

RECORD OF THE SENATE

WEDNESDAY, AUGUST 7, 1996

OPENING OF THE SESSION

At 4:33 p.m., the President Pro Tempore, Hon. Leticia R. Shahani, called the session to order.

The President Pro Tempore. The eighth session of the Senate in the Second Regular Session of the Tenth Congress is hereby called to order.

Let us all stand for the opening prayer to be led by the Senate President, the Hon. Neptali A. Gonzales.

Everybody rose for the opening prayer.

PRAYER

Senator Gonzales.

Almighty God, Most Gracious Father in heaven:

As we commence today's session, we humbly pour out the desires of our hearts to Thee, in thanksgiving and supplication.

We thank Thee for all the blessings Thou hast bestowed upon each of us—blessings that help us recognize that if we were to be true and efficient in the performance of our duties to our country and people, we need Thine divine assistance.

We beseech Thee that Thou wilt grant unto us Thine Spirit, that in us we may bear Its fruits—even those fruits that Thou hast enumerated and promised to Apostle Paul when he wrote in his letter to the Galatians:

“...The fruit of the Spirit is love, joy, peace, long-suffering, gentleness, goodness, faith, meekness, and temperance.”

Grant us, O heavenly Father, the grace of humility that we may be able to recognize that we are not infallible, that we can sometimes be wrong even in some of our deeply held views.

Give us the humility to know that we do not have a monopoly of patriotism, of wisdom and love of country, remembering at all times the teaching of our Lord Jesus 2,000 years ago, a lesson which we have never learned that he who wants to be first must be last and servant of all.

Humbly we pray in the most holy name of Thine only begotten son—the savior and redeemer of the world—Jesus Christ.

Amen.

ROLL CALL

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. Flavier	Present
Senator Ernesto F. Herrera	**
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	**
Senator Sergio R. Osmeña III	Present
Senator Ramon B. Revilla	**
Senator Raul S. Roco	Present
Senator Alberto G. Romulo	Present
Senator Miriam D. Santiago	Absent
Senator Leticia R. Shahani	Present
Senator Vicente C. Sotto III	Present
Senator Francisco S. Tatad	Present
Senator Freddie N. Webb	Present
The President	Present

The President Pro Tempore. With 18 senators present, there is a quorum.

SUSPENSION OF THE SESSION

Dear colleagues, today is a very special day in the life of one of our colleagues and also in the life of our Chamber.

In order that we can properly greet Sen. Alberto Romulo, our Majority Leader, a happy birthday, the Chair declares a brief suspension of the session.

It was 4:38 p.m.

*Arrived after the roll call

**On official mission

RESUMPTION OF THE SESSION

At 4:39 p.m., the session was resumed.

The President Pro Tempore. The session is resumed.

THE JOURNAL

Senator Romulo. When I was pleasantly interrupted, Madam President, I was going to move that we dispense with the reading of the *Journal* of the previous session and consider it as approved.

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

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

BILLS ON FIRST READING

The Secretary. Senate Bill No. 1656, entitled

AN ACT CREATING THE DEPARTMENT OF THE AUTONOMOUS REGIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Introduced by Senator Tatad

The President Pro Tempore. Referred to the Committees on Local Government; Cultural Communities; and Finance

The Secretary. Senate Bill No. 1657, entitled

AN ACT ESTABLISHING THE LANAO DEL NORTE SCIENCE HIGH SCHOOL, AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Mercado

The President Pro Tempore. Referred to the Committee on Rules

The Secretary. Senate Bill No. 1658, entitled

AN ACT PROVIDING FOR THE PROMOTION OF HEALTH RESEARCH AND DEVELOPMENT, ESTABLISHING FOR THE PURPOSE THE NATIONAL INSTITUTES OF HEALTH (NIH) DEFINING ITS OBJECTIVES, POWERS AND FUNCTIONS AND FOR OTHER PURPOSES

Introduced by Senators Angara, Webb, Drilon, Fernan, Ople, Tatad, and Flavio

The President Pro Tempore. Referred to the Committees on Health and Demography; Science and Technology; and Finance

RESOLUTION

The Secretary. Proposed Senate Resolution No. 533, entitled

RESOLUTION EXPRESSING THE SENSE OF THE SENATE THAT SARAH BALABAGAN AND OTHER PERSONS SIMILARLY SITUATED SHOULD BE PROTECTED FROM UNSCRUPULOUS INDIVIDUALS BENT ON EXPLOITING THE FORMER FOR LATTER'S SELFISH ENDS

Introduced by Senator Webb

The President Pro Tempore. Referred to the Committee on Labor, Employment and Human Resources Development

Senator Romulo. Madam President.

The President Pro Tempore. The Majority Leader is recognized.

SUSPENSION OF THE SESSION

Senator Romulo. Madam President, in order that we can proceed with the consideration of Senate Bill No. 950 for just a few more individual amendments, if any, may I ask for a brief suspension of the session so that the Presiding Officer can defend or answer the individual amendments.

