senator TOLENTINO. I understand Your Honor's concern about keeping the pattern of the symmetry of the Revised Penal Code, but in connection with trying to make a parallel between frustrated or attempted robbery with homicide, this thought occurs to my mind. If a person is in the act of committing robbery, then somebody comes around and catches him and he turns on this fellow and kills him, then you would have your case of attempted or frustrated robbery with homicide. Here is a case

where a person turns from the original offense intended by him and commits a new offense on the occasion of the original offense. But in the case of rape, it is different. A person tries to have carnal knowledge with a woman who resists, and because of that resistance he kills the woman. If he cannot consummate the rape it is not because she resisted, it is because he could not rape the woman any more. It is different. I think the parallelism does not hold. That is why I say, the moral responsibility would be the same whether the rape was attempted or consummated or frustrated. I do not think that the parallel of robbery with homicide can hold. But with respect to the penalty, I was thinking in my mind and I still have an open mind upon it, that we may perhaps increase the range of the penalty for the entire paragraph so that the courts may also have some distinction in determining whether some attendant circumstances may justify the imposition of "*reclusión perpetua* to death," for instance whether it is consummated or frustrated, the circumstances are such that the moral offense committed, not only the legal offense, but the moral offense committed is to such an extent as would excite the court to inflict the death penalty. We should allow the court to inflict the death penalty even if there was only an attempted rape with homicide. As I said, I have an open mind and I would be willing to consider any suggestions making the penalty provided in the second paragraph, "*reclusión perpetua* to death."

Senator PADILLA. Well, I respect Your Honor's views. I just wanted to point out some of these observations because when this bill was considered by the Committee on Revision of Laws, of which I am a member, I was not then present and I could not voice these sentiments or thoughts. Now, Your Honor, another thing—the death mentioned in this last paragraph only refers to the offended party. Now, according to your own example, in case of robbery the person killed may not be the person intended to be robbed, it may be somebody else who comes to the rescue of the person to be robbed. Does not Your Honor believe that in case of rape, a similar situation may arise—that the offenders are trying to use force, violence on the offended girl, and someone comes to the succor, to the help of the offended girl, and the offenders kill the person who comes to the rescue of the offended girl. Now, does not Your Honor believe that under those circumstances the principle sought to be applied in this bill should likewise apply?

Senator TOLENTINO. Well, I agree with the gentleman there and that is a point where I agree there may be a graduation of the penalty.

Senator PADILLA. Now, would not Your Honor consider therefore a rephrasing in the period of amendments to use as much as possible a similar phraseology as used by the Code in Article 294, paragraph 1?

Senator TOLENTINO. I would be very glad to consider the suggested amendment in the period of amendments.

Senator PADILLA. And this phrase, for example, "or as a consequence of the crime," I think this should be eliminated and in lieu thereof, on line 18 we should use the words "by reason or on the occasion of the rape," similar to Article 294.

Senator TOLENTINO. I would be very glad to consider those suggestions.

Senator PADILLA. Because sometimes it is difficult to prove that the killing was the direct consequence of the rape, and I think our intention is that so long as the death occurs by reason or on the occasion of the rape, this higher penalty should be imposed, and in addition, as Your Honor has gladly accepted my suggestion, that instead of limiting it to the offended party, we apply or copy a similar provision of Article 294 saying: "when by reason or on the occasion of the rape a homicide is committed," instead of limiting it to the offended girl.

Senator TOLENTINO. As I said, I will be very open-minded in the period of amendments.

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

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

Senator TOLENTINO. Willingly.

Senator BALAO. Your Honor, I would like to be enlightened on one point. How would Your Honor define the responsibility of a woman in case one of the many members of a rapist group happens to be a woman? How would Your Honor define the responsibility of that woman under this amendment? It is possible that a brother is being helped by a sister, or in these common days of white slave traffic, a woman might be a party to a group of rapists.

Senator TOLENTINO. Well, I confess that the question stumps me just right now, because of the fact that there may be a serious question as to whether a woman can be convicted of rape,

but I believe that if she is part of a conspiracy, certainly she can be convicted.

Senator BALAO. Well, how would the present amendment encompass or cover the responsibility of the woman?

Senator TOLENTINO. The same. So long as she is co-principal, she falls under the provision, and the fact that she is a woman would not exempt her from responsibility. That should even aggravate, that being a woman, she conspires with men to commit an assault upon another woman.

Senator BALAO. So, it is clear in the amendment that everybody, including a woman, can be responsible.

Senator TOLENTINO. Yes, so long as the conspiracy exists.

Senator RODRIGO. Mr. President, just one last question for clarification in the record, if the gentleman will yield.

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

Senator TOLENTINO. Very gladly.

Senator RODRIGO. The amendment states that the penalty will be imposed in the maximum whenever the crime of rape is committed by two or more persons. Now, in the first paragraph of Article 335, it says "Rape is committed by having carnal knowledge of a woman * * *." I just want to clarify this matter in the record. Suppose that the crime of rape is committed by two persons, but only one of them had carnal knowledge of the girl and the other one merely helped in the commission of the crime. Would the penalty be imposed in the maximum?

Senator TOLENTINO. That is covered. The penalty would be in the maximum.

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

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

Senator TOLENTINO. With pleasure.

Senator SABIDO. Now, after listening to the interesting questions propounded by the distinguished gentleman from Pangasinán and after hearing Your Honor admit the existence of degrees of perversity on the part of the offender, how would Your Honor classify the offender if, instead of death, it happens that the offended party by reason of the rape committed or the attempted rape becomes insane or invalid for life?

Senator TOLENTINO. Well, I confess the bill does not expressly cover such a situation, and if the gentleman has any suggestions, we can consider those suggestions to clarify the amendment on this matter and make it more comprehensive to cover that situation. Mr. President, if there are no more questions, I move that we go to the period of amendments and suspend the consideration of the bill for the time being until tomorrow, in order to have the amendments completed.

MOCIÓN DE SUSPENSIÓN

Senator PRIMICIAS. Mr. President, I ask that we suspend consideration of this bill until tomorrow.

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

ORDEN ESPECIAL

Senator PRIMICIAS. Mr. President, I ask that Senate Bill No. 62 be set in the calendar for Friday, March 7.

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

LEVANTAMIENTO DE LA SESIÓN

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

The PRESIDENT. If there is no objection, the session is adjourned until tomorrow morning at ten o'clock. (*There was none.*)

Eran las 6:20 p.m.