

## RECORD OF THE SENATE

WEDNESDAY, JULY 24, 1996

ROLL CALL

### OPENING OF THE SESSION

*At 4:30 p.m., the President Pro Tempore of the Senate, Hon. Leticia Ramons Shahani, called the session to order.*

**The President Pro Tempore.** The session of the Senate is hereby called to order.

We shall now be led in prayer by Sen. Dominique M.L. Coseteng.

*Everybody rose for the opening prayer.*

### PRAYER

**Senator Coseteng.**

Dakilang Maykapal sa Iyong Kaluwalhatian  
basbasan ang Kapulungang ito upang kami  
ay maging higit na karapat-dapat sa  
sagradong tiwala na ipinagkaloob Mo  
at ng sambayanang Pilipino.

Balutin Mo ng pag-asa ang aming puso't diwa  
pag-asang magsisilbing panangga sa bawat  
alinlangan at sigalot na aming haharapin  
sa pagsunod sa Iyong kalooban na  
mapaglingkuran nang buong katapatan  
ang Inang Bayan.

Diyos Ama, huwag pahintulutang kami ay mawalay  
sa kadakilaan at kabanalang Iyong taglay  
sapagkat kung wala Ka sa aming piling  
wala na ring katuturan ang sangkatauhan.

Asahan Mo na kami ay magiging mapagpakumbaba  
at isasantabi ang pansariling interes, pananaw  
at paniniwala.

Bendisyunan Mo ang sama-samang pagkilos  
ng aming Kapulungan at pairalin ang  
kadalisayan ng aming layunin tungo sa  
minimithing kapayapaan, kasaganaan  
at kaunlaran.

Purihin Ka, Panginoon at ipagkaloob sa amin ang  
Iyong walang katapusang grasya at kalinga.

Ngayon at kailan man.

Siya nawa.

**The President Pro Tempore.** The Secretary will please call the roll.

**The Secretary, reading:**

Senator Heherson T. Alvarez ..... Present  
Senator Edgardo J. Angara ..... Present  
Senator Anna Dominique M. L. Coseteng ..... Present  
Senator Franklin M. Drilon ..... Present  
Senator Juan Ponce Enrile ..... Present  
Senator Marcelo B. Fernan ..... Present  
Senator Juan M. Flavie ..... Present  
Senator Ernesto F. Herrera ..... Absent  
Senator Gregorio B. Honasan ..... Present  
Senator Gloria M. Macapagal ..... Present  
Senator Ernesto M. Maceda ..... Present  
Senator Ramon B. Magsaysay Jr. .... Present  
Senator Orlando S. Mercado ..... Present  
Senator Blas F. Ople ..... Present\*  
Senator Sergio R. Osmeña III ..... Present\*  
Senator Ramon B. Revilla ..... Present  
Senator Raul S. Roco ..... Present  
Senator Alberto G. Romulo ..... Present  
Senator Miriam D. Santiago ..... Present\*  
Senator Leticia R. Shahani ..... Present  
Senator Vicente C. Sotto III ..... Present  
Senator Francisco S. Tatad ..... Present  
Senator Freddie N. Webb ..... \*\*  
The President ..... Present

**The President Pro Tempore.** With 19 senators present, the Chair declares the presence of a quorum.

### THE JOURNAL

**Senator Romulo.** Mr. President, I move that we dispense with the reading of the *Journal* of the previous session and consider it approved.

**The President Pro Tempore.** Is there any objection? *[Silence]* There being none, the reading of the *Journal* of the previous session is dispensed with and consider it approved.

The Secretary will read the Reference of Business.

\*Arrived after the roll call

\*\* On official mission

TO AD VALOREM RATE OF DUTY FROM HOME CONSUMPTION VALUE (HCV) TO TRANSACTION VALUE (TV)", AND FOR OTHER MERITORIOUS PURPOSES IN VIEW OF MOUNTING COMPLAINTS PERTAINING TO SGS OPERATIONS IN THE PHILIPPINES

Introduced by Senator Alvarez

**The President Pro Tempore.** Referred to the Committees on Accountability of Public Officers and Investigations; and Ways and Means

**The Acting Secretary [Atty. Raval].** Proposed Senate Resolution No. 510, entitled

RESOLUTION DIRECTING THE COMMITTEE ON FOREIGN RELATIONS TO CONDUCT AN INQUIRY INTO THE ACCEPTABILITY OF THE PROPOSED SOUTHERN PHILIPPINES COUNCIL FOR PEACE AND DEVELOPMENT (SPCPD) BY THE INTERNATIONAL COMMUNITY WITH THE END IN VIEW OF ADOPTING SUCH LEGISLATIVE MEASURE AS MAY BE NECESSARY TO IMPROVE THE INTERNATIONAL IMAGE OF THE PHILIPPINES

Introduced by Senator Maceda

**The President Pro Tempore.** Referred to the Committee on Rules

**Senator Romulo.** Madam President.

**The President Pro Tempore.** The Majority Leader is recognized.

#### SUSPENSION OF THE SESSION

**Senator Romulo.** Before we take up the bills that are on the calendar this afternoon, Proposed Senate Resolution No. 475, the Resolution Concurring in the Ratification of the Second Protocol to the General Agreement on Trade and Services, as well as the Anti-Rape Bill which is Senate Bill No. 950, may I ask for a brief suspension of the session.

**The President Pro Tempore.** The session is suspended, if there is no objection. *[There was none.]*

*It was 4:42 p.m.*

#### RESUMPTION OF THE SESSION

*At 4:43 p.m., the session was resumed with the Senate President, Hon. Neptali A. Gonzales, presiding.*

**The President.** The session is resumed. The Majority Leader is recognized.

**Senator Romulo.** Mr. President, yesterday, the interpellations started on Senate Bill No. 950, and Senators Drilon and Enrile took their turns in interpellating Senator Shahani, the sponsor of the bill as well as Senator Roco, its cosponsor.

Today, we have the following Senators who would interpellate Senator Shahani: Senators Tatad, Herrera, and Sotto.

#### SUSPENSION OF THE SESSION

May I ask for a brief suspension of the session, Mr. President, before we resume consideration of the said bill.

**The President.** The session is suspended, if there is no objection. *[There was none.]*

*It was 4:44 p.m.*

#### RESUMPTION OF THE SESSION

*At 4:47 p.m., the session was resumed.*

**The President.** The session is resumed.

#### BILL ON SECOND READING S. No. 950—Special Law on Rape (Continuation)

**Senator Romulo.** Mr. President, I move that we resume consideration of Senate Bill No. 950 as reported out under Committee Report No. 78.

**The President.** Resumption of consideration of Senate Bill No. 950 is now in order.

**Senator Romulo.** We are still in the period of interpellations. I ask that the sponsor of the bill, Senator Shahani, again be recognized with her cosponsor, Senator Roco. For the interpellations, I ask that the distinguished gentleman from Catanduanes, Quezon City, and Aklan, Senator Tatad, be also recognized.

**The President.** Senators Shahani and Roco, cosponsors of the bill, are recognized, as well as Senator Tatad, for purposes of interpellation.

**MOTION OF SENATOR SHAHANI  
(Referral of S. No. 1534 to the Committee on  
Environment and Natural Resources)**

**Senator Shahani.** Before we enter into the debate on Senate Bill No. 950, I would like to make a manifestation that Senate Bill No. 1534, entitled "Animal Welfare and Protection Act," of which I am the humble author, be referred to the Committee on Environment and Natural Resources instead of the Committee on Agriculture and Food, as the same relates to the conservation of our animal resources. This refers to cats and dogs. They are not really for eating and therefore they are being protected.

**The President.** The Majority Leader is recognized.

**Senator Romulo.** We have no objection.

**The President.** Is there any objection to the motion?  
[Silence] There being none, the motion is approved.

Senator Tatad is recognized.

**Senator Tatad.** Will the distinguished sponsor yield for a few questions for clarification?

**Senator Shahani.** Mr. President, I shall be happy to entertain questions from our colleague from Catanduanes and the Bicol Region.

**Senator Tatad.** Thank you very much, Mr. President. At the outset, I should like to express my appreciation for the early action on this bill. I believe this bill has long been under discussion, and it is one of the measures that a large sector of our population has been waiting for. But I do have a few simple questions for clarification.

I am using a text version of the bill as of June 3, 1996. Is this still the document?

**Senator Shahani.** That is correct, Mr. President.

**Senator Tatad.** Thank you very much. In the bill, Section 2 says: "Rape is a crime committed by a man who shall have a penile penetration of the genitalia of a woman under any of the following circumstances: through force, threat or intimidation; by means of abuse of authority or relationship; when a woman is deprived of reason or is otherwise unconscious."

I would like to focus on this phrase "deprived of reason." Exactly how does this happen? When does this happen, Mr. President?

**Senator Shahani.** Mr. President, she might be sick and she is not in control of her rational capability. She is not able to make judgment of what is happening around her so that she cannot make a conscious choice. It can also be that she is born with a congenital defect so that she is feeble-minded. And at an early age, she has not been able to distinguish the acts which would be harmful to her own survival as a human being.

**Senator Tatad.** Does the use of drugs, prohibited drugs, deprive a person of reason?

**Senator Shahani.** Yes, it certainly does, Mr. President.

**Senator Tatad.** In which case, if drugs are introduced into a person, it does not matter whether it is the person who becomes the victim of rape who has taken the drug herself or was compelled to take drugs by the assailant. Is this a correct understanding of this particular usage, Mr. President?

**Senator Shahani.** If she is under the influence of drugs, whether it was self-administered or administered by somebody else, she is incapable of making the right judgment which is resisting or fleeing from the assailant, yes, Mr. President.

**Senator Tatad.** Thank you for that clarification, Mr. President. Under the same section, letter D, "when the woman is below twelve (12) years of age, even though neither of the circumstances mentioned above is present", then she becomes a victim of rape as soon as there is a penile penetration.

Why 12 years old? Why not 13? Why not 14? Why not 15? Why not 16? Why not 17? Why not 18?

**Senator Shahani.** Mr. President, that is the biological age when she has not reached the period of puberty. And I think it is to protect children from sexual abuse, and in this case, rape.

**Senator Tatad.** But a 13-year-old girl would still be a minor. Would she not be, even if she enters the period of menarche?

**Senator Shahani.** That is correct, Mr. President; but as I said, this is specifically to draw that line that children can also be abused. It is important that we make this distinction here. In other words, a 13-year-old girl can still be raped by circumstances mentioned in paragraphs (a), (b), and (c).

**Senator Tatad.** Mr. President, I am not against the attempt to protect children. In fact, I am very much in favor of protecting children. But since what is at issue here, I believe, is the faculty of the person concerned to use reason, may it not be more

protective of a wider number of people, mostly minors, to increase this age level?

A 13-year-old girl may have begun to menstruate. She has reached the age of puberty. But is it understood that she has reached the age when she could or should give free consent to a sexual relationship?

**Senator Shahani.** Mr. President, we shall be ready to entertain some modifications to this paragraph to enlarge the group which needs to be protected.

**Senator Tatad.** Thank you very much for that assurance. At the proper time, I would like to propose an appropriate amendment.

Going farther into the text of the bill, we find the various circumstances when rape may be committed. It is not only the insertion of the penis into the genitalia of the woman but also when a man inserts any part of his body other than the sexual organ or introduce an object or instrument into the genital or anus of a woman; when a man inserts his penis into the mouth or anus of a woman under the circumstances stated in the earlier paragraph, then rape is committed.

Mr. President, we are moving very fast into an information-driven age. We have moved into the age of high-tech computers, and people are talking of cybersex. Does the distinguished sponsor recognize the existence now or in the future of cybersex?

**Senator Shahani.** I have read about it, Mr. President. I believe that that is another dimension.

**Senator Tatad.** Yes, it is very much into the future. But since we are crafting a bill that should be very useful in the next century for our children, we should probably anticipate some of the technological developments of the future.

I asked that question because if we recognize cybersex as a distinct possibility in the near future, should we not at the same time recognize the possibility of cyberrape?

**Senator Shahani.** Mr. President, if our distinguished colleague has some amendments semantic in nature, because I think that would be quite difficult, I, of course, would be happy to entertain it.

I just would like to say that this bill has been in the works since 1988 and even the issue of marital rape has had a very rough sailing. Although I agree with him that, of course, we should legislate in order to meet the demands of the times and I would be willing to entertain whatever amendments he would have, I

just would like to say that the passage of this bill has not been easy in the past and I hope he will be able to help me support an amendment on cyberspace, if it should become part of the text. Mr. President.

**Senator Tatad.** We recognize the difficulties, Mr. President. We shall try to be as helpful as possible because we share the legitimate interest of the distinguished sponsor and so many of our countrymen in having this bill enacted into law.

Now, still on page 1, line 22. It says: "The fact alone that the offender is the lawful husband of the offended party will not negate the commission of the offense."

I am interested in finding out the reason for this usage—"lawful husband." Are there husbands who are not lawful?

**Senator Shahani.** Mr. President, I believe our colleague from Catanduanes knows the Philippine culture and I think there could be, of course, other partners to the woman concerned. But here we are talking about marital rape, and I am sure our colleague is aware of that and this is why the word "lawful" was placed there.

**Senator Tatad.** I thank the distinguished sponsor for that clarification. Now, as the distinguished sponsor says, we are now talking of marital rape. This is a difficult concept, and I believe we have to exert every possible effort to make sure that that concept is reflected as clearly as possible in the bill.

The first difficulty arises from the fact that in marriage, the spouses give to each other the right to each other's body. That is how marriage is understood in our culture and up to this point, that has been supported by law. However, this does not mean that a spouse may not refuse the conjugal debt for valid reasons. A wife may say that she is sick, she is unfit, and therefore, she would very much like to pay her conjugal debt to the husband at some other time, not now, because she is now indisposed.

But yet, if the husband persists, there would be an abuse committed; a great deal of inconsideration would be committed by the husband. But since he has the right to her body, it does not constitute rape, unless the conjugal act takes place under scandalous circumstances. I wonder if that concept is what we are trying to put in here.

**Senator Shahani.** That concept, Mr. President, is precisely what is being questioned by the issue of marital rape. The way I think the women understand marriage, Mr. President, is that although they take the marriage vow and they give their bodies to their husbands, it does not mean that that body is going to be abused or violated or raped. It is given in love and respect



because it is expected that that body is to be loved and respected in return.

That is part of the marriage bond, Mr. President. If the spirit of that bond is violated, then the wife has a right to go against the claims of the husband done in threat and intimidation or as an abuse of authority or of the relationship. Many of the rape cases specifically address themselves to married women who have been raped by their husbands. It is a worldwide phenomenon. It happens in this country. It happens in many countries. But, of course, the wife is inhibited because of convention. This is why we felt that we have to include marital rape.

Also, on the suggestion of several of our women, all classes of women—they do not have to be women of the elite. They are the poor women who have been battered by their husbands for not fulfilling their wishes. So, Mr. President, this section here is responding to what is a situation in the bedroom. But because the instances have been multiplied, we cannot ignore that it has become a social problem.

**Senator Tatad.** I have no difficulty appreciating the position of the distinguished sponsor. We are in agreement as to the fact that the obligation of spouses is, first of all, to regard marriage as a sacrament. It is something holy. The conjugal act is a sacred act, not something vulgar, not just an expression of a biological need, and so the bodies of both spouses should be given the utmost respect.

However, I am now trying to distinguish between an abuse of a privilege and rape. As I understand it, if a husband is so inconsiderate, he does not take into account the particular situation of his wife who is not in a position to render her conjugal debt, then that husband commits abuse. But when does this abuse become rape? To try to understand that, we will probably have to go into the various parts of the proposition.

**Senator Shahani.** Mr. President, I just would like to inform our distinguished colleague that because of the fairly lengthy debate yesterday on this issue of marital rape, Senator Roco and I—and I think this will help in the debate—have decided that we will end the issue of marital rape in line 23 after the phrase “commission of the offense” in order to avoid any complexities of the situation. We propose the deletion of the end of lines 23, 24, and on page 2, line 1 up to line 5. So we do not go into the instances anymore but we refer to the other sections like in 1 (a) and (b), for instance.

**Senator Tatad.** I thank the lady sponsor for that, Mr. President. I will look at that closer later. In the meantime, I think we can proceed.

Under Section 5, we have an enumeration of who may file

the complaint—the offended party, the parents and legal guardian. Would the distinguished sponsor be amenable to breaking letter (b) into two? Because here we have parents and legal guardian. Can we say her parents, and then subsequently, her legal guardian?

**Senator Shahani.** That would be acceptable, Mr. President, and I thank Senator Tatad for that.

**Senator Tatad.** At a later stage.

**Senator Shahani.** Yes, because we could see that the two are different.

**Senator Tatad.** Now, in the enumeration, we also have “the officer or social worker of the Department of Social Welfare and Development, or of a duly licensed child-caring institution, orphanage, home for the aged, mental hospital or other similar institutions under whose care or custody the offended party is committed.”

Mr. President, I have a pending bill which seeks to create the Tanod Bata, one of whose functions will be to file cases on behalf of minors, children, and women who are victims of all types of abuses, including sexual abuse.

Would the distinguished sponsor be amenable to include in this enumeration a word or two that would allow such an institution, if it is finally enacted, to be included in the enumeration?

**Senator Shahani.** I think that would be a very useful contribution, Mr. President.

**Senator Tatad.** Thank you very much. I am leading to my final question.

Mr. President, recently, a friend of mine, a married woman, was raped in Mindanao. She is still undergoing a very rough ordeal in the courts and in the media. One of the difficulties being encountered in this particular case is that there is not enough evidence of physical trauma. But psychologically, the lady is all shot.

My question, Mr. President, is, are we prepared in this bill to include a provision that would allow for the competent authorities to testify on the psychological condition of victims even though they may not exhibit the usual degree of physical trauma?

**Senator Shahani.** Yes, Mr. President. After all, the psychological trauma is equally, if not even more, destabilizing than the physical trauma. Of course, that is difficult to present

in court. But I believe medical science has also been advancing in this regard. So that, there is a way now of preventing psychological shock, trauma, and stress. I believe that is a very useful point.

**Senator Tatad.** I am happy to hear that, Mr. President. At the appropriate time, I would like to help formulate the appropriate amendment if it is not yet adequately covered in the text of the bill.

That is my last question, Mr. President. I thank the Chair very much. I also thank the distinguished sponsor.

**Senator Shahani.** Mr. President, I should like to thank our colleague from Catanduanes for his interest in the matter.

**The President.** The Majority Leader is recognized.

**Senator Romulo.** Mr. President, for the next interpellation, may I ask that the gentleman from Isabela and Cagayan Valley, Sen. Heherson Alvarez, be recognized.

**The President.** Senator Alvarez is hereby recognized.

**Senator Alvarez.** Mr. President, will the lady senator answer a few questions which would clarify my doubt over certain issues which were discussed yesterday and answered to by Senator Roco as well?

**Senator Shahani.** Mr. President, I shall be very pleased and happy to entertain questions from our colleague from Isabela.

**Senator Alvarez.** Senator Roco stated yesterday that this is in the nature of a special law which removes this specie of a crime from the Penal Code and therefore none of the characterization of this crime—perhaps even the past jurisprudence that define this crime—will now apply in the enforcement of this crime.

**Senator Romulo.** Mr. President.

**The President.** The Majority Leader is recognized.

**Senator Romulo.** With the permission of our colleagues on the floor, may I also ask that Sen. Miriam Defensor-Santiago who is one of the sponsors of this bill, be recognized.

**The President.** Senator Santiago will be recognized in the course of this sponsorship and interpellations.

Senator Alvarez may proceed.

**Senator Alvarez.** My concern here, Mr. President, is that

there is a more defined characterization of the crime of rape with the corresponding gradations of that particular crime. Therefore, those refinements in defining the crime protect the rapist depending on the gravity or the degree of the act which I think is obtainable under the present jurisprudence within the application of our penal system.

When we therefore make this special law, we diminish the ability of the defendant to protect himself, and the application of this special law takes away those characterization which are modes of protecting the rights of the defendant for this particular crime.

Would that be an accurate perception on this particular issue over this proposed penal legislation?

**Senator Shahani.** Mr. President, we will recall that this point was debated at length yesterday when Senator Enrile was interpellating us. I made the clarification that the reason we thought of crafting a special law on rape would show that rape in itself is such a serious crime that the intent of the offender should not be taken in consideration anymore. The fact that it has been committed by itself was already a serious crime. But we did continue the discussion before we started the session this afternoon, and we also talked with Senator Roco.

I think we are beginning to see that by going back to the present law which is a revision of the Penal Code, which makes the gradations of the crime clearer, might be a more helpful way of approaching the matter.

So I just would like to inform our colleague from Isabela and I would like to thank him for touching on an important point, that we are ready to entertain serious proposals about reverting to the Revised Penal Code, if necessary.

Again, we would just like to stress that the crime of rape is something which is very grave. Twenty percent of the crimes in this country are rape cases. If we revert to the provisions of the Penal Code, I would like to say that the other sections of this bill on the assistance to rape victim, of course, should be retained and should not be amended.

**Senator Alvarez.** Mr. President, I am enlightened with the explanation of the lady senator, and I see a solution to the conflict that I was anticipating.

While I am in accord with the policy direction to perhaps invest more social and even penal attention to this particular act because of its implications in the broad human rights sense for women, I am concerned that if we disregard previous jurisprudence and insist that this should be a special crime, we may be setting aside the human rights gains which we have over the

manner in which we have looked at this complex crime.

If we want to punish more and call attention to this crime, this representation perhaps will be more than happy to support that. But I am afraid that if we make it a singular act, like it were a special crime punishable with a singular application of a penalty, instead of enhancing the human rights of women, we may also be diminishing the human rights of many accused, which have been clarified in many previous decisions.

In any case, Mr. President, I thank the lady senator for that information. We will be guided.

**The President.** The Majority Leader is recognized.

**Senator Romulo.** Mr. President, may I ask that the distinguished gentleman from Quezon City and Cebu, Senator Sotto, be recognized for his interpellation.

**The President.** Senator Sotto is recognized.

**Senator Sotto.** Will the distinguished lady yield for a few questions for clarification?

**Senator Shahani.** Mr. President, I shall be happy and honored to entertain the questions from our distinguished colleague from Quezon City and Cebu and the chairman of the Committee on Local Government.

**Senator Sotto.** Mr. President, at the onset, may I state that I fully support this bill and its intentions to correct the discriminatory and erroneous way which society has generally viewed the crime of rape, and the way rape victims have been treated. I believe it is time to eliminate all forms of discriminations against women.

Having said that, may I now be allowed to ask a few questions regarding Section 3 of the bill, particularly paragraph (2) which pertains to the consummation of the crime of rape. It states: "The slightest contact of any part of his or her body other than the sexual organ or any object or instrument, or any part of the animal used by the offender with the genital or anus of the offended party under paragraphs (3) and (4) of Section 2 hereof shall consummate the crime of rape."

I am concerned, Mr. President, with the use of the phrase "slightest contact." May I know what is meant by this phrase and how this is to be construed? For instance, does this require skin-to-skin contact between the offender and the offended party?

**Senator Shahani.** Mr. President, before I answer that question, I just would like to inform our colleague from Quezon

City that we are using the version of the bill of June 3, 1996 where we have left the gender-free approach to rape and we are just saying "a woman." So here, we say the "slightest contact of any part of the body of a man."

**Senator Sotto.** Of a man, yes.

**Senator Shahani.** Yes, Mr. President, the slightest contact of any part of the body of a man with the genital or anus of a woman under paragraphs (3) and (4) of Section 2 shall consummate the crime of rape.

**Senator Sotto.** Yes, Mr. President. But when we say "slightest contact," does it mean skin-to-skin contact? What if one or both of the parties are wearing underwears?

**Senator Shahani.** Mr. President, it will have to be skin-to-skin contact.

**Senator Sotto.** Thank you, Mr. President. I really want that clear.

Then under the present law on rape and based on the existing jurisprudence in rape, there must be sexual intercourse or even partial if necessary. However, the present law does not require full penetration since even the slightest penetration is enough.

Under this bill, Mr. President, the need for actual penetration is removed, instead the slightest contact is enough to consummate the crime of rape. May we know why the change in requirement under this bill? What were the actual experiences during the trial of rape cases?

**Senator Shahani.** Mr. President, I think the important thing there is that, the woman is forced to have physical contact with the man against her will. It is not so much the extent or the area covered but the very fact that she has been forced to have physical contact with the man; she has been threatened or intimidated, or there is abuse of authority or relationship that, in itself, is already a violation of the personhood of the woman. I do not think that there is a need to go further.

**Senator Sotto.** Would the distinguished sponsor be aware of the troubles and problems that have come up during trials of these rape cases, Mr. President; so as to have the need to change the requirement under this bill?

**Senator Shahani.** Mr. President, this comes under the testimony of many women who have been abused, who have been violated that it does not have to have penile penetration in order to say that one has been raped. The fact that women have been forced to have physical contact with a man against her will



is a subject of many testimonies.

The reason why it may seem strange to some of us is that, there are really few reported rape cases, Mr. President, precisely because there are many inhibiting factors in reporting rape cases and in having them prosecuted successfully. But this, is the point of view of many women who have had this type of experience.

**Senator Sotto.** I would like to call the attention of our colleagues and our distinguished sponsor to a different type of perspective. I understand and believe in the need to give the victims of rape greater leeway in their fight for justice. I have heard the interpellations yesterday and the distinguished sponsor mentioned the fact that rape victims really are not only maltreated during investigations but also during the trials that ensue. Prosecution really has a hard time. But I am also a little bit concerned about the great possibility of abuse and harassment under this bill, because of the "slight contact" phrase.

Let me illustrate the possibility of abuse by way of an extreme example, if I may be permitted, Mr. President.

Let us suppose that a woman is sunbathing in the nude in the beach and fell asleep, and a man also probably in the nude or wearing a skimpy swimming trunk is walking by. If he suddenly trips and falls and any part of his body—his arm or probably something that he is holding—touches the genital or anus of the woman, then he would be guilty of rape based on Section 3 of this bill.

In the example that I mentioned, all the elements of the crime are present. The woman is unconscious because she is asleep. The crime is deemed consummated because there was contact although there was no actual insertion or penetration. May we be clarified on this, Mr. President?

**Senator Shahani.** Mr. President, if it was accidental, I believe that there would be a correction on that. I think the case is extreme and it would not really happen. But may we ask Senator Santiago to further clarify the matter.

**The President.** Senator Santiago is recognized.

**Senator Santiago.** Mr. President, when the principal sponsor and I were participating in the committee deliberations, the principal author, Senator Shahani, already expressed concurrence to a possible amendment that will add the following clause to paragraph 3, which is now the subject of the distinguished senator's comments. Section 3 redefines rape as committed by any person who shall insert any part of his body other than the sexual organ or who shall introduce any object or instrument into the genital or anus of another.

At this point, the principal sponsor has already expressed her agreement to amend this particular paragraph by adding this clause "with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person." This clause is lifted from the American version of the Rape Law.

**Senator Sotto.** Thank you, Mr. President. Probably, during the period of amendments, we can further fine-tune that portion to remove the apprehension of this representation and probably some of our colleagues.

**Senator Shahani.** I would like to say, Mr. President, that we will accept amendments later on to make this phrase clearer. During the period of amendments, we will, in consultation with Senator Santiago on this matter.

**Senator Sotto.** That is good, Mr. President. Because, as I said earlier, I am worried or apprehensive about the possible abuse that can be committed by women regarding this phrase. I am sure the distinguished sponsor is aware of that.

**Senator Shahani.** Mr. President, I am aware. I mean, the contact is already with the private parts of a person, although I would agree theoretically that it would be possible. But I would say abuse would be very far from the reality. Is the gentleman talking about the private parts?

**Senator Sotto.** Yes. Let me put it this way, Mr. President. Because of the "slight contact" provision, it is very difficult to prove, when before, there must be consummation by sexual intercourse, there must be semen; there must be a medical examination. With the slight contact, it is merely the word of the woman against the man. As we know, there are guys who can be harassed, like Richard Gomez and Aga Muhlach. They can be harassed by women they did not like, by merely saying that they were forced, that their private parts were touched. It is very difficult to prove that they have been touched. I am looking for safeguards. And I am worried about the bill being abused.

**Senator Shahani.** Mr. President, we are legislating for everybody. I think the majority of the women of the world or the Philippines would not be in the same class as Richard Gomez. But I would be amenable to clarify what I know is a new jurisprudence. It is important that we clarify the matter.

Thank you, Mr. President.

**Senator Sotto.** Thank you, Mr. President. I am looking for some safeguards. I am glad that the distinguished sponsor has mentioned that. I would like to make sure that there would be safeguards in the bill so that it may not be abused for harassment purposes.



It has happened in the past when it was difficult to prove rape. It has already been used for harassment. We hope that because of the new provisions in the bill, particularly the phrase "slightest contact," there could be some safeguards in the bill. Then this could not be abused and used for harassment by some of our countrymen.

Thank you, Mr. President.

**The President.** The Majority Leader is recognized.

**Senator Romulo.** Mr. President, may I ask that the gentleman from the Cordillera and Baguio City, Senator Flavie, be recognized to interpellate.

**The President.** Senator Flavie is recognized.

**Senator Flavie.** Mr. President, will the distinguished lady senator from Pangasinan allow me to ask a question for clarification?

**Senator Shahani.** Mr. President, I am honored that our colleague from the Cordillera is interested in the rape bill.

**Senator Flavie.** First of all, I would like to apologize to the lady senator that I am raising this question when I attended all her hearings related to the bill. I just wanted a clarification to a point that Senator Enrile raised yesterday, and my intention is to inquire whether later the distinguished lady senator would, in fact, agree to the deletion of that particular portion. I refer to the marital rape.

Here, the following elements must be present. One, carnal knowledge was accomplished; two, the act was committed against the will of the wife; and, any of the four elements. I understand that to mean that unless one of the four is present, then marital rape has not been committed. And this bothers me because the four are: the act was committed under scandalous circumstances, or the husband is afflicted with HIV or any sexually-transmitted disease, or the husband has abandoned his wife without justification for at least one year, or the husband has been charged with bigamy or concubinage.

The way I understand it—and I think this was partly raised by Senator Enrile—we need one of any of those four. And by reading this, I am bothered that it may not be always possible to have any of the four and, therefore, might negate the intention of the section of the bill.

**Senator Shahani.** I am glad that this provision is being clarified during the debate, Mr. President. As I said yesterday, this is an important contribution. This is a new dimension of marital rape. I am sure that all of my cosponsors will agree that clarification would help.

As I said earlier this afternoon, Senator Roco and I decided yesterday that we are willing to delete—of course, we will also consult Senator Santiago—the end of lines 23 and 24 on page 1 and lines 1 to 5 on page 2 so that it does not become ambiguous. Of course, it will be very hard to file a case with all of these conditions.

So, that is where the matter stands, Mr. President. If our colleague from the Cordillera feels that there can be improvement in this present text which we are proposing, I will be very happy to entertain them.

**Senator Flavie.** Thank you, Mr. President. I am more in favor of the deletion, and if that can be entertained as an amendment at a later date, I shall be very pleased.

Thank you, Mr. President.

**Senator Romulo.** Mr. President.

**The President.** The Majority Leader is recognized.

**Senator Macapagal.** Mr. President.

**The President.** What is the pleasure of Senator Macapagal?

**Senator Romulo.** Mr. President, I ask that the distinguished senator from Pampanga, Pangasinan, and Negros Occidental be recognized.

**The President.** Senator Macapagal is recognized.

**Senator Macapagal.** Mr. President, first I would like to state that I fully support the objective of turning the crime of rape from a crime against chastity to a crime against person. And being supportive of the spirit of the bill, may I just be allowed by the sponsor to ask a few questions.

**Senator Shahani.** I shall be very happy, Mr. President, to entertain questions from our colleague from Pampanga and Pangasinan.

**Senator Macapagal.** Mr. President, I would just like to be clarified on certain details regarding some of the sections, not really the controversial sections but the more mundane and traditional sections regarding crimes.

For instance, in Section 11, on aggravating circumstances, may I just ask whether the aggravating circumstances mentioned are in addition to those found in the Revised Penal Code?

**Senator Shahani.** Mr. President, Section 11 is new; it is not

found in any jurisprudence so far. We thought that it is important to add this in the light of present developments.

**Senator Macapagal.** What about the aggravating circumstances that are already found in the Revised Penal Code, Mr. President? Is it the intention of the sponsor that these will also be considered as aggravating circumstances in determining the degree of guilt with regard to the crime of rape?

**Senator Shahani.** Mr. President, the intention of this bill was really to make a special law, which means that the crime of rape is therefore removed from the Revised Penal Code so that it would stand as a statute by itself.

As I said earlier, Mr. President, we have had serious discussions on the final form of this law. We are thinking of putting back the definition of rape as it appears in the Revised Penal Code. The question of our colleague from Pampanga and Pangasinan might again take the features of the Revised Penal Code, but at the same time, we would like to preserve the new features of this special law as it stands now.

**Senator Macapagal.** Mr. President, does this mean therefore that we may, by some amendments, clarify that aggravating circumstances under the Revised Penal Code such as treachery, rape by two or more persons, or intoxication would once again be considered as aggravating circumstances under this bill?

**Senator Shahani.** That is a possibility, Mr. President.

**Senator Macapagal.** I hope that these will be considered as aggravating circumstances because certainly, treachery, rape by two or more persons, intoxication and similar circumstances should indeed be considered in determining the gravity of the penalty for the offense committed.

Mr. President, may I also ask about Section 12 on damages, especially with regard to the provision in subparagraph 1 when the offended party becomes insane or suffers psychological damage. May I inquire how is psychological damage qualified?

**Senator Shahani.** Mr. President, there are medical parameters of psychological damage. The trauma, which is experienced after the shock of violation, can affect the judgment, the reasoning power, and the confidence of the victim. These are all known medical phenomena. In the hands of a qualified psychiatrist or a psychotherapist, it will be easy to prove with scientific evidence.

**Senator Macapagal.** Does this mean, Mr. President, that this is not similar to the catch-all nature of psychological incapacity in Article 36 of the Family Code which makes psychological incapacity a ground for annulment?

**Senator Shahani.** Mr. President, I think we are talking about two different things. Psychological incapacity, maybe, is the incapacity of the husband and wife to get along with each other. But we are talking here about damage, shock, trauma and enormous stress. I think that is what these words mean.

**Senator Macapagal.** Mr. President, also in the section on damages, in subparagraph 4, there is a reference to the phrase "When the offended party is infected with HIV or other sexually transmissible disease."

Mr. President, is knowledge of the offender of his HIV, STD infection status material?

**Senator Shahani.** No, Mr. President, it is not.

**Senator Macapagal.** So whether he knows that he has it or not, the extent of the damage would be considered the same.

**Senator Shahani.** That is correct, Mr. President.

**Senator Macapagal.** Thank you, Mr. President, for these clarifications. I am glad that aggravating circumstances that are in the Revised Penal Code will have a chance of finding their way into this bill because they are very important. Even if we change the definition of rape, there are still aggravating circumstances.

Thank you, Mr. President; and I thank the sponsor.

**Senator Romulo.** Mr. President.

**The President.** The Majority Leader is recognized.

**Senator Romulo.** Mr. President, for the final interpellation, may I ask that the distinguished gentleman from Manila, Ilocos Sur and Laguna, Senator Maceda, be recognized.

**The President.** Senator Maceda is recognized.

**Senator Maceda.** Mr. President, will the distinguished sponsor yield for questions on only one section of the bill?

**Senator Shahani.** Mr. President, I shall be honored and happy to hear and entertain the questions from our distinguished colleague from Manila, Ilocos Sur and Laguna.

**Senator Maceda.** I refer, Mr. President, to Section 9, on page 4 of the revised version as of June 3, 1996, and the title is "Evidentiary Requirements." I refer to the second and third paragraphs: "The following shall not be construed as indicative of consent." I have no problem with that. We are referring to "the sexual history of the offended party; the nature of her work,

such as prostitution; the amorous relationship between the offender and the offended party."

I have some clarifications to establish for the record with regard to the statement "nor shall be considered as tending to establish the improbability of the commission of the crime."

In relation to that paragraph, lines 24 and 25 say: "Evidence of such nature at any stage of the prosecution and trial shall be disregarded."

Does the distinguished sponsor not think that this interferes too much with the judicial discretion in the appreciation of the evidence and is really of a nature that, we could say, unfairly loads the case against the offended party? After all, the purpose of trial is to establish the truth. And, really, as has been held in a long list of US Supreme Court cases, these matters—the sexual history of the offended party, the nature of her work, such as prostitution especially, and an established previous amorous relationship between the offender and the offended party—are relevant matters to look into, but not necessarily to indicate consent. But I am just worried about the other side that immediately, evidence of this shall be disregarded to try to build a case for the accused.

**Senator Shahani.** Mr. President, this section was crafted the way it was in view of the fact that it has been very difficult and impossible in many cases to win a rape case. This is why women are intimidated. They do not want to report rape cases. They do not want to proceed with the prosecution precisely because of the perceived bias, we might say, of the criminal justice system in relation to these three instances here. The woman is always looked upon as the one who has instigated the rape, especially if she is a prostitute or she has a sexual history which may not be acceptable. That is why we have a redefinition of the crime of rape against a person and not against the chastity of a woman to let the issue of amorous relationship between the offender and the offended become again a discriminatory element in the case of the rape victim.

I admit, that this bill tends to favor the rape victim. I believe that we have made it so because the history of the crime of rape is such that: one, there are unreported, underreported cases; and second, there are very few cases where the victim herself is vindicated in the end. I believe that that is the explanation.

**Senator Maceda.** Mr. President, I think we can look for some more objective language just to complete my interpellation. The distinguished sponsor has always been the exponent of equality between the sexes. On the other hand, if we leave this in the bill as is, would the sponsor then also agree that the sexual

history of the accused, that the nature of the work of the accused, that the amorous relationship between the offender and the offended party, as well as the amorous relationship between the offender and previous women shall therefore not also be considered as tending to establish the guilt or innocence of the accused and shall be disregarded?

It works both ways. If these three items should not be considered in determining the probability or improbability of the commission of the crime in relation to the offended party, then it should not also be considered in relation to the accused.

**The President.** I think the cosponsor, Senator Roco, would want to reply. But can the gentleman also add his comments on this question: Are the matters cited by Senator Maceda necessary for the purpose of the determination not of the fact at issue but of the credibility of the complainant?

**Senator Roco.** I understand that the problem being posed by the gentleman from Manila, Mr. President, is we are mixing up two objectives and two different sets of laws. On one side, the substantive desire of the sponsor to prevent the possibility of making always the victim look as though she now must carry forward and it is her reputation that is at stake. That is the substantive goal of the lady senator and that is why it appears in the bill.

The problem now posed by the gentleman from Manila and Ilocos Sur is that it adds an exclusionary rule to the rules of evidence. I am sure we can find some appropriate phraseology, Mr. President, so that as the distinguished President has put it, maybe we can rephrase the exclusionary rule. I am just not ready now to present an alternative.

But putting another inference that it does not necessarily also add to the inference of guilt may confuse the situation. I am actually thinking of just rewording evidence of this nature or objections to the presentation of the evidence may be raised at the appropriate time unless it is otherwise relevant on some other grounds.

I am just sharing this, Mr. President, to address the difficulty of the gentleman from Manila so that when we rephrase this provision, we can look precisely at its effect on the rules of evidence and still maintain the objective of the lady senator from Pangasinan that the victim is not therefore put unnecessarily under strain in a prosecution for rape.

**Senator Maceda.** Mr. President, I am glad that the gentleman understands. Let me, for example, illustrate a very easy factual situation. As we know, there is a system prevailing in this country, especially in Metro Manila, where one goes up to a



cocktail lounge and even pays a bar fine to take a woman out of the cocktail lounge. In that situation, when the nature of the work of the woman is a hostess and the accused will try to prove that he even actually paid a bar fine and introduces into evidence the manager or the cashier who accepted the bar fine, that is something that could not be allowed under the particular wordings as phrased. That is a very clear example.

Another clearer example is when one goes to an established prostitution house in Pasay, whatever it is, and the woman was duly paid for and went out with the man. I am afraid that a very conclusive statement here that evidence of that kind of situation is not acceptable really loads the dice too much against the accused.

**Senator Roco.** Mr. President, may I put the situation this way. We cannot obviously suppress any fact in an adversarial situation because the effectivity of trials is precisely in ascertaining the truth of a fact to the extent it can be ascertained, but we can define by law the probative value of the evidence. I am not just ready now to give a technical answer to the gentleman from Manila.

What we will therefore examine later on is what the probative value of this fact is because to suppress a fact is against the sense of trial, of determining truth in a court of law.

Mr. President, we will discuss that in the committee, and maybe with our technical staff, we can come up with a standard for giving a probative value determination for certain evidence like this, or maybe it may be something else.

**The President.** The Chair thinks that Senator Santiago, another cosponsor, may wish to intervene. Is that the pleasure of Senator Santiago?

**Senator Santiago.** Thank you, Mr. President.

**The President.** Senator Santiago may proceed.

**Senator Santiago.** I believe, as cosponsor, that the well-founded concerns of the gentleman could be overcome if Section 9 is amended at the proper time so that Section 9 shall be entitled PRESUMPTIONS rather than entitled "Evidentiary Requirements."

He is correct in pointing out that it is misleading to consider this paragraph as evidentiary requirements because they might be construed as evidentiary requirements for conviction when actually they are simply *prima facie* evidence for filing the case. So one step towards saving Section 9 would be to entitle it PRESUMPTIONS instead of "Evidentiary Requirements."

**Senator Maceda.** Mr. President, we will wait for the final wording to be drafted by the sponsors. I think my point has been understood, and I hope we can find some satisfactory language. After all, one of the basic principles still is that the accused is presumed innocent until proven guilty and he must be given every chance to acquit himself.

**Senator Roco.** Thank you, Mr. President.

**The President.** Is there any other matter?

**Senator Romulo.** Mr. President.

**The President.** The Majority Leader is recognized.

**Senator Romulo.** I move, Mr. President, that we close the period of interpellations on Senate Bill No. 950.

**The President.** Is there any objection to this motion? [Silence] There being none, the motion to close the period of interpellations is approved.

**Senator Shahani.** Thank you, Mr. President.

#### SUSPENSION OF CONSIDERATION OF S. NO. 950

**Senator Romulo.** Mr. President, I move that we suspend consideration of Senate Bill No. 950.

**The President.** Is there any objection to this motion? [Silence] There being none, the motion is approved.

**Senator Romulo.** Mr. President, for the privilege hour, we have two speakers: first, Senator Santiago, and then Senator Tatad. May I ask that the distinguished senator from Iloilo and Quezon City, Senator Santiago, be recognized.

**The President.** Senator Santiago is hereby recognized for the first half of the privilege hour.

#### PRIVILEGE SPEECH OF SENATOR SANTIAGO

(Mindanaogate: The Joint Formulation of Foreign Policy by Congress and the President)

**Senator Santiago.** Thank you, Mr. President. The title of this privilege speech is "Mindanaogate: The Joint Formulation of Foreign Policy by Congress and the President."

Ladies and Gentlemen of the Senate:

In seeking to negotiate some form of solution to the problem of Muslim Mindanao, the Ramos administration has been guilty