The President Pro Tempore. Is there any objection? *[Silence]* There being none, the session is suspended.

It was 4:42 p.m.

RESUMPTION OF THE SESSION

At 4:42 p.m., the session was resumed with the Senate President, Hon. Neptali A. Gonzales, presiding.

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. This is the anti-rape bill.

The President. Consideration of Senate Bill No. 950 is now in order.

Senator Romulo. Yesterday, when the consideration of the bill was suspended, we have not yet closed the period of individual amendments in case there may still be individual amendments to be proposed today. But as we were aware yesterday, there were no more individual amendments that our colleagues wanted to propose.

At any rate, there is a clean copy now of Senate Bill No. 950, as amended, until yesterday. If at this time there are still no more individual amendments to be presented, then the next motion would be to close the period of individual amendments.

But before we do that, Mr. President, I move that the distinguished sponsor, Senator Shahani, be recognized.

The President. Senator Shahani is recognized to continue with her sponsorship of Senate Bill No. 950 which is now in the last stage of individual amendments.

Senator Shahani. Thank you, Mr. President. The parliamentary status is exactly as the distinguished Majority Leader has indicated. We are still in the period of individual amendments. We will recall that we have practically covered the entire bill up to Section 6. In addition to whatever additional amendments might be proposed this afternoon, we shall be taking into consideration Section 6—the Rape Crisis Centers—and also the section on appropriations.

If there are individual amendments, the sponsor is, of course, entirely open to the other members of the Chamber.

Senator Maceda. Mr. President.

The President. Senator Maceda is recognized.

Senator Maceda. I do not know if the matter has been brought up for the record. I refer to page 2, lines 12 to 14:

THE FACT THAT THE OFFENDER IS THE
LEGAL HUSBAND OF THE OFFENDED PARTY
SHALL NOT NEGATE THE COMMISSION OF THE
OFFENSE.

in relation to page 4, line 36:

...PROVIDED, HOWEVER, THAT THE SUB-
SEQUENT MARRIAGE BETWEEN THE
OFFENDER AND THE OFFENDED PARTY
SHALL EXTINGUISH THE CRIMINAL ACTION

OR THE PENALTY IMPOSED;...”

Some sectors have brought to our attention that there seems to be some ideological inconsistency here.

Would the lady sponsor, who feels very much in favor of including this marital rape provision, agree without my proposing it yet—and we can hold a recess if it has to be discussed—that the provision be in line with the new provisions of Article 266-F EFFECT OF PARDON, the provision that “THE SUBSEQUENT MARRIAGE xxx SHALL EXTINGUISH xxx” shall be deleted?

Meaning to say, if the subsequent marriage shall serve to extinguish the criminal liability of a rapist, why should the spouse who already married the accused be subject to some criminal liability?

The President. Senator Drilon wishes to intervene, with the permission of the lady sponsor and Senator Maceda.

Senator Shahani. Yes, Mr. President. Before we proceed, may I just propose that we use the version as of 7:38 p.m. of August 6, 1996. This is the version which Senator Maceda has referred to. This has been distributed to all of the members of the Chamber.

Senator Drilon. With the permission of the sponsor, may I intervene?

Senator Shahani. Yes, Mr. President. Senator Drilon may go on.

Senator Drilon. Mr. President, last night, this representation was the one who proposed to reinstate this particular provision. The provision will allow the extinguishment of the criminal liability in case of the marriage of the offender and the offended party.

In case of marital rape, the Roco amendment would also provide that the forgiveness by the wife of the offender—the lawful husband—shall also extinguish criminal liability. Those amendments are reflected on page 4 of this version that we are reading, Mr. President.

Senator Maceda. I have noticed that, Mr. President. But what I am also saying is, the spirit of those two provisos seems to be inconsistent with the first part of the paragraph, which says:

THE EXPRESS OR IMPLIED PARDON
GRANTED BY THE OFFENDED PARTY TO THE
OFFENDER SHALL NOT BE A LEGAL

IMPEDIMENT TO THE PROSECUTION OF THE CRIME OF RAPE;...

So, marriage is a form of express or implied pardon.

Senator Drilon. Mr. President, I do recall that Senator Roco proposed last night that the provision on "EXPRESS AND IMPLIED PARDON BY THE OFFENDED PARTY," et cetera, shall be deleted. That was the amendment, if I recall correctly.

Senator Roco. Mr. President, just to correct the record.

The President. Senator Roco is recognized, as one of the sponsors.

Senator Maceda. I give the gentleman the permission, Mr. President, to be very clear for the record.

Senator Roco. Yes, I also thank the gentleman very much. I accept the permission, Mr. President. *[Laughter]*

Mr. President, I was under the impression last night that the Drilon amendment would be in lieu of the first paragraph. So that Article 266-F will no longer contain lines 30 to 36, but will instead begin in line 37:

...SUBSEQUENT MARRIAGE BETWEEN THE OFFENDER AND THE OFFENDED PARTY SHALL EXTINGUISH THE CRIMINAL ACTION—which is the old rule—PROVIDED, FURTHER, THAT WHERE THERE ARE CO-PRINCIPALS..., all the way to line 47.

In fact, the motion of the gentleman from Iloilo was specifically that—in lieu of line such and such, replace it with line 37.

Senator Drilon. As it appears now on page 4, this was my proposal. But the Gentleman proposed an amendment that we should delete what appears in lines 30 to 36.

Senator Roco. Maybe that was not clear because we approved this, subject to style. What I understood as approved was the original statement about this express or implied pardon as now deleted, and instead we put back the old rule which is the subsequent marriage extinguishes, provided, that where there are coprincipals, they are not affected; and provided, finally, that when the offender is the legal husband, forgiveness can also extinguish. So that becomes a clearer concept, and then our friend from Manila and Ilocos Sur will no longer have a problem.

Senator Maceda. In view of the fact that it is included in

the 7:38 p.m. version, would the principal sponsor now agree to the Roco-Drilon-Maceda amendment—that in lines 30 to 36, from the phrase "THE EXPRESS OR IMPLIED PARDON" up to phrase "PROVIDED, FURTHER, THAT" are deleted, and the paragraph will start with the phrase "THE SUBSEQUENT MARRIAGE", et cetera?

Senator Shahani. May I know what Senator Drilon thinks, Mr. President?

Senator Drilon. I will reply by way of a question on the intention of the sponsor.

I view lines 30 to 36 to cover situations where there is an alleged written or verbal forgiveness extended to the offender by the offended party. Lines 30 to 36 would not necessarily result in the extinguishment of the criminal liability where, for example, it appears that the offended party or the victim forgave the offender. So that the pardon in that case will not be a legal impediment to the continued prosecution of the crime of rape since rape is now a public offense and no longer a private crime.

Theoretically, the prosecutor can continue to prosecute even with the written pardon granted by the offended party. That, I think, will be covered by lines 30 to 36.

However, I do not know whether that particular situation, where there is a pardon on the part of the offended party by means other than a marriage, would extinguish criminal liability.

Senator Shahani. I think that is the way I understood the debate yesterday. And maybe Senator Roco can explain it because he was the one who did emphasize the need for forgiveness, if I understood him correctly.

Senator Roco. Mr. President, as the sponsor allows, the effect of deleting lines 30 to 36 will restrict pardon only to very specific instances. One is marriage, which is acknowledged now. The other is forgiveness by the wife of the husband. Beyond that, any written forgiveness that is produced will then suffer the scrutiny of probative value. They become defenses, but they do not extinguish because there is no express extinguishment of the crime.

Senator Drilon. Mr. President, the subsequent act of pardon will not be a defense unless we specify it.

Senator Roco. That is correct, Mr. President.

Senator Drilon. That is why I thought that lines 30 to 36 would cover instances where, for example, there is a written pardon by the offended party.

In other words, the question I raised, Mr. President, with the deletion of this line is: Is it the intention of the sponsors then that the written pardon will have the effect of extinguishing the criminal liability?

Senator Roco. There is no more basis for extinguishing if we remove that.

Senator Drilon. But if we retain it, it would be clear, Mr. President, that there is no extinguishment of criminal liability?

Senator Roco. Yes, but the crime is never extinguished unless we say so. That is why I thought the amendment proposed by the gentleman would, in fact, be in lieu of that portion:

Senator Drilon. Mr. President, the records will show that I tried to reincorporate lines 37 to 43 which were in the earlier version.

Senator Roco. Yes, Mr. President.

SUSPENSION OF THE SESSION

May we request for a short suspension of the session, Mr. President?

The President. Is there any objection? *[Silence]* There being none, the session is suspended.

It was 4:56 p.m.

RESUMPTION OF THE SESSION

At 5:02 p.m., the session was resumed.

The President. The session is resumed. Senator Drilon is recognized.

DRILON AMENDMENT

Senator Drilon. Mr. President, after discussing with the sponsor and Senator Roco, we propose an amendment on page 4. The amendment will delete lines 30 up to line 36, starting with the phrase "the express or" ending with the word "that". Again, for clarity, in line 30, delete the phrase "the express or", then delete lines 31 to line 36 up to the word "that".

So that Article 266-F will start with line 36 starting with the article "THE".

Senator Shahani. I believe there are other amendments in line 40.

Senator Drilon. There is also a proposed amendment in line 40, deleting the phrase "accomplices and accessories", and in line 42, after the comma on "coprincipals", insert the words AND THEIR.

The President. What does the sponsor say?

Senator Shahani. Mr. President, this is acceptable to the sponsor, but I just would like to know the reaction of Senator Maceda since he raised the question in the first place.

Senator Maceda. Mr. President, we agree with the amendment for reasons already stated and, in addition thereto, to prevent situations where the offended party has granted clearly an express pardon or refuses to prosecute, and this would be an occasion for other parties—including other members of the family and even the prosecutors—to make money before they agree to drop the case altogether.

Senator Shahani. As I said, the amendment is accepted. Of course, it is quite clear that the provision on marital rape remains unaffected by this provision. The amendment is accepted, Mr. President.

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

Senator Maceda. Mr. President, I have one minor amendment for clarity.

If we go back to page 2, in lines 12 to 14 on the marital rape provision.

PARLIAMENTARY INQUIRY OF SENATOR SOTTO

Senator Sotto. Parliamentary inquiry, Mr. President.

The President. Senator Sotto is recognized.

Senator Sotto. Did we act from line 30 all the way down to line 43 as suggested by Senator Drilon?

The President. On what page?

Senator Sotto. On page 4, the amendment that we just acted upon. I would just like to inquire whether we deleted the word "further" in line 39 when we proposed the amendment. As I understand it, it is no longer necessary to retain that word.

The President. What does the sponsor say?

Senator Shahani. That is correct, Mr. President. It is a

surplusage. We can delete the word "further" in line 39.

SOTTO AMENDMENT

Senator Sotto. May I then move that we delete the word "further" from that line, Mr. President.

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

Senator Maceda may now continue.

Senator Maceda. Yes, Mr. President.

MACEDA AMENDMENT

On page 2, line 12, before the phrase "the fact that the offender is the legal husband of the," insert the phrase SUBJECT TO THE PROVISIONS OF PARAGRAPH (F) HEREOF, then comma [,].

The President. In what line is that, Senator Maceda?

Senator Maceda. On page 2, line 12. The proposed amendment is to insert at the beginning of the paragraph the phrase SUBJECT TO THE PROVISIONS OF PARAGRAPH (F) HEREOF.

The President. What does the sponsor say?

Senator Shahani. It is accepted, Mr. President.

Senator Maceda. This is Article 266, so we do not have to repeat Article 266.

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

Senator Maceda. Thank you, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, I would like to go back to page 1 and ask the sponsor the precise meaning of the word "demented."

Will this cover a situation where the person is totally insane—meaning legally insane? There is a difference between "insanity" as known in the medical profession and "insanity" as a defense in criminal law.

"Insanity" as a defense in criminal law requires a total deprivation of the right to apprehend right or wrong. But "insanity" as a medical term is a very broad term. I would like to find out therefore what is the precise meaning of the word "demented" here. Will it include an imbecile, a feeble-minded person, a schizophrenic person, a person who suffers from what is called in psychiatry a "catatonic schizophrenia" where the person withdraws inwardly and maintains a world of her own, although she is not deprived of reason but she could not reason because of her personality defect?

By the way, schizophrenia is not insanity, it is a personality defect. I would like to find out whether this is the intent of the word "demented" here.

Senator Shahani. Yes, Mr. President. I think "demented" would include mental illness and behavioral disorder. Insanity would mean psychosis. I guess, that is very extreme.

Senator Enrile. If that is the meaning, may I request a colleague who is a member of the medical profession to tell us what is the precise medical meaning of the word "dementia" or "demented"?

Senator Flavier. With the permission of the author and the interpellator, Mr. President.

The President. Senator Flavier is recognized.

Senator Flavier. If we use the word "demented", that is the generic term that will then encompass everything. But if we approach it medically, then we will have to classify the disorders according to the precise ailment. For example, there is such a thing as dementia praecox which is to say that one's memory was affected when he was young. There is one that comes out when one is older or elderly, that is where the Alzheimer-type comes in. Then there is also the question of degree of mental ability, and it is a form of dementia. But it is pegged on the IQ of the individual, so that is where the classification of imbecile and all of that comes into the picture, Mr. President.

Senator Enrile. Thank you, Mr. President, for that. I am now satisfied. May I now go to page 2, if there are no anterior amendments.

I would like to find out, first of all, Mr. President, what is the meaning of the phrase appearing in line 24, "or on the occasion"?

When the rape is attempted or frustrated, and homicide is committed by reason of the rape, I would understand that. But what is the meaning of the phrase "on the occasion"? How far

in time must the commission of the homicide be considered a homicide "on the occasion" of the rape? Will it be, if the rapists happen to leave the place of rape, they are drunk and they killed somebody along the way, would there be a link between that homicide and the rape? Will it be "on the occasion" of the rape?

Senator Shahani. Mr. President, this is taken from the Heinous Crime Law. I believe this is time-bound. It will have to be linked with the rape itself, and the homicide is committed with a very short time lapse.

Senator Enrile. I would like to take the first scenario, Mr. President: If the rapist enters a house, kills a maid, and rapes somebody inside the house, I would probably consider that as a rape "on the occasion of". Or if the rapist finished committing the crime of rape, and upon leaving, saw somebody, let us say, a potential witness inside the house and kills him, that is probably clear. But suppose the man happens to kill somebody in the vicinity of the area and rapes somebody, will there be a link between these? What is the intent of this phrase "on the occasion of rape"? This is also repeated in line 27.

I think all of us who have had some practice in criminal law, Mr. President, realize that it is very important that we must be very precise in the definition of crimes.

Senator Shahani. Mr. President, the principal crime here, of course, is rape, and homicide is a result of the circumstances surrounding the rape.

So, the instance which was brought up by the good senator from Cagayan where, let us say, the offender is fleeing the place or is apprehended by the police and he commits homicide, I think would be examples where the phrase "on the occasion thereof" would apply. But the principal intent, Mr. President, is rape.

Senator Enrile. Would there be any effect on this proposed law, Mr. President, if this phrase "or on the occasion" be deleted in lines 20, 24, and 27? This presents to me certain ambiguities that could create some avenue to cause a lot of trouble later on.

"When as a consequence of the rape the offended party becomes insane", then that is clear.

"When as a consequence of the attempted or frustrated rape homicide is committed by reason of the attempted or frustrated", that means by reason, of either before or after.

Senator Shahani. Mr. President, this is really part of the Revised Penal Code and it is quoted here *in toto* because we have revised some of its provisions. But the wording which the distinguished senator from Cagayan is referring to is the old

language of the Revised Penal Code.

Senator Enrile. Do we have any jurisprudence explaining the meaning of this phrase "or on the occasion of"? I presume that there must have been some decisions already. If this is a part of the Revised Penal Code, there must have been some decisions so that we can understand what this phrase really purports to mean.

SUSPENSION OF THE SESSION

Senator Shahani. Mr. President, may I ask for a brief suspension of the session.

The President. Is there any objection? [Silence] There being none, the session is suspended.

It was 5:18 p.m.

RESUMPTION OF THE SESSION

At 5:23 p.m., the session was resumed.

The President. The session is resumed.

Senator Enrile. Mr. President, if there is jurisprudence on this and this has been interpreted by the Supreme Court, then I will abide by that interpretation.

Senator Shahani. Yes, Mr. President. There are several decisions of the Supreme Court on the complex crime of rape with homicide. There is the SCRA 199 of 1961, that is *People of the Philippines v. Yu*. Also, *People of the Philippines v. Ramos*, 92 SCRA 165. The decision was made in 1979. And *People of the Philippines v. Ramos*, 94 SCRA 842, was made in the year 1979.

There is literature, Mr. President, to support the phrase "on the occasion of".

Senator Enrile. Thank you, Mr. President. My next question is in lines 38 to 39, "when the offended party is under the custody of the police or the military." If the person is under the custody of the NBI or is actually confined in a penal institution and the woman is raped in that institution, or if she is raped while in the custody of the National Bureau of Investigation, is there any intent to exclude this situation?

Senator Shahani. I think that situation mentioned by our colleague from Cagayan does not appear in Article 266-B. I believe that if they are under the custody of the NBI, I think that could be added here, but I still would like to find out. Maybe

somebody can explain in the Chamber, Mr. President, why this omission.

I am informed, Mr. President, that the NBI is not included here because it is the police or the military authorities which do the custodial investigation when the offended party is under detention. And this is the responsibility of the police or the military authorities.

Senator Enrile. I will give the sponsor an example. Suppose the National Bureau of Investigation confines in its headquarters a female witness to a crime and that witness was raped by an NBI employee while in their custody, would such a situation be outside the ambit of paragraph 2, appearing in lines 38 and 39 of page 2 of this measure?

Senator Shahani. Yes, Mr. President, I think that would be covered.

Senator Enrile. It will be covered, but it says here "police and military authorities," Mr. President.

Senator Shahani. Mr. President, if there is a desire to amend this since we have amended this article in other parts, this sponsor is open to suggestions.

Senator Enrile. How would this differ from line 5, paragraph 6, of page 3, Mr. President, when the rape is committed by a member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency?

I would imagine that when rape is committed by a member of the military or the police or law enforcement agency, whether the offended party was under the custody of the military, police or any law enforcement agency or not, then paragraph 6 will apply. But it would seem that there is a special intent being presented in the situation contemplated by paragraph 2, appearing in lines 38 and 39 of page 2.

Senator Roco. Mr. President, may we offer an explanation, if the sponsor will allow.

The distinction between lines 38 and 39, "When the offended party is under the custody of the police or military authorities", the offender may not in fact be a police or a military man or somebody who is with the law enforcement agency. When they are in the custody, then there must be protection for the woman. So the offender may be a private individual. He may not be under the command of the police, et cetera. But since he is under custody, presumably, he is supposed to be safe.

In the case of lines 5 to 7 on page 3, "When committed by

any member of the Armed Forces of the Philippines or the Philippine National Police, maybe, we can also put the NBI, or any law enforcement agency should cover the NBI, where the offender is a member of the military. The woman may not be in custody.

Senator Enrile. I take that explanation Mr. President. But then there is certain ambiguity with respect to lines 38 and 39 of page 2.

Let us take the case of Jessica Alfaro. She was under the custody of the NBI—assuming that the NBI is going to be included in this paragraph. She went on leave. She was allowed to go on leave by the NBI while in custody. While on leave, as the gentleman said by way of example, she was raped. Would that situation come under paragraph 2, lines 38 and 39 on page 2?

She is under the custody of the NBI but she was out of the building, out of the immediate environs of the law enforcement agency that has custodial authority over her because she was allowed to go on a furlough.

Senator Roco. In my opinion, Mr. President, on those assumptions, then the woman will not be covered by this attendant circumstance because she put herself outside the protective mantle of the custody by escaping the custody temporarily.

Senator Enrile. Suppose she was allowed to leave? She was permitted to visit, let us say, a hospital and on the way she was raped. She was at that time under custody.

Senator Roco. Under those assumptions, Mr. President, then I guess the judge will have to determine whether the custodial protection was still in existence. But I would suggest that that be left to the discretion of the judge.

Senator Enrile. I just want to ask these questions, Mr. President, to lend some aid to interpretation later on.

How about custody by a penal institution or a mental institution? When the person is under the custody of a mental institution, of course, she is demented and that is already covered. How about in the case of a penal institution, a juvenile institution?

Senator Roco. Yes, I guess, Mr. President, with the consent of the principal sponsor, words can be put in so that that will be covered. Conceptually, I see no difficulty accepting the concept, but we have to get the consent of the sponsor.

ENRILE AMENDMENT

Senator Enrile. May I therefore suggest an amendment to this, subject to style, Mr. President, and say, WHEN THE OFFENDED PARTY IS UNDER THE CUSTODY OF THE MILITARY OR ANY LAW ENFORCEMENT OR PENAL INSTITUTION. That will cover, I think, the situations that I have raised.

Senator Shahani. Mr. President, our colleague from Cagayan has raised some important issues. On the part of the sponsor, I would be willing to accept those amendments concerning the inclusion of the phrase LAW ENFORCEMENT OR PENAL INSTITUTIONS.

Senator Enrile. Thank you very much.

Senator Sotto. Mr. President.

The President. Senator Sotto is recognized.

Senator Sotto. Just a question on that point, Mr. President, in lines 38 and 39, still on page 2.

The President. If Senator Enrile would yield.

Senator Sotto. Yes, if the gentleman will yield.

Senator Enrile. Yes, Mr. President.

Senator Sotto. Mr. President, I just want to find out if lines 38 and 39 will also apply if the offender is a co-detainee or a co-prisoner.

Senator Enrile. I suppose so. Rape is rape.

Senator Sotto. Thank you, Mr. President.

Senator Enrile. Mr. President, I would like to clarify line 34 on page 3. It says here, "To acknowledge the offspring, unless the law should prevent him from so doing."

May I know what are the situations contemplated by this exception—"unless the law should prevent him from so doing?"

The President. Before the sponsor answers that question, I understand that there has been a previous amendment by Senator Enrile. Is that amendment acceptable to the sponsor?

Senator Shahani. I think this is just a clarification. I think the occasion would arise when the man is married, Mr. President, and the father would not acknowledge the offspring.

The President. Is it accepted by the sponsor?

Senator Enrile. I think my previous amendment has not been approved, Mr. President.

Senator Shahani. Mr. President, the amendment on page 2, lines 38 and 39 which proposes the inclusion of the phrase LAW ENFORCEMENT OR PENAL INSTITUTIONS has been accepted by the sponsor.

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

Senator Enrile may proceed.

Senator Enrile. Coming to page 3, "unless the law should prevent him from so doing." We are crafting a law, Mr. President. If the person who raped the woman is married and that rape resulted in a pregnancy, why should the law not compel that person to recognize the offspring even if he is married as an exception to the non-investigation of paternity?

Senator Shahani. Mr. President, I think this could raise problems. If the senator from Cagayan wishes to delete the phrase "unless the law should prevent him from so doing," I think that would be a good addition.

ENRILE AMENDMENT

Senator Enrile. I so move, Mr. President, that the comma (,) after the word "offspring" be changed to a PERIOD (.) and the phrase after that comma (,) all the way to line 35 ending with the word "doing" be deleted.

Senator Shahani. It is accepted, Mr. President.

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

Senator Macapagal. Mr. President.

The President. May we know the pleasure of Senator Macapagal?

Senator Macapagal. Mr. President, may I just inquire from the distinguished gentleman from Cagayan about the situation where a married woman gives birth and she has been a victim of rape. But rape or no rape, is it not the presumption that if she is married, her husband is the father of the child?

Senator Enrile. That is correct, Mr. President.

Senator Macapagal. So in this particular case, could that be the meaning of the provision that the law therefore prevents the rapist from acknowledging the child as his?

Senator Enrile. I think in a situation like that, there is no basis to presume that the offspring is the offspring of somebody else because there is husband and wife relationship.

Senator Macapagal. So therefore, in this case, would the rapist then not be prevented by law from claiming the child as his own because the presumption is that the child belongs to the husband?

Senator Enrile. In that situation, Mr. President, we do not even have to inquire because the child is presumed to be the legitimate offspring of the husband, unless we have a situation where the husband is totally impotent. And maybe in that situation we can make a case that even if the child is born in wedlock but the husband in that marital relationship is impotent, and we proved that there has been a rape and after that rape, the person became pregnant and we can relate the pregnancy to that rape, I think the provision that we have just crafted would compel that man, whether he is married or not, to recognize the child.

Senator Macapagal. But if the husband of the victim is not impotent?

Senator Enrile. I doubt whether we can impute that, Mr. President, as a child of the rapist.

Senator Macapagal. Article 266-E says that the persons guilty of rape shall be sentenced to acknowledge the offspring. But in this case, will the rapist be compelled to acknowledge the offspring when the law presumes that the child belongs to the husband of the victim?

Senator Enrile. The lady senator has raised a very important legal question. This representation is not prepared to argue the civil law implication of that situation.

Senator Macapagal. I am asking this question, Mr. President, because I can imagine that the ones who assisted the sponsor in crafting this bill might have been thinking of that situation when they have a provision "unless the law should prevent him from so doing."

Senator Enrile. As I said, when A and B are married and every pregnancy is presumed to be that of the couple, even if there was rape, if there is pregnancy, it is presumed by law that

the pregnancy is that of the couple.

I have my doubts whether we can raise the issue of paternity in a situation like that. That is why I really came out with a scenario where the husband might be impotent in which case we can probably make a case.

Senator Shahani. Mr. President, with the deletion proposed by the senator from Cagayan, I think we leave the issue somewhat open-ended. I think that is better. Under the Family Code, all children who are born are recognized anyway. Now, recognized by whom? I think we are putting the burden here on the rapist. It is better open-ended because this might give rise to new legislation.

Senator Enrile. Mr. President, I will now come to my last point. I refer to page 4, lines 39 to 43 regarding the marriage of one of the accused to the offended party.

The President. Senator Enrile, before you proceed, may the Chair interrupt. I understand that the gentleman from Cagayan has an amendment on page 3, lines 34 to 35, calling for the deletion of the phrase "unless the law should prevent him from so doing." Has that offer of amendment been accepted?

Senator Shahani. I have accepted that, Mr. President.

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

The senator from Cagayan may proceed.

Senator Enrile. Thank you, Mr. President. I am raising a point here under this proviso: "Provided, further, that where there are co-principals, accomplices and accessories, the extinguishment of the criminal action or the penalty shall not apply to such co-principals, accomplices and accessories."

Now, there is only one woman to be married. If there are two or more principals and accomplices, how can they all marry the same girl? So, it is unfair to those who are not allowed to marry the girl to stay in jail and allow the other one to go scot-free simply because he was clever enough to marry the offended party even though he or she may not really love the girl.

The point that I am raising, Mr. President, is the basic principle in Criminal Law that every intendment of the law must lean in favor of the accused in a criminal case. And if there is an extinguishment of the crime with respect to the person of one of the principal authors of the crime, then why should this event

not apply in favor of the co-principals and accomplices? Suppose that the one marrying the offended party is the most guilty because he was the one who instigated the rape in the first place.

Senator Shahani. Mr. President, I wonder whether we are referring to line 40 where the words "accomplices and accessories" have been deleted.

Senator Enrile. I am referring, Mr. President, to the proviso appearing from line 39 and ending in line 43.

Senator Shahani. Yes. As the situation stands, Mr. President, in line 40, the word "co-principals" is retained, but the phrase "accomplices and accessories" has been deleted.

Senator Enrile. Yes. Still the point I am raising, Mr. President, is: If there are two, three or more than two actors who raped the woman, why should one or the rest be allowed to rot in jail and the other one be allowed to go free simply because of that act of marrying? Why should that forgiving act of the offended party not be allowed to inure to the benefit of the co-principals following the principle in Criminal Law that every intendment of the law must lean in favor of the accused?

Senator Shahani. Mr. President, this was the subject of a long debate yesterday and we went so far as to delete the phrase "accomplices and accessories" and retain the word "co-principals". But on further consultation with the proponents of this amendment, I believe, if I read their body language right, Senator Drilon now is in favor of deleting "co-principals" also.

Senator Enrile. Then I so move that we delete this entire proviso beginning from the word "provided" in line 39 and ending in line 43 before the word "provided".

Senator Shahani. Just for clarification, Mr. President. Senator Enrile is proposing the deletion of lines 39 beginning with the word "provided" up to line 43 ending with the word "accessories".

Senator Enrile. That is correct, Mr. President.

Senator Shahani. Yes.

Senator Enrile. Which means that even if there are multiple actors in a rape case, the marriage of one of them with the offended party will wipe out the crime including the penalties imposed.

Senator Shahani. That is correct, Mr. President. I accept the amendment.

Senator Enrile. Thank you very much, Mr. President.

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

Senator Shahani. Just as a matter of style, I propose that in line 43, the word "finally" after the word "provided" be also deleted.

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

Senator Mercado. Mr. President.

The President. Senator Mercado is recognized.

Senator Mercado. Unless there are anterior amendments, I would like to go back to page 2.

Senator Shahani. Mr. President, I wonder whether Senator Coseteng has something to add to this paragraph. She spoke about it yesterday, and this is the time for her to say something.

Senator Mercado. I shall propose my amendments after Senator Coseteng's.

The President. Senator Coseteng is recognized.

Senator Coseteng. Mr. President, in yesterday's deliberation, during the period of amendments, there was an acceptance of the principle that if an involuntary marriage is performed after the crime of rape, then this should not extinguish the crime itself.

May I find out at this point, since so many other things have been inputted into the law, what is the actual position of our distinguished sponsor because yesterday, it seemed like it was already accepted?

Senator Shahani. Mr. President, we were in the period of amendments, and what I told our colleague was that, she has to present some language at this stage. I just cannot be accepting ideas since this is a fairly complex issue. So if our colleague from Quezon City could tell me where she would like this amendment or what words she would like to use, since there is no such thing as involuntary marriage.

Senator Coseteng. It could be in line 37, unless another paragraph or article is necessary for this particular matter.

I mean when the victim is forced into marrying the offender, then the crime of rape shall not be extinguished by that very marriage.

SUSPENSION OF THE SESSION

Senator Shahani. Mr. President, may I request for a brief suspension of the session.

The President. Is there any objection? [Silence] There being none, the session is suspended.

It was 5:53 p.m.

RESUMPTION OF THE SESSION

At 6:04 p.m., the session was resumed.

The President. The session is resumed. Senator Shahani is recognized.

Senator Shahani. Mr. President, I think Senator Coseteng would like to say something.

The President. Senator Coseteng is recognized.

Senator Coseteng. Thank you, Mr. President. Before I propose a final amendment, may I just ask a question for clarification concerning the extinguishing of a criminal liability?

In Article 89 of the Revised Penal Code, it specifies—correct me if I am wrong—that only the following circumstances could extinguish a crime: the death of the convict, the service of the sentence imposed on him, amnesty, absolute pardon, prescription of the penalty, and marriage as reflected in Article 334 which states that marriage would extinguish the crimes of adultery, concubinage, seduction, abduction, acts of lasciviousness and rape. Since we are removing rape from that category of crimes against chastity, therefore marriage would not be a condition to extinguish the criminal liability of the rapist.

This being the situation, Mr. President, how would that relate to Article 266-F?

Senator Shahani. Mr. President, as the debate has proceeded on this issue, I think we have accepted that marriage between the offender and the offended party shall extinguish the criminal action imposed. Of course, that is on the premise that this is a marriage agreed upon in a free and voluntary manner.

I think Senator Coseteng yesterday and today referred to instances where the woman might have been forced into marriage or she herself is too embarrassed to say no because of the humiliation and the embarrassment but she did not really voluntarily choose to be married to her own rapist.

I think we have to strike a compromise because the nature of rape is somewhat different from the nature of murder as a crime. Rape relates to the intimate physical and emotional relationship between a man and a woman or the offended party and the offender so the issue of forgiveness comes into the matter. As Senator Roco said, she cannot be married to the man and at the same time there is a sword of Damocles hanging over her. The marriage, of course, cannot be stable.

On the other hand, there must be in this bill the opportunity for the woman to protect her rights if indeed the marriage was a forced one. I believe Senator Coseteng has an amendment and maybe she can now inform us of what her intention is.

COSETENG AMENDMENT

Senator Coseteng. Mr. President, the amendment is the insertion of the word VALID in line 37 between the words “subsequent” and “marriage.”

So the clause that starts in line 36 would now read: “*PROVIDED, HOWEVER, THAT THE SUBSEQUENT VALID MARRIAGE BETWEEN THE OFFENDER AND OFFENDED PARTY SHALL EXTINGUISH THE CRIMINAL ACTION OR THE PENALTY IMPOSED;*”

Senator Shahani. Mr. President, I believe with that addition, this opens the door for the women—if she is the offended party—to declare her marriage null and void. Therefore, whatever charges she may want to file against her rapist, her former husband will be allowed under these circumstances. So I accept the amendment, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, before we act on this amendment, may I just seek a clarification for purposes of future interpretation.

I would like to find out. If A was raped by B, later on B was sentenced to suffer imprisonment and did enter prison. Later on, B married A, but after the marriage, B sought the annulment of the marriage with A. Would that annulment be considered as no longer material in the cancellation of the crime as well as the penalty? The pardon is already absolute and irretrievable. Am I correct in this, Mr. President?

My understanding of the law of marriage is that when we annul a marriage, it means that the validity of the annulment retroacts